House of Representatives

The House was not in session today. Its next meeting will be held on Monday, May 23, 2005, at 12:30 p.m.

Senate

FRIDAY, MAY 20, 2005

The Senate met at 9:31 a.m. and was called to order by the Honorable JOHNNY ISAKSON, a Senator from the State of Georgia.

The PRESIDING OFFICER. The guest Chaplain, Dr. Alan N. Keiran, Office of the Chaplain of the Senate, will lead the Senate in prayer.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray.

God of second and third chances, help us to be as patient with each other as You are with us. Even as You forgive us when we don’t deserve it, give us the grace to show mercy to others. As You see what we can become instead of who we are, infuse us with optimism so we may become all You want us to be.

God, the times require wisdom and courage. Give our Senators the wisdom not to mortgage the future for today’s ephemeral successes, but strengthen them to stand for what is right and good and lasting. As You gave Your life for us, each day make us willing to die ourselves for the good of the many. We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHNNY ISAKSON led the Pledge of Allegiance, as follows:

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

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

APPPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS). The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,

To the Senate:
Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHNNY ISAKSON, a Senator from the State of Georgia, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. ISAKSON thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Colorado is recognized.

SCHEDULE

Mr. ALLARD. Mr. President, today, the Senate will resume consideration of the nomination of Priscilla Owen to be a circuit judge for the Fifth Circuit. This will be the third consecutive day of debate on this well-qualified nominee. We have had a good debate on the Owen nomination, with a number of Members, on both sides of the aisle, speaking on the issue. As the majority leader announced yesterday, we will be seeking a unanimous consent agree-

ment to set a time certain for a confirmation vote on the Owen nomination. If an objection is raised to a time agreement, a cloture motion will be filed later today.

Also, as announced by the leader, there will be no rollcall votes today. The next rolcall vote will be on Monday, and that vote will likely be in relation to a motion to instruct in order to request the presence of absent Senators. Additional votes are possible on Monday, and the leader will update that schedule on Monday.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NOMINATION OF PRISCILLA RICHMAN OWEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT—RESUMED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session for the consideration of calendar No. 71, which the clerk will report.

The bill clerk read the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.
The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CORNYN). Without objection, it is so ordered.

The Senator from Georgia.

Mr. ISAKSON. Mr. President, I rise this morning to continue the debate with regard to the confirmation or advice and consent on the approval or denial of judicial nominations made by the President.
The Senator from Georgia.

Mr. President, I rise this morning to continue the debate with regard to the confirmation or advice and consent on the approval or denial of judicial nominations made by the President.

I thought this morning I would talk about one of these seven. We obviously are debating Priscilla Owen, from the Presiding Officer’s home State of Texas. But I want to direct my remarks to Janice Rogers Brown, of California, who also has been threatened to be filibustered and not allowed to get to a vote, up or down.

I thought, in preparing my remarks, I would research those who do not think she should get a vote and what they are saying about her record so I could at least come to the floor and debate the issue by the vote that should be debated and that is the qualifications of that judge. I went to a number of Web sites, and I found something very common that you usually find in this type of an issue. I found a couple of quotes, repeated over and over again, as an example of why Janice Rogers Brown is not in the mainstream.

So what I thought I would do today in my time is take those quotes and the sense from those two speeches she gave and ask the question. Is she out of the mainstream? For, you see, those two quotes that are used so much on the Web sites to disparage Justice Brown are two quotes from two speeches, both of which I have read, which I find to be quite remarkable. Both were made in the year 2000, and both are fundamentally about the beliefs of Janice Rogers Brown.

So I would like to analyze those two quotes for a second and ask us to ask the question, Is Janice Rogers Brown in the mainstream or is she not?

The first quote is from August 12, 2000, in a speech she made, entitled “Fifty Ways To Lose Your Freedom.” I apologize to the Chair. I am going to read precisely so I do not miss a word. This is a quote used to say she is not in the mainstream—one of them. She said:

Some things are apparent. Where government moves in, community retreats, civil society disintegrates and our ability to control our own wealth and property. The result is families under siege; war in the streets; unapologetic expropriation of property; the precipitous decline of the rule of law; the rapid rise of corruption; the loss of civility and the triumph of deceit. The result is a debased, debauched culture which finds moral depravity entertaining and virtue contemptible.

That is a strong statement, but it sits there on its own without any thought or context to the speech that was made because the speech by Mrs. Brown was about the innate goodness of people. What she refers to in her speech as to natural law is that we are born knowing right from wrong and good from evil. Her point is that when Government becomes so big, so intrusive, and so pervasive, it can do everything that is not listed. I do think the things she listed, some people say that is not a mainstream statement. So I ask myself, let’s look at those things she said could happen as we lose our freedom.

She said facts are “under siege.” I think that is a fair statement in contemporary 21st century. Divorce continues to be up. Child abuse grows. Obviously, that has been a problem. She talks about the streets. We do not have war in the streets, but we have gangs in the streets. We have crime in our streets.

“Expropriation of property.” I look at the assault on private property rights, something we debate in this Senate; on “the rule of law,” where today it seems, in many cases, the whole goal is to avoid the rule rather than follow it.

“The triumph of deceit.” Even in corporate America, look at WorldCom, a statement of deceit to represent a value that did not exist.

A “debased culture.” Well, I am a product of the 1950s and 1940s and 1960s, when I grew up, similar to Mrs. Brown. I do not know if this is a good example or not, but in the 1950s, when I was growing up, “Father Knows Best” was the No. 1 show. Today, it is “Desperate Housewives.” I think that tells us something about the direction we may have gone in terms of the value of entertainment.

And then let’s talk about “virtue” for a second and finding it “contemptible.” We are in a time where Justices have ruled that “under God” does not belong in the Pledge of Allegiance and “obscenity” is in the eye of the beholder. Somewhere along the way, Janice Brown makes a very good point. When Government grows so large that it permeates every facet of society, and there are not restraint upon it, then the natural law of what we know as good and evil or right and wrong really loses its momentum.

Janice Brown made another comment in that speech which I found remarkable. She fundamentally talks about what she believes in terms of democracy and freedom. I want to quote that. She wrote:

Freedom and democracy are not synonymous. Indeed, one of the grave errors of American foreign policy is the assumption that merely installing the forms of a regime like ours—without its foundation—will automatically lead to freedom, stability, and prosperity.

Is that out of the mainstream? I don’t think so. Janice Rogers Brown was saying: You just can’t say you are something unless you have fundamental foundations. You need to underpin that. That is what has made this democracy of ours so great. That is why our freedom has endured, because we are built on fundamental foundations of right and wrong.

For one, as I consider whether I would give advice and consent on a justice to one of the highest courts in our Nation, like somebody who has that fundamental belief in natural law, that fundamental belief in right and wrong, and that fundamental belief that by human nature we are good people, and that freedom of good people, governed by natural law, is the greatest freedom of all.

There is a second quote that has been used over and over on Web sites. I want to share that quote, if I may. It is from another speech she made, although it is in the speech I mentioned on “Fifty Ways To Lose Your Freedom.” It is also given and quoted from a speech made in the year 2000 in April to the Federalist Society called “A Whiter Shade of Pale.”

My grandparents’ generation thought being on the government dole was disgraceful, a blight on honor. Today’s senior citizens blithely cannibalize their grandchildren because they have a right to so much “free” stuff as a political system will permit them to have. Big government is . . . (the choice of multinational corporations and single moms, for regulated industries and rugged [midwesterners], and militant senior citizens.

That quote is cited to say that she is not in the mainstream, without explanation and out of context. I wanted to analyze it for a second. I am a little older than Janice Rogers Brown, but we are of the same generation. We are concerned citizens. I was born in the early 1940s, she in the late 1940s. My grandparents found the Government dole contemptible as well, just as hers. My grandparents were sharecroppers, just as hers. In fact, my grandfather, for whom I am named, was a pretty successful tobacco warehouse man in Coffee County, GA, who lost it all in the Depression and sharecropped. During the summers in the 1950s, my mom would send me down there to work on the farm with him. I heard him say many times he never needed to have to be on the Government dole.

That was not out of the mainstream then, and it is not out of the mainstream now. All of us want to find the prosperity of individual initiative and live and work in a country whose system of justice honors the greatest success that any of us can achieve.

But she made another good point when she talked about big government is, in many cases, the choice of multinational corporations and single moms. Taken out of context, somebody might say: Is that in the mainstream? Well, she is pointing out what you and I see
every day, and that is both single moms and multinational corporations have their own lobbies here to lobby us. In terms of corporations, that may be for tax treatment or regulation. In terms of single moms, it may be for benefits. As government grows, the more pervasive it gets, the more those lobbies may grow.

And she says for regulated industries and rugged midwesterners. Yesterday I had a meeting with an energy company that is- and rugged midwesterners—including Senators in this body—are out for ethanol benefits all the time. And she was pointing out that how big government can get and how pervasive it may be can make all of us possibly too dependent on that big government.

As far as the statement about senior citizens cannibalizing their children’s future, I understand why somebody might say that is a strong statement. But the debate of the day, outside of this issue of the filibuster, is about Social Security, and the debate to follow will be about Medicare, and the fact that the two combined, of which I, a senator from a very southern state, benefit from, will, if not reformed, cannibalize my grandchildren’s future.

Janice Rogers Brown is not only not out of the mainstream, somebody might have even called her a prophet in the year 2000 when she made both of these speeches. The analogy she drew and the conclusions she made are now the contemporary issues of the day.

I did a radio interview this morning in my home town or one of the most listened to stations in the city of Atlanta. I was asked by the host: Mr. Isakov, you were in the minority in the Georgia Legislature for years and were the leader for 8. Do you understand the Senate and the minority’s point on the filibuster?

My answer was: Yes, I understand it. When I was in the minority in that role in the legislature, I tried to take every advantage of every rule. But there is a point at which your certification is a strong statement.

For us, the master rule is the Constitution. And in article II of that Constitution, it delegates to the President the authority to appoint Justices to the Supreme Court and several courts created thereunder, and it gives the Senate the responsibility to advise and consent, advice and consent that is not delinquent in that sense or in that document to require anything other than a simple majority.

In fact, there are seven places in the Constitution where it says we have to have a supermajority: Impeachment is one. Constitutionam is very shortly sometimes it is two-thirds; sometimes it is three-fourths in terms of the States ratifying the Constitution. The Constitution is specific. It is specific on judges that the Senate advises and consents, without designation of a super-majority.

For the public who listens to the debate about filibusters and tradition, that really is the issue. The rule of the Senate invoking cloture that requires 60 votes to bring up a simple majority vote is the application of a rule to supersede the constitutional dictate that this Senate vote up or down on Janice Rogers Brown and Priscilla Owen. That is ultimately the issue. To me, it is that simple.

Another reason I chose to talk about Janice Rogers Brown is because she is a daughter of the South. Because of the experience she had and, and the time she spent for her—she and I grew up in the same South. We grew up in the most significant change that part of the country ever went through, when civil rights changed, beginning with Brown v. Board of Education in 1954, and I, as a student in school, went through that transition where the schools were integrated. And in college, while I studied political science, the debate in this body and the most famous filibuster of all was about the civil rights laws that were passed in the 1960s.

Janice Rogers Brown was born at a time and in a year where her ascension to the bench on the Supreme Court of California or the Federal courts would not have seemed possible because of the rules of the day in the South. But she and I grew through a time where this Congress—in fact, this Senate—saw fit to memorialize the civil rights laws and equalize the treatment of every American.

That is why I believe Janice Rogers Brown deserves a vote up or down. I care and I respect how many Member of this body will vote. But voting not to vote, to deny someone the opportunity to which they have been nominated by the President, elected by a majority of the electors in the last election, is not right. It is not, as Janice Rogers Brown referred to it, the natural law. We all know basically the difference in right and wrong. Denying that vote is wrong.

She told me this at the end of our meeting: I respect anyone voting either way on the floor of the Senate to speak on the matter of extended debate, the filibuster rule. I certainly wish—and I believe many of my colleagues on both sides of the proverbial aisle wish—we were engaging in a deeper manner. Certainly, there are other matters that are far more pressing in the eyes of the American public than the discussion we have been having over these last several days and will have over this weekend and early into next week.

As is the tradition of this institution, the majority has the right to set the agenda, and they are doing so, obviously, with their insistence upon this particular debate and preoccupation with changing the Senate rules with a simple majority. Eliminating the extended debate rule of this institution when it comes to judicial nominations is a matter of grave importance. I can think of no other issue that I have been engaged in over the years that has as many profound implications for how this institution will function in the years to come if the majority prevails in its desire to change these rules.

Like many others, I wish we were debating the issues here and trying to do something more about gasoline prices, education, and health care. In a sense, we are engaging in a filibuster, I suppose, in terms of our ability and willingness to engage in debate on the matters that are most pressing to the American public.

We are a unique institution. There have been 1.884 of us who have served here in 217 or 218 years. It is a rather small group when you think of it—a group of members in age and yet not even 2,000 people have been so fortunate as to have been chosen by their respective States to sit
and represent their interests in this unique institution we call the Senate.

So I begin this discussion by admitting to my colleagues that this is no passing matter of interest to any of us here. It is one of the most important debates we as Senator for whom our first office building, the Russell Building, is named. The Presiding Officer, of course, knows of this individual as well as any member of this body or any determined minority, insisting on the right to be heard on the issue of civil rights. Theirs was not a popular position. My father and others vehemently opposed the position of Senator Richard Russell—despite their great friendship, I might add. As far as I know, the proposal of the majority leader to require a simple majority to close debate on judicial nominations—despite their great friendship, I might add. I take the floor to discuss and debate this proposal. In doing so, I engage with our colleagues in a practice that is as old as the Senate itself.

I know other colleagues have come to the floor in recent days and hours to debate this proposal. Some have spoken in support and others in opposition. Our debate is in keeping with the time-tested principles: respect for human freedom, respect for minority rights, and checks on the tendency of any leader or party to accumulate and abuse power.

The majority leader of the Senate, like the rest of us, is one of its temporary stewards. He is, like the rest of us, a transient member of this enduring institution. He proposes to change the Senate rules to eliminate the right of extended debate with respect to judicial nominations. He is considering doing so by a procedure that, in my view, is outside of the rules of the Senate. I take the floor to discuss and debate this proposal. In doing so, I engage with our colleagues in a practice that is as old as the Senate itself.

This is not just a matter of professional interest for me either; it is intensely personal as well. I vividly recall as a young boy sitting in the Senate gallery watching my father, a Member of this institution, and his colleagues that issue of that time. They were passionate debates, and the use of the filibuster was very much in play. Civil rights, war, poverty, and other issues were demanding the attention of this institution.

I remember, as well, as a teenager sitting on the floor of the Senate, where these young men and women sit today, as a Senate page during some of the civil rights debates of the early 1960s. We watched Senators such as Lyndon B. Johnson, Everett Dirksen, Paul Douglas, and Jacob Javits. We watched them debate sometimes with great passion and vehemence. We watched them negotiate, as well. They were well schooled in the art of advocacy and equally well schooled in the art of compromise. They understood the obligation of party, but they were no less committed to fulfilling their obligations to this great Senate and the country in which they lived.

I particularly watched the Senator for whom our first office building, the Russell Building, is named. The Presiding Officer, of course, knows of this individual as well as any member of this body or any determined minority, insisting on the right to be heard on the issue of civil rights. Theirs was not a popular position. My father and others vehemently opposed the position of Senator Richard Russell—despite their great friendship, I might add. My father and others were frustrated at the possible ability of Senator Russell and a minority of Senators to defeat civil rights legislation. Senators who supported civil rights—my father included—did indeed protest the use of extended debate by both the majority and their adversaries. They even attempted to lower the threshold of Senators required to end such debate. One could hardly blame them, I suppose. Tens of millions of Americans were being systematically and often brutally denied their basic rights.

Using Senate rules and practices to block civil rights legislation was understandably seen by many Senators—most, in fact—as an affront to Americanism, overwhelming the agenda. But it is almost impossible, I say with all due respect, to understand the delicacies and the rhythms of this institution if you have just been here a limited amount of time, serving under one set of circumstances. That, in a sense, is one of the problems.

It is also a problem that too many of our Members have come from the other body, the House of Representatives, I am included. The other body has become highly divided along partisan, with reasons and faults on both sides. But Members who have come from that institution to this institution too often bring some of that luggagae, in effect, some of that passion that existed in the House, and have allowed it to contaminate this institution. We need to stop it.

Too often, over the last number of days, I have heard Members cite speeches given by other Members here. I wish to cite one by another that would have never happened. You might debate with one other Member and remind them of something they said earlier, but a sort of free-flowing attack on other Members of the Senate does this institution ill service, in my view. We need to get back to the business of doing what the Senate does best.
helped pass many pieces of legislation in my 24 years here, both as a majority and minority Member of this institution. I have never helped pass a single bill worth talking about that didn’t have a Republican as a lead cosponsor. I don’t believe a single piece of legislation here that didn’t have a Republican and a Democrat in the lead. We need to sit down and work with each other. The rules of this institution have required that. That is why we exist. Why have a bicameral legislative body, two Chambers? What were the Framers thinking about 218 years ago? They understood the possibility of a tyranny of the majority. And yet, they fully understood the idea that in a democratic process, there ought to be a legislative body where the majority would rule.

So the House of Representatives was created to guarantee the rights of the majority. — Senator McConnell — and the minority. — Senator Biden. — the other institution. — Senator Graham — that would serve as a cooling environment for the passions of the day. The Framers recognized that. — Senator Feinstein — and engaged in the great debates of their times, it was not necessarily the rules of the Senate that created those great moments in history; it was the quality of the individuals here who respected the rules and worked within them, because they understood the value of this institution.

That is what worries me so much about this debate. We are not paying attention to each other here. We have come to believe, I suppose, that the sum of the special interests in this country equals the national interests. They never have and they never will, in a sense. We need to focus on the history of our service, the question we can play, and the importance this institution can play in the years ahead. As I said at the outset, we are only stewards here.

I have been here a quarter of a century. It is a fraction in time. And what do we do with our time? When our tenure is over and our legacy is written, the history of our service, the question will be asked—what did we do with our time? We do something everyday to make a huge difference. There are only going to come a handful of opportunities that will be of great value when you look back on your service and think of the best moments you had.

Some of the best moments, I promise, for those recently arriving in the Senate, will be the moments when you stood up and defied, in a sense, the passions of the day, the trend of the day, and did something different. I am going to step out of the predictable role and try and do something people may not expect.

Over my service here, those Members who have done that are the ones who have enjoyed their service and look back on their service with the greatest sense of pride.

This institution deserves some leaders today who are willing to stand up and protect it. I know my passions are running high. I know the temperature is getting hotter and hotter by the day. But this issue we are debating will probably fade in memory. It will be hard to recall a few years from now debating when the filibuster rule was involved. I do not minimize this issue of judicial nominations. I respect my colleagues who feel passionately about this issue. But I promise them, within a matter of months or years, you will be hard pressed to recall the names of the people involved or exactly where they were going to serve, on what bench.
successful in ensuring the Senate is a bulwark against popular passions that move in time from the left to the right, back and forth. None of us can predict within a matter of days, hours, weeks, months, how the country’s popular opinion will change. And with us having a place where passions are not going to dictate the outcome every day is essential to the stability of this great Republic, in my view.

With these great rights come responsibilities. Of course, the Senate was given special powers to try impeachments, ratify treaties, and, most critically, for our purposes today, to confirm nominees. Perhaps nowhere other than in the advice and consent responsibility of the Senate, laid out in Article II, Section 2 of the Constitution, do we see the Framers’ keen preoccupation not only to respect the principle of majority rule but, as important, to limit the possibility of an overreaching Executive and the tyranny of the majority.

The President nominates, but the President’s powers are balanced and checked by the power of the Senate to provide advice and consent. Remember, Mr. President, what were the personal experiences of the Framers? They came off an experience where one individual, a king, had made exclusive decisions that affected the lives of millions of people, and they were suspicious of an awful lot of power being accumulated in too small a place or too few hands.

With respect to the judiciary, the third and separate equal branch of Government, the powers of the President and the Senate are deliberately and carefully counterposed. Robert Caro, the author whom I cited earlier, has observed that very point. Caro says in his book:

... [In creating the new nation, its Founders] the Framers of the Constitution, gave its legislature ... not only its own powers, specified and sweeping ... but also powers designed to make the Congress independent of the President and the powers the President has to act as a check on his authority. [Including] power to approve appointments, even the appointments made within his own Administration. And the most potent of these restraining powers the Framers gave to the Senate. ... The power to approve Presidential appointments was given to the Senate alone; a President could nominate and appoint ambassadors, Supreme Court Justices, and other officers of the United States, but only “with the Advice and Consent of the Senate.”

The proposal contemplated by the majority leader would, with all due respect to the leader, in my view, undermine the Senate’s role in our constitutional democracy. I know that has been said by many others. It would surrender enormous power to the Executive and upset, in our view, the system of checks and balances created by the Framers.

It would have us move to a majority clout rule on that portion of our business that involves the independence of the judicial bench.

There is an irony to this proposal that cannot go unnoted, and should not go unexamined. It proposes to limit the Senate’s exercise of its power in the matter of nominations rather than legislation. Yet one can argue convincingly that it is precisely in the area of nominations—particularly judicial nominations—that the Framers intended that power to be most utilized. We must remember that during the Constitutional Convention, only after lengthy debate was the power to appoint judges committed to the President as well.

In the closing days of that Convention, the draft provision in the Constitution still read as follows:

“The Senate of the United States shall have the power to . . . appoint . . . Judges of the Supreme Court.

On four separate occasions, proposals were made to include the President in the process for selecting judges. And on four occasions in those closing days, the proposals were rejected. Why? John Rutledge of South Carolina said it best: “The people will think we are leaning too much toward monarchy” if the President is given free rein to appoint judges.

The final compromise was characterized by Gouverneur Morris of Pennsylvania as giving the Senate the power “to appoint Judges nominated by the President.” In Federalist Paper No. 76, Hamilton explained the Senate’s review would prevent the President from appointing judges to be “the obsequious instruments of his pleasure.” As Federalist No. 78 confirms, the Founders were determined to protect the independence and the integrity of the courts, and they believed the chief threat to the independence and integrity of our courts was a President who had nearly unchecked authority to appoint judges.

Against this backdrop, it is, indeed, ironic and troubling to this Senator that the majority leader now suggests that we restrict deliberation, debate, and the rights of the minority with respect to the nominations process, and thereby the ability of the minority to turn this Senate into a rubberstamp for Presidential nominees, Democratic or Republican.

The majority leader and his supporters refer to this effort as the constitutional option. Yet in the name of the Constitution, they are advocating a change that defies the history of the very document they claim to honor. They eagerly lecture this body about the preservation of the original intent of the Framers. Yet they now act with reckless disregard, in my view, for that intent.

At its most fundamental, this Senate is a testament to the rights of the minority. That is the message of the Framers. Yet they now act with reckless disregard, in my view, for that intent.

This tradition of extended debate to preserve minority rights as smaller States offends no constitutional edict at all. In fact, it endorses it. In the words of former Chief Justice Burger, “There is nothing in the language of the Constitution, or history, or cases that requires that a majority always prevail on every issue.”

Nor is there any place in the Constitution entitling anyone—judicial nominees included—to a so-called up-or-down vote on the floor of this Institution.

It has been noted by the Democrats in this debate that there were some 69 nominations sent by President Clinton to the Judiciary Committee, appellate and district court judges, for which none of them were given a hearing. Some said that is a form of filibuster. I agree, it is.

There is nothing, I argue, exactly what the Framers were saying. That is exactly what the people wanted when they wrote the provisions of our Constitution creating the Senate.

In addition, nowhere does the Constitution or record of the Constitutional Convention say or even suggest that the advice and consent function of the Senate should be less with respect to judicial nominees than other nominees.

The reason there is no such distinction is simple: it is illogical on its face. How can anyone argue that we should have the right to extended debate with respect to some obscure agency nominee who can serve for a couple of years, whereas we should not have a right with regard to lifetime appointments to the Federal bench? Such an outcome not only defies the history of the Convention, it defies logic. And this is called the “constitutional option”? To call it by this name is, in my view, dishonest the genius of those men who conceived the Constitution.

The majority leader’s proposal will, without question, diminish the Senate’s power in relation to the Executive, and in so doing will diminish the power of each and every Senator, regardless of party, to stand up for his or her State.

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The majority leader’s proposal will, without question, diminish the Senate’s power in relation to the Executive, and in so doing will diminish the power of each and every Senator, regardless of party, to stand up for his or her State.
Let me say to those who have been here only serving in the majority, only serving under a Republican President—my wish as a Democrat is that this would happen more quickly—I do not know when it will happen, but it will happen. I presume coming up here, you will see the long end of it, you will serve in the minority. You will serve with a Democratic President. And for those of you who want to absolutely guarantee that Presidents can guarantee a right on their judicial nominees, you may never get it back.

I worry, as well, that when we talk about statistics, when we talk about what percentage of President Bush’s nominees were confirmed, which ones were not, how President Clinton’s nominees were treated, what percentages were confirmed, what percentages were not, that we fall into the deplorable habit of treating Presidents like mere statistics. But I would only add that one violation of the Constitution is one too many. And when it comes to getting things done, getting things right, it is near for this institution listening to some of the rhetoric, when all we are talking about is trying to restore this 214 years of unbroken tradition of providing an up-or-down vote for any nominee who enjoys bipartisan majority support in this Chamber as this nominee, Priscilla Owen, does.

If you want to talk about statistics—and our friends on the other side of the aisle have—they have time and time again essentially argued that it is payback for Republicans who have successfully obstructed for the treated nominees of President Clinton. And one of the names they mention is Richard Paez, who was nominated by President Clinton, who was ultimately confirmed by less than 60 votes of the Senate. All we are asking is that Priscilla Owen be treated with the same courtesy and according to the same standard that Richard Paez was treated when he was given an up-or-down vote and was confirmed by less than 60 votes.

A number of my colleagues on this side of the aisle have done an excellent job of presenting, in a comprehensive analysis, the legal and constitutional framework that exists for the Senate’s authority to determine its own rules, and that is really all we are talking about—the Senate determining its own rules. I believe the case that has been made for the Senate continuing to do that is a strong one. In fact, that is why Senators on the other side of the aisle, including the former Democrat majority leader, the senior Senator from West Virginia, the senior Senator from Massachusetts, and the senior Senator from New York, have all stated in the past as recently as 2 years ago that, of course, a majority of Senators has the power to set rules, precedents, and procedures. Indeed, that is how power is vested in the Senate majority to set rules, precedent, procedures has sometimes been referred to as the Byrd option, or otherwise, the constitutional option.

But let me begin my remarks by making a simple point I made last night, and let me reiterate it. I much prefer the bipartisan option to the Byrd option. America works better, the Senate works better, and our constituents are better served when we act in a bipartisan and cooperative manner. I would much prefer to wake up each day not anticipating the battles in this Chamber but, rather, to anticipating the opportunity to do what I came here to do, and that is to serve the interests of my constituents and the Nation by taking the time to get things done, to solve problems. That is why I believe we were sent here. I have done my best to take advantage of every opportunity I have seen in order to work in a bipartisan manner. I would simply choose collaboration over contention any day of the week.

But we know that bipartisanship is a two-way street, that you cannot claim to be bipartisan when a partisan minority seeks to obstruct, and has succeeded, obstructed for the past 4 years, a bipartisan majority from getting a simple up-or-down vote for nominees such as Priscilla Owen. In order to have true bipartisanship, both sides must agree to treat each other fairly and apply the same rules and standards regardless of who happens to be President, whether it is a Republican or Democrat, and regardless of who is in the majority, whether it is a Republican or Democrat majority. But bipartisanship, we know, is difficult, especially when you find the willingness to abide by basic agreements and principles have unraveled so badly as it has these last 4 years.
What are we to do when these basic principles and commitments and understandings have simply unraveled so badly? What are we to do when Senate and constitutional traditions are abandoned for the first time in more than 2 centuries? Senators who seek a supermajority requirement that nominees never be blocked by the filibuster, and then one side says, well, that agreement never existed; when our colleagues on the other side of the aisle boast in fundraising letters to their donors of their “unprecedented” obstruction and then come to the Senate floor and claim that precedent is on their side and that somehow this side, the bipartisan majority, is somehow blowing up the Senate by exercising a “nuclear option”? What are we to do when the former Democrat majority leader claims on one day that the filibuster is somehow sacrosanct and sacred to the Founders and then demonstrates by his own words that he has successfully killed filibusters in the past on the Senate floor?

In 1995 he stated:

I have seen filibusters. I have helped to break them. The filibuster was broken, back, neck, legs and all.

Finally, what are we to do, Mr. President, when they claim on one day that all they seek is more time to debate a nomination, and then claim on another day there are not enough hours in the universe to debate the nomination—indeed, as we stand here 4 years after this fine nominee was proposed, we know there has been more than adequate time for debate. There has been a lot of debate. But this is not about debate. This is not about the Senate’s traditions. This is about raw political power of a partisan minority to obstruct a bipartisan majority from exercising the power conferred upon that bipartisan majority by the Constitution.

It is clear that a partisan minority is now seeking to impose a new requirement during these last 4 years, that nominees will not be confirmed without the support of at least 60 Senators. This, by their own admission—at least at one point by their own admission—is wholly unprecedented in Senate history. But thinking about it, Mr. President, the reason they have now sought to adopt this double standard and this increased threshold before a nominee can even get a vote, the reason for it is simple, and that is because the case for opposing this fine nominee, Priscilla Owen and her fellow nominees, is so weak that the only way they can hope to defeat their nominations is by applying a double standard and changing the rules. That is the only way they can hope to win—this partisan minority.

We have heard a lot of talk about some of the decisions this judge has made when she served on the Texas Supreme Court, as so many others. I think the distinguished Senator from California, who is currently occupying the Chair, spoke eloquently about another nominee, Janice Rogers Brown, who is also accused of “being out of the mainstream” and shown how thin and baseless that allegation is—and by the way, Janice Rogers Brown is accused of being out of the mainstream for exercising her first amendment right as an American citizen in a speech, two speeches, of judicial decision-making. Does that mean that citizens should somehow be constrained in what they can talk about lest they be deemed disqualified to serve as a Federal judge later on because they expressed an opinion of their own? Senators think that they are “outside of the mainstream”? I hope not.

A number of Senators have mentioned the case called Montgomery Independent School District v. Davis. This is one of the cases they cite as an example for Justice Owen “being out of the mainstream.” But, of course, I doubt they have read the opinion. This is about a schoolteacher a local school board dismissed because of her poor performance and because of her abusive language toward her students. This teacher admitted that she had referred to her students as little blank blank blanks—a four-letter expletive that I will not repeat on the floor of this body. When confronted with this statement, she justified the use of this expletive to schoolchildren, mind you, on the bizarre ground that she uses that same language when talking to her own children—clearly unacceptable conduct.

The senior Senator from New York has said that this teacher was wrongly dismissed. Other Senators criticized Justice Owen about this case as well. I have children. Many Senators have children. Certainly the people across America who have children understand, Are Justice Owen’s opponents really arguing that this teacher’s opponents acted inappropriately, that she was wrongly dismissed for using that language and mistreating her students in such a way?

If you read the opinion, as I doubt the critics have, preferring, rather, to speak off of talking points written by political consultants who engage in character assassination for their profession. Justice Owen simply said that the local school board was justified in dismissing the teacher—hardly a decision which was published in the Washington Post in 2003. He said:

It is not just me who says that a supermajority requirement is unconstitutional and violates the Senate traditions for over 200 years. Legal scholars across the political spectrum have long concluded what we know in this body instinctively—that to change the rules of confirmation, as this partisan minority has done starting 4 years ago, badly politicizes the judiciary and hands over control of the judiciary to special interest groups—something we all ought to want to avoid.

The record is clear: Senate tradition has always been majority vote, and the desire by some to alter those Senate rules has been roundly condemned by legal experts across the political spectrum.

In fact, Lloyd Cutler, who recently passed away, who was really the dean of lawyers, who advised Presidents, both Republican and Democrat, during the entire Watergate-White House period, wrote “The Way to Kill Senate Rule XXII,” which was published in the Washington Post in 2003.

They have a mission to fulfill. Whether it is the radical redefinition of some of our society’s most basic institutions, such as marriage; whether it is expelling the Pledge of Allegiance from classrooms of schoolchildren because the phrase “under God” is involved; or whether it is the elimination of the “three strikes and you are out” law and other penalties against hardcore convicted criminals; or the forced removal of military recruiters from college campuses, Justice Owen’s rulings on the type of activism decisions, this category of cases that to me defines the phrase “judicial activism.”

There is a world of difference between struggling to try to do the job judges are duty-bound to perform—that is, to interpret ambiguous expressions of a statute—there is a world of difference between that and refusing to obey a legislature’s objectives altogether and instead substituting that legislature’s own opinion or political agenda for what the legislature, the elected representatives of the people, had said the law should be.

If the Senate were to follow more than 200 years of consistent tradition, dating back to our Founding Fathers, there would be no question but that this judge, and this fine and decent human being, would be given the up-or-down vote and confirmed for the Fifth Circuit Court of Appeals. President after President has argued that this judge and this fine and decent judge has been confirmed for the Fifth Circuit Court of Appeals. President after President has argued that this judge has been confirmed for the Fifth Circuit Court of Appeals. President after President has argued that this judge has been confirmed for the Fifth Circuit Court of Appeals. President after President has argued that this judge has been confirmed for the Fifth Circuit Court of Appeals. President after President has argued that this judge has been confirmed for the Fifth Circuit Court of Appeals.

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A strong argument can be made that the requirements of a two-thirds vote to amend the rules are unconstitutional.

Liberal USC law professor Erwin Chemerinsky wrote in 1997, "Rule XXII is a rule that requires 60 votes in order to get a vote that has been invoked for the first time in more than 200 years against nominees. We are not talking about legislation, as I know the Chair understands and which has been clear but sometimes gets muddled. Professor Chemerinsky writes:

Rule XXII is unconstitutional in its requirement that change be approved by two-thirds of the Senate. The essential point of declaring this unconstitutional is that the current Senate could change rule XXII by majority vote. In other words, a majority of this Senate could eliminate the filibuster if a majority wished to do so.

I believe a majority does wish to do so when it comes to breaking the logjam over nominees, not with regard to legislation. There is a general consensus in Congress—Senators from both parties, that, for our own reasons, it is important to preserve the filibuster for legislation. But, of course, that only affects how we conduct our business, not how we interact with a coordinate branch of Government known as the executive branch in exercising advice and consent when it comes to the nominees by a President elected by the American people.

To employ the Byrd option is not a radical move. It would merely be an act of restoration. I say it again. There is nothing radical about the Byrd option, yet our colleagues on the other side of the aisle have called it, not the Byrd option or the constitutional option, but the nuclear option, to suggest that somehow there is something radical about it.

But all we need to do is to look at the senior Senator from West Virginia, who was the majority leader who used the constitutional option—and this is the reason it is sometimes called the Byrd option—on four occasions—in 1977, in 1979, in 1980, and again in 1987—to establish precedents that changed Senate procedure during a session of Congress. Other leading Senators from the other side of the aisle have, at some times in the past—perhaps not today but in the past—recognized the legitimacy of that procedure, of the Byrd option, including the senior Senator from Massachusetts and the senior Senator from New York, as recently as 2 years ago.

The establishment of Senate rules and procedures by majority vote is commonplace. As a matter of fact, on most days, as the occupant of the chair knows, we operate by unanimous consent; that is, everybody agreeing—or at least no one objecting. The constitutional power of a majority of the Senators to strengthen, improve, and reform Senate procedures is expressly stated in the Constitution. It was unanimously endorsed by the U.S. Supreme Court, and it has been supported and exercised by the Senate on numerous occasions.

For those who may be students of the Constitution, all you have to do is look at article I, section 5, which clearly states that, "[e]ach House may determine the rules of its proceedings." The Supreme Court has unanimously held in United States v. Ballot and Ballot, that, unless the Constitution expressly provides for a supermajority vote, the constitutional requirement is there. Again, as the senator from Georgia pointed out earlier this morning, when it comes to amending the Constitution, when it comes to ratifying treaties, it is clear that an explicit supermajority requirement is present. But failing that, where the Constitution is silent about a supermajority requirement, the U.S. Supreme Court said majority rule is the standard.

I point out again, perhaps the most eloquent and learned Member of this body, when it comes to Senate rules and procedures, is the distinguished senior Senator from West Virginia. I know as a new Senator I have watched and listened and tried to learn from him about Senate rules. He is truly a master of that subject. Yet Senate Democrats have spent considerable time dismissing how the Founders would somehow be offended if a majority of Senators acted to prevent a partisan minority of the Senate from using filibusters against nominees. One of their own, one of the Senate’s great historians, this same distinguished senior Senator from West Virginia, stipulated on the Senate floor that our Founders did not tolerate filibusters.

He said:

The rules adopted by the U.S. Senate in April, 1789, included a motion for the previous question. The previous question allowed the Senate to terminate debate. "Mr. President, I move the previous question" or in the House "Mr. Speaker, I move the previous question" and if that gains a majority, no further debate, the previous question will be voted on.

As the senior Senator from West Virginia has previously written in his four-volume history of the U.S. Senate:

It is apparent that the Senate in the first Congress disapproved of unlimited debate. In fact, for the first several Congresses, from 1789 to 1806, a majority of Senators always had the power to bring debate to a close through majority vote through the motion for the previous question under Senate Rule IX.

I realize we are getting down into the weeds quite a bit when it comes to parsing Senate rules and the history of the Senate for the American people who might be listening to this debate, but in the end, I believe what we are talking about is the ability in this body to write its own rules and establish its own procedures, which is clearly provided for in the Constitution, and to use procedures that have been used on the other side of the aisle when they were deemed appropriate and when a majority of Senators supported that change.

We are also talking about restoring fundamental fairness to the judicial selection and nomination process. Is there anybody in America today who believes that the way we are handling the confirmation of judges is a good and positive thing? Or do the vast majority of Americans believe, as I do, that it has become unnecessarily contentious and fractious and divisive, and that we need a fresh start when it comes to this process?

I believe a good place to start would be to restore this 200-year tradition, which provides for a majority vote, something that was accepted without any real debate until 4 short years ago when the standard was somehow increased to 60 votes for confirmation rather than the 51 votes which had applied for the entire history of the Senate—4 short years ago.

Finally, it is worthy of note that in addition to the constitutional support I have mentioned, and that of legal scholars and established Senate precedent and tradition, many of the editorial writers in the mainstream media also acknowledge that the Byrd option is not a radical option, that the Senate making its own rules and procedures is not radical, it is what we do.

The New York Times even, by its own admission, in 1996, endorsed a proposal by Senators Harkin and Lieberman that . . . would have gone even further than the nuclear option in eliminating the [power of the] filibuster . . . entirely, including for legislative matters.

We do not propose that. We just propose giving these nominees an up-or-down vote when it comes to the Executive Calendar.

The Austin American-Statesman, in Texas, has recently editorialized that:

We urge Republican leaders to press ahead.

They wrote that in an editorial entitled “Nuke the Filibuster.”

Let me conclude by reiterating what I said at the beginning of my remarks. I would prefer the bipartisan option to the nuclear option. If America works better, the Senate works better when we do things together in a bipartisan and collaborative way. It is time for us to fix the broken judicial confirmation process. It is time for us to end the blame game, fix the problem, and to move on. It is time to end the wasteful and unnecessary delay in the process of selecting judges that hurts our justice system and harms all Americans.

It is simply intolerable that a partisan minority will not allow a bipartisan majority to conduct the Nation’s business. It is intolerable that the standards now change depending on
The Founders, in their wisdom . . . gave the Senate the power to establish for itself the rules governing exercise of its powers. Unlike the unwieldy House, which had to adopt rules that prohibited debate, the Senate became the true deliberative body that the Framers had envisioned by maintaining the ability of its members to debate as long as necessary to effectuate the just result.

Caro continued:

For more than a century, the Senate required unanimous consent to close off debate. The adoption of Rule XXII in 1917 allowed cloture to be applied to “measures,” but nominations were not brought under the rule until 1949. In short, two centuries of history rebuff any suggestion that the language of the intent of the Constitution prohibits or counsels against the use of extended debate to resist presidential authority. To the contrary, the nation’s Founders depended on the Senate’s members to stand up to a popular and powerful president.

The right of extended debate in the Senate is an integral part of our system of checks and balances and an important historic protection of the rights of the minority in our country. But it is not only the filibuster rule and the valuable protections it provides which the “nuclear option” is threatening. It is the Senate’s rule-making function. In its very character.

Whether to change Rule XXII has been debated throughout our history and that debate will continue. But, how to change our rules is a totally different matter. The ground rules for doing so, the process for changing the rules, should be defended by us all because that process is laid out in the Senate rules.

Under the so-called “nuclear option,” the Presiding Officer of the Senate would arbitrarily end debate. The ruling would be challenged and a simple majority would then be urged to uphold the ruling of the chair. In ruling by fiat, instead of by applying Senate rules and cannot be done by decree, by fiat instead of by an arbitrary ruling which runs head on against Senate Rule XXII. That rule guarantees Senators’ right to speak until 60 Senators vote to end debate and is also at the core of our being a deliberative body.

The leadership of the majority party in the Senate has threatened to use an extraordinary and radical parliamentary procedure, the so-called “nuclear option,” to end filibusters in the Senate. Interpreting a rule which is ambiguous or silent on a matter is one thing. It is intolerable this nominee, this outstanding judge, has waited 4 years. It is intolerable this nominee, this outstanding judge, has waited 4 years. It is intolerable this nominee, this outstanding judge, has waited 4 years.

Mr. LEVIN. Mr. President, the Senate holds a revered place in the history of the U.S. Senate is that we not only operate by rules, but we must never lose sight of our proud role as the defender of rights of the minority and its essential role in the system of checks and balances. Expediency can destroy the uniqueness of this body.

The majority leader says that he would use the “nuclear option” to change the Senate rule by fiat. The history is dry and difficult, but is essential for our understanding of the tenacious way this body has rejected attempts to change the filibuster rule by circumventing the rules. I am setting that history forth in an addendum to these remarks.

The majority leader says that he would use the “nuclear option” to change the Senate’s rules, if the “nuclear option” we are debating is pursued and succeeds. The Senate, almost inevitably, would slide toward becoming a second House of Representatives. That body is tightly controlled by its majority through its Rules Committee which severely limits debate and dictates what amendments can and cannot be offered. The character of the Senate would be destroyed as a uniquely deliberative body as would its role as the defender of rights of the minority and its essential role in the system of checks and balances. Expediency can destroy the uniqueness of this body.

The majority leader has said, “At the end of the day, one will be left standing: either the Constitution, or the Senate.” Hopefully, both will be left standing. The only way for that to happen is if the “nuclear option” is rejected and we say “no” to changing the Senate’s rules by fiat. Again, the majority leader could say with no intention of eliminating filibusters except on judicial nominations. But, if one accepts the position that the filibuster is unconstitutional for a judicial nomination, why is it not equally unconstitutional for all nominations? The majority leader has no intention of eliminating filibusters except on judicial nominations. But, if one accepts the position that the filibuster is unconstitutional for a judicial nomination, why is it not equally unconstitutional for all nominations? The majority leader has no intention of eliminating filibusters except on judicial nominations. But, if one accepts the position that the filibuster is unconstitutional for a judicial nomination, why is it not equally unconstitutional for all nominations?
powers in Article I also mandate major-ity up-or-down votes and, for instance, rule out of order supermajority, 60-vote budget points of order.

But, with all due respect to the leader, no rule of the Senate should be depended enforcement to address the whims and promises of a majority leader, any majority leader. To leave the fundamental rules of the Senate vulnerable to a change of mind by this majority leader or the whim of a future majority leader would be a nonsense, no matter how long it is that we find ourselves in such a situation. We must live by unless and until it is amended by the procedures in our rules. The ‘nuclear option’ would change Rule XXII by decree of the President. What are the limits of the President’s power? Can he do it by edict, by decree, by rule? Can he change the rules by presidential order? It is argued that the rules of the Senate should be changed by amendment by proxy. It is argued that the Senate itself makes the change in both instances by majority vote; and it is asked, What is the difference? Of course, this is really an argument that the end justifies the means.

Senator Vandenberg continued:

I think there is a great and fundamental difference, Mr. President. When a substantive change is made in the rules by sustaining a ruling of the Presiding Officer of the Senate—what I pretend is being undertaken here—it does not mean that the rules are permanently changed. It simply means that regardless of precedent or traditional practice, the rules, hereafter, mean whatever the Presiding Officer of the Senate, plus a simple majority of Senators voting on the rules voting on the rules to mean. We fit the rules to the occasion, instead of fitting the occasion to the rules. Therefore, in the final analysis, under such circumstances, there are no rules except the transient, unregulated wishes of a majority of whatever quorum is temporarily in control of the Senate. That, Mr. President, is not my idea of the greatest deliberative body in the world. . . . No matter how important [the pending issue’s] immediate incidence may seem to many today, the integrity of the Senate’s rule is our paramount concern today, tomorrow, as long as this great institution lives.

Senator Vandenberg continued:

. . . [T]he Senate as it exists today, I want to be sure that none of my colleagues shall feel under the slightest compunction to vote on a friendship or loyalty basis so far as I am concerned. This is a solemn decision—reaching far beyond the immediate consequence—and it involves just one consideration:

He concluded, with that “one consideration”:

What do the present Senate rules mean; and for the sake of law and order, shall they be protected in that meaning until changed by the Senate itself in the fashion required by the rules?

In summarizing, he got to what is the root of the nuclear option. He did it almost 60 years ago on a similar occasion, but how prescient and his comments are today. I think that there is protection in which we find ourselves today. Senator Vandenberg:

. . . [T]he rules of the Senate as they exist at any given time and as they are clinched by precedents, shall that protection be safely safeguarded only by the direct and conscious action of the Senate itself, acting in the fashion prescribed by the rules. Otherwise, no law in the Senate is worth the paper it is written on, and this so-called “greatest deliberative body in the world” is at the mercy of every change in parliamentary authority.

How I wish every Senator would read Senator Mitchell’s famous statement before we vote on the nuclear option.

In a recent address on this subject, former Senator and Vice President Al Gore recalled the words of Sir Thomas More, the famous British jurist and author:

When More’s zealous son-in-law proposed that he would cut down any law in England that served as an obstacle to his hot pursuit of the devil, More replied: ‘And when the last law shall be done away with, the lastKing’s foot shall tread upon your own, where will you hide . . . the laws all being flat? This country is planted thick with laws, from coast to coast . . . and if you cut them down, and you’re just the man to do it, do you really think you could stand upright in the winds that would blow them down?’

Vice President Gore observed:

The Senate leaders remind me of More’s son-in-law. They are now proposing to cut down a rule that has stood for more than two centuries as a protected debate. It has been used for devilish purposes on occasion in American history, but far more frequently, it has been used to protect the right of a minority to make its case.

Our former colleagues Senators Malcolm Wallop of Wyoming and Jim McClure of Idaho, both conservative Republicans, recently wrote in the Wall Street Journal: . . . [I]t is naive to think that what is done to the judicial filibuster will not later be done to its legislative counterpart . . .

Senator Vandenberg was right, naive, he or she should take a broader look at Senate procedure. The very reasons being given for allowing a 51-vote majority to shut off debate on judicial appointments, in fact, they apply more aptly—to the rest of the executive calendar, of which judicial nominations are only one part. That includes all executive branch nominations, treaty nominations, and appointments. Treaties, too, go on the executive calendar, and the arguments in favor of a 51-vote cloture on judicial nominations apply equally well to any other executive actions. It is little comfort that treaty ratification requires a two-thirds vote. Without the possibility of a filibuster, a future majority leader could bring up objectionable nominations with only an hour or two for debate, hardly enough time for opponents to inform the people and rally the citizenry against ratification.

Former Majority Leader George Mitchell, writing in the New York Times, has recalled the words of Senate Majority Leader Harry Reid, another of the great Senators we sent to us from the State of Maine, in her famous “Declaration of Conscience” on June 1, 1950, speaking out against the excesses of Senate Joe McCarthy, a Member of the majority party.

I don’t believe the American people will uphold any political party that puts political exploitation above national interest. Surely we Republicans aren’t that desperate for vices. While it might be an act of charity for the Republican Party, it would be a more lasting defeat for the American people. Sure- ly it would ultimately be suicide for the Re-publican Party and the two-party system that has protected our American liberties from the dictatorship of a one-party system.

As Senator Mitchell writes:

the sum total of our history is that there is no McCarthyism in the current dispute. But the principles of exercising independent judgment and preserving our system of checks and balances are at the heart of the Senate rules debate. Senator Smith embodied independence and understood the Senate’s singular place in our system of checks and balances. We founders created that system to prevent abuse of power and to protect our rights and freedoms. The president’s veto power is a check on Congress. The Senate’s power to confirm or reject nominations balances the president’s authority to nominate them. The proposal by some Republican senators to change rules that have governed the Senate for two centuries now puts that system in danger.

Mr. President, the nuclear option—this extra-legal changing of the Senate

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rules—will cause a permanent tear in the Senate fabric because it violates a deeply held American value: playing by the rules. Our rules themselves provide the process for changing the rules. Using it in an arbitrary way—the President, by his alone—will produce a deeply embittered and divided Senate because it tears at the heart of the way we operate as a Senate. The Presiding Officer is supposed to be an impartial umpire, not a dictator. He is supposed by rule to apply the rules, not rewrite them.

This Senate is an enduring monument of political history. Its uniqueness is perhaps most embodied in rule XXII, which is at the heart of our being a deliberative body and the source of protection of the minority. I plead with our colleagues: Do not deface this Senate monument by eliminating by fiat that right of the minority. Do not trample on rights so essential to the institution’s deliberative nature. Do not provide a mechanism by amending the rules by fiat. Instead, seek to change our rules, if you deem it wise, according to the procedures set out in our rules. But do not take this fateful, unprecedented, and misguided step.

Few are privileged to serve in this special place. Let those who follow us here look back at what we will do in the fateful days which lie ahead and here look back at what we will do in that special place. Let those who follow us step that is being proposed.

One of the statements that is used to characterize filibusters aimed at nominations is unprecedented. They are clearly wrong. Their assertions usually contain carefully crafted hedge words. For example, they refer to “nominations reaching the Senate floor” being entitled to an up or down vote. Republicans colleagues refer to “the Senate tradition of giving nominees an up-or-down vote”. Well, what about those more than 60 Clinton judicial nominations, which were bottled up for years in the Republican-controlled Judiciary Committee without being given even a hearing? Blocking nominees in the committee by refusing to give them a hearing is, in effect, filibustering the nomination. When former Foreign Relations Committee Chairman Jesse Helms was opposed to the former President George H.W. Bush’s nominee to be U.S. Ambassador to Mexico, William Weld, a former Republican Governor, was an up-or-down vote permitted? No, Senate tradition held that attorneys at the Foreign Relations Committee and in that way eventually defeated the nomination. There are many such examples.

And what about the so-called holds that Senators use to delay and as a result deny nominees an up-down vote? Just recently, one of our Members placed a hold—an implied threat to filibuster a nomination—blocking an up-or-down vote on President Bush’s nominees to the Federal Trade Commission. The President had to get around that hold by giving his nominee a recess appointment, which doesn’t require Senate action.

One of the statements that is used to support the nuclear option is that there has never been a successful filibuster of a judicial nominee. That statement flies in the face of the history of the filibuster of the nomination of Abe Fortas to be Chief Justice of the Supreme Court in June of 1968. Republicans filibustered the nomination for a month. The Senate said that time argued that the Senate has the obligation to be more than a mere rubberstamp for the President.
by forcing supermajority votes with Clinton judicial nominees, now want to take away by fiat the right of other Senators, under our rules, to exercise that same advise and consent power.

Mr. President, we must be ever mindful of the role the Senate plays. It is the unique role of this institution. I urge my colleagues to reject the reckless course of the nuclear option. I hope that every one of my colleagues will take the time to read the speech of Senator Robert Taft on the floor of this Senate, facing a very similar situation to the one we face, where there was intended to be, and in that case was, a ruling—a fiat of the Presiding Officer which would have changed the rules of the Senate. It is even more clear here than it was then that it is a change in the rules which is involved. Back then, one could have argued that it was only an interpretation of the then-existing rule XXXII which was at issue. The majority of the Senate stated that because of the majority, it was quite clearly a change in the rules.

Senator Vandenberg and others carried the day with their eloquence about the meaning of this body and its rules to live and to change the rules according to the procedures set forth in the rules. That wisdom is surely as relevant today as it was back then. I hope all of us will consider the consequences of changing the rules by fiat, by a ruling of the Chair, not guided by the Parliamentarian, who is an objective umpire, not following the precedents of this body, which has faced similar efforts before to change the rules by decree of a Presiding Officer, and which has rejected that course over and over again. If we will take our own history and the meaning of this body into consideration, and to take it to heart, I believe we will do as previous Senates have done, and reject to an arbitrary approach to adoption or modification of the rules that guide us.

Mr. President, I ask unanimous consent that an addendum to my statement be printed in the RECORD.

The ACTING PRESIDENT pro tempore.

Mr. LEVIN. I thank the Chair.

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

ADJUDICATION

In 1953, Senator Clinton Anderson raised a point of order that, under the Constitution, the Senate should be free to adopt its rules in accordance with existing Senate Rules as long as six amendments have been adopted since the cloture rule was enacted in 1917, and ‘‘each of these changes was made within the framework of the existing or entrench rules of the Senate, including Rule XXII.’’

Mr. LEVIN. I thank the Chair.

The ACTING PRESIDENT pro tempore.

Mr. SPECTER. Mr. President, today the Senate Chamber has the feel of a Hollywood stage set. The Senate clock, centered above the Vice President’s chair, is in a countdown second by second to the appointed hour and minute when a nuclear explosion may render the Senate inoperative, or at least do substantial damage to this institution. We cannot expect Jimmy Stewart to stride across the center floor to save the day, as he did in ‘‘Mr. Smith Goes to Washington.’’ It is up to the Members of this body, to save the day. It is up to us to do the job America sent us here to do.
If 100 Members of the Senate, with the same values and common backgrounds, experienced in elected politics, cannot cross the aisle to compromise, what hope is there for the deep-seated disagreements and hatreds in Iraq, Darfur, Laos, the Congo, or the Ivory Coast, and around the world? Today I am renewing my suggestion that the leaders, Senator FRIST and Senator REID, liberate their caucuses to vote without party straitjackets. From extensive discussions I have had with Members on both sides of the aisle, I remain convinced that most Democrats would reject the obstructive tactics of the unprecedented pattern of filibusters, and most Republicans would reject the constitutional or nuclear option to change the Senate rules.

This controversy did not arise because Democrats concluded that Miguel Estrada and nine other of President Bush’s circuit court nominees were so qualified that they should not be filibustered. Rather, these systematic filibusters were initiated as payback for Republican treatment of President Clinton’s nominees. These filibusters are a culmination of a power struggle between Republicans and Democrats as to which party could control the judicial selection process through partisan maneuvering.

To reach a compromise, the first step is for the parties to continue partisan filibusters. The fact is that both parties are at fault. As debate has raged on the Senate floor for days and really weeks, there has been very little willingness on the part of Members on both sides of the aisle to vote without party straitjackets. Let the party line ought not to be the determinant. Against this background of bitter and angry recriminations, with each party serially trampling on the rights of the other party to get even or, really, to dominate, it is obvious that the issue does not involve the qualifications of the nominees. In the exchange of offers and counteroffers between Senator FRIST and Senator REID, I have made an offer to avoid a vote on the constitutional or nuclear option by confirming one or perhaps two of the filibustered judges, Priscilla Owen, Janice Rogers Brown, William Pryor, and to the Supreme Court if it is really outlandish or egregious. If a situation does arise where a panel of three circuit judges makes an egregious decision, it is subject to correction by the court en banc of the circuit court. And if the filibuster were to continue on a Supreme Court nominee, given the many Senators, more than 12, participating in the filibuster, the Supreme Court意见 would stand; there would be no determination on very many tremendously important questions; and the Supreme Court of the United States would be rendered dysfunctional.

In a press conference on March 10, 2005, Senator REID referred to the nuclear option and said: In press conference on March 10, 2005, Senator REID referred to the nuclear option and said: If it does come to a vote, I ask Senator Frist to allow my Republican colleagues to follow their consciences. Another recent said that senators should be bound by Senate loyalty rather than party loyalty on a question of this magnitude.

Senator REID concluded that he asked for a vote. Well, that needn’t be. But Senator REID did not make any reference to my urging him to have the Democrats reject the party-line straitjacket voting on filibustering.

The fact is that the harm to the Republic by confirming all of the pending circuit court nominees is, at worst, infinitesimal compared to the harm to the Senate that would occur whichever way the vote would turn out on the constitutional or nuclear option. None of the nominees can unilaterally render an egregious decision. If a situation does arise where a panel of three circuit judges makes an egregious decision, it is subject to correction by the court en banc of the circuit court. And if the filibuster were to continue on a Supreme Court nominee, given the many 5-4 Court decisions, we know we would then have 4-4 decisions so that the circuit opinion would stand; there would be no determination on very many tremendously important questions; and the Supreme Court of the United States would be rendered dysfunctional.

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On Tuesday afternoon, when a group of us met downstairs in the first floor of the Senate Chamber, one of the Democrats said: Suppose we take the floor and add Judge Saada of Michigan, and suppose you take two and give us three, or suppose we take three votes to give you. It seemed to me that the latter suggestion of taking three to confirm, rejecting two, would be a sound proposition. I cannot subscribe to the idea that a group of 12, however they may ultimately be constituted, ought to have any hand in determining who shall be confirmed and who ought not to be confirmed. It is my view that ultimately that is a decision for this body.

To achieve that end in a principled way, I have urged the majority leader, Senator Frist, to do a whip count among Republicans. If anybody is watching on C-SPAN 2, by way of brief explanation, a whip count is when there is a tabulation by talking to each of the Republican Senators, and the same process may occur on the Democratic side to discern how those Senators are going to vote.

It is a common practice. If the whip count were to be conducted, we might know in advance what the result would be, and it would be that two or more of the filibusters would be rejected, then the Democrats would have won their point.

So much of what we are engaged in today is a matter of saving face. This whole effort has been so far that neither side is prepared to back down. Neither side is willing to back down. In the wings, we have all of these press conferences on the Senate steps. We have various groups meeting. We have the commercials on the air—perhaps started with Gregory Peck in 1987 on the Judge Bork nomination, continuing until the past weekend, and continuing to this day. It is hard to turn on the television set without finding a commercial. Last week, my State of Pennsylvania was inundated with commercials demanding that Senator ARLEN SPECTER vote to “save the Republic.” Nobody is quite sure what it means to “save the Republic,” the way the debate is going on.

These commercials, in my opinion, counterproductive, certainly not effective, and realistically viewed, insulting. If we take the play from the groups, the play from the press conferences, all of the opinion makers out there—the newspaper writers and editorialists, and the so-called groups—group is shouting to the Democrats: Filibuster forever, filibuster forever. The other side is shouting to the Republicans: Pull the trigger, pull the trigger. So what if it is a nuclear detonation, as long as our side wins.

What I think needs to be done is the issue ought to be returned to the Senate. This ought to have been voted on the 12 Members of this body. And if the leaders do not liberate their Members to pass their individual consciences on these issues in the context of a whip check to get an idea of what will happen, then a small group of Senators will take control of the Senate; a small group of Senators will have struck a deal; a small group of Senators will pledge, with sufficient numbers, not to carry on the filibuster; and a sufficient group of Senators will have a sufficient number of votes not to implement the constitutional or nuclear option.

What we need to do is return this decision-making to this body. One idea I floated many years ago with S. Res. 146, joined by Senator Byrd, was a resolution to establish an advisory role for the Senate in the selection of Supreme Court justices. The thrust of this resolution was that it would be useful to create a pool of recognized candidates of superior quality for consideration by the President. The pool would be considered by consulting with the chief judges of the various State supreme courts, bar associations, professional associations, and others. It may be that chief judges from across the country. This sort of body would be available to the President.

It is my judgment not to reintroduce that Senate resolution at this time because of the current incendiary context—of the prospect of the nomination or nominations which may be upon us any day now, it is my conclusion that this would not make a constitutional time to promote the idea. And I think the time when heads are cooler and the country is not so badly divided on this issue, and when the Senate is not so badly divided on this issue.

It is my personal view that the option of a filibuster for extraordinary, egregious circumstances ought to be retained, but not in the context of the way it has been used in the immediate past, as a pattern of delay that is directed at getting even or getting back. When you deal with the doctrine of separation of powers, there is a well-established principle that to have a little play in the joints is a good thing, where it is uncertain as to how a vote will turn out. And I think at this reading, it remains uncertain how a vote on the constitutional or nuclear option will turn out. There is a greater chance for compromise.

In an earlier floor statement, I analogized our controversy here to the confrontation between the States and the Union of Soviet Socialist Republics in the Cold War. I have seen some of my colleagues pick up on that analogy. If there is any certainty in our troubled world—if the United States and the Soviet Union could avoid a nuclear confrontation on mutually assured destruction—so should the Senate.

I yield the floor.

The ACTING PRESIDENT pro tem: The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, I would like to take a few minutes today to caution the majority from pursuing what is referred to as the “nuclear option” in an effort to change Senate rules and forbid unlimited debate on judicial nominations.

Some of my colleagues say they are seeking this change because they want judicial nominees to get a vote. This view is a shift for those who denied more than 60 of President Clinton’s judicial nominees a vote either in committee or in the full Senate.
Unlike those nominees, President Bush’s nominees have received votes by the full Senate. Those votes determined that those nominations should not move forward.

Some in the majority did not like the outcome of those votes, and that is why we are here today in what has been described as “a historic moment” in Senate history. But I fear that we are making history for all the wrong reasons.

I do not find it the least bit alarming that we are challenging a handful of judicial nominees while at the same time we have approved more than 200 of the President’s choices.

These judges will be appointed for life, and it is our job—no, our responsibility—to ensure that these judges are worthy of the role. Despite what some would have the public believe, the system is working just as it is supposed to work.

Perhaps if this administration had consulted the Senate on these nominees, rather than show such determination to test our will, we would not be in the unfortunate position we are in.

But instead of heeding the warning signs that this administration plowed recklessly ahead.

A success rate of over 95 percent apparently wasn’t good enough, so the administration resubmitted the names of its most controversial picks.

I believe that a 95 percent success rate is a record this Senate should be proud of. Unfortunately, some in the majority don’t share my view.

The right in the Senate to unlimited debate is an important part of our system of checks and balances. It ensures that a bipartisan consensus is reached by more than a bare majority of Senators when we are faced with critical issues.

There are those in the majority who believe, contrary to the U.S. Constitution, Senate rules, and Senate precedent, that all judicial nominees must have an up-or-down vote on the floor of the Senate.

Nothing in the Constitution, nothing in the Senate rules, and nothing in the way the Senate has functioned in the past supports that belief.

In fact, my colleagues in the majority have themselves required 60 votes in order to confirm judicial nominees. Back in 2000, during consideration of the nominations of Richard Paez and Marsha Berzon to the Ninth Circuit Court of Appeals, 60 votes were required in order to reach a final vote on these two Clinton nominees.

During the debate on those nominations, then-Senator Bob Smith of New Hampshire made a very important point concerning the need for unlimited debate on judicial nominations.

He said:

I think it is fair that judges who are appointed forever, who will be making decisions long after we are out of here, probably when our children are coming into voting age, or our grandchildren, whatever the case may be...we have a responsibility to look very carefully at them.

As I prepare to become a grandfather for the first time any day now, I am struck by these remarks.

Some of the judicial nominees we approve today may be interpreting laws and deciding constitutional questions that our grandchildren will apply when they graduate from high school, when they vote for the first time, and perhaps even when he starts his own family.

It seems logical, given this scenario, that we require some lifetime appointments to be confirmed by the support of a bare majority of Senators.

I am also concerned that if the nuclear option is invoked and unlimited debate on judicial nominations is forbidden, this precedent will eventually be extended to other nominations and legislation.

I fear the ultimate goal of some of those pursuing this nuclear option will be to extend the filibuster prohibition beyond judicial nominees. We will then have a Senate that is purely run by a majority and not protective of the rights of the minority.

It is nice to hear the majority leader say that he has no intention of extending this precedent.

Of course, with a little hollow to me when we all know that come January 2007, there will be a new majority leader in the Senate. This individual, Republican or Democrat, will not be bound by the promises made by the current majority leader.

This week, the editorial pages of a local Vermont newspaper noted the irony of the timing of this debate. That editorial, printed in the Times Argus of Barre, VT, said:

The majority in the United States Senate wants to remove one of the important and traditional political tools—the filibuster—that protects the rights of the minority party, even as Secretary of State Condoleezza Rice goes to Baghdad to urge the minority there to put aside its long-standing grudges and guarantee minority rights.

So why is it that we are urging the fledging democracy in Iraq and in other nations around the world to respect minority rights, while some in the Senate want to trample those same rights and threaten the balance of power that we hold so dear right here in our own democracy? I am afraid I do not have the answer, but it concerns me beyond words.

In my more than 30 years in Washington, I have always tried to decide each issue on its merits, rather than to provide a rubberstamp to comply with the wishes of leadership.

I fear that we are here today because some in the majority would prefer that the Senate just act as a rubber stamp for the President’s desires.

I refuse to spend the last 19 months of my term in the Senate being a rubberstamp.

I will oppose changing the Senate rules for this purpose, and I hope my colleagues and I will continue to protect the rights of the minority by protecting the right of unlimited debate in the Senate.

In concluding, I suggest that my colleagues listen to the words of Charles Mathias, a former Republican Senator from Maryland, who recently wrote:

Make no mistake about it: If the Senate ever creates the precedent that, at any time, 51 senators say they are—without debate—then the value of a senator’s voice, vote and views, and the clout of his state, will be diminished.

I do not know of a single Senator who would desire this outcome, but I fear it could happen if this Congress chooses to change the Senate rules that have served this chamber so well for so long.

This is truly a historic moment in Senate history.

I hope my colleagues will join me to maintain our system of checks and balances, keep the Senate the Senate, and protect each individual Senator’s right to unlimited debate.

I yield the floor.

The acting President pro tempore. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I commend the distinguished Senator from Vermont whose independence and wisdom has been demonstrated in this body in the time I have been here. Senator Mathias, a former Republican Senator from Maryland, who recently wrote:

I spoke earlier this week about why the elimination of the filibuster on judicial nominations would be ill advised as a matter of policy and why violating the rules is not an option. The Senator from Minnesota’s concerns how we can properly change the Senate’s rules of procedures should be unthinkable and would be unconscionable. It would set a terribly damaging precedent for this great institution, damage that would be permanent and irreparable, a precedent that the existing rules and procedures of the Senate can at any time and for any reason or for no reason be disregarded or changed or a new rule added by a majority vote of the Senators present at that time. Just make a motion the Presiding Officer, who could ignore the advice of the Senate’s professional parliamentary, make his or her own ruling, and a majority vote would either uphold or overturn that decision.

That essentially means the majority of this body at any time can do whatever they want to do, however they want to do it, as long as they ratify it by their own majority vote. None of the rules of procedure would have any impact on standing or reliability, no matter how long they have been in existence.

If the majority of Senators decides it does not like those rules of procedure, or if they cannot get the results they want by following the rules which they can just disregard them or change them any time and then vote themselves right by doing so, we have lost the integrity of this institution. What kind of society would we have if that precedent, reestablished here, became standard? It is terrifying for my fellow citizens all over this land.

Another point I would like to raise, after listening for the last couple days
to the stated reasons by the proponents of this so-called nuclear option, is that many of them say the U.S. Constitution’s advice and consent clause requires an up-or-down vote by the full Senate. I raise this point respectfully and seriously because each of us, the day we take a seat here as a Senator, takes a sworn oath right here in the Senate Chamber, right in front of our family, our friends, and the American people, administered by the Vice President of the United States, with our hand on the Bible. And that oath says in part:

And it ends with our saying:

I will support and defend the Constitution of the United States.

It goes on to say:

.I will bear true faith and allegiance to the same.

And it ends with our saying:

so help me God.

I know for myself that was the most serious and important oath I have ever taken, and I believe that every other Member of this Senate is as fully committed to upholding that oath as I am and is acting now and wants to continue to act in all good faith to uphold it at all times.

We sometimes have honest differences in our views of what particular words in the Constitution mean and what they instruct us to do. Those honest differences have arisen since this body commenced its work on March 4, 1789, sometimes between Members of the two parties, sometimes between Members of the same party, sometimes between Members of different parts of the country, or those representing large States and small States, and for many other legitimate reasons.

In most of our actions and decisions in the Senate, our interpretations of the words of the Constitution and our application of those words individually and as a collective body will be reviewed and can be tempered or even rejected by other public officials and institutions.

All the legislation we pass must be agreed to by the House, must be agreed to by the President, or vetoed by him, and overridden with a two-thirds vote here and in the House. Then, if properly challenged by someone with legal standing, it can be further reviewed as constitutionality by Federal courts and, as the ultimate arbiter of constitutionality, the U.S. Supreme Court.

So with all the legislation we act upon and most other matters that come before us, our constitutional understandings, interpretations, and applications are subjected to a rigorous process of checks and balances between the President’s nominating power, the advice and consent of the Senate, the right to up or down vote by the Senate, and judicial review.

Those checks and balances, however, do not exist for Senate approval or disapproval of Presidential nominees because the Constitution clearly and explicitly authorizes the Senate and the House, each of those bodies, to determine their proceedings. Previous Federal courts have ruled those words mean exactly what they clearly say.

The Constitution then defines this proceeding we are engaged in now as “the advice and consent of the Senate.” That wording, its meaning, and its intent are unfortunately much less clear. The section of the Constitution says the president “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointment shall not herein otherwise be provided for, and which shall be established by law; but the Congress may by Law vest the Appointment of such Inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.”

That means almost everyone in the Federal Government is subject to the advice and consent of the Senate unless Congress, by law, chooses to waive that requirement for specified “inferior” officers, that is, the heads of branches of government, not mine—officers. That is why as members of the Armed Services Committee we regularly report to the full Senate rosters of “appointments,” most of which are promotions, of 2,000, 3,000, 4,000, 5,000 officers in the U.S. Armed Forces. They must then be approved, and they usually are approved en bloc by the full Senate.

Proponents of the nuclear option are saying this clause of the Constitution, particularly the words “shall nominate, and by and with the advice and consent,” requires that every Presidential judicial nominee get an up-or-down vote by the full Senate. If that is the view of the majority of the Senate, how can it not also apply equally to every other nomination described in that section of the Constitution?

The Constitution, the section I just read, makes no distinction in defining our role and responsibility to advice and consent between Presidential appointments to the branch of government that is judicial offices. It makes no distinction between term limited or lifetime appointments, and it gives us no authority to make those distinctions either, except that by law we cannot require the Senate to approve certain lower level positions.

As I understand the majority leader’s intention for next week, just from published reports I have read, he will ask the Presiding Officer of the Senate to rule that the Constitution’s wording “advice and consent” require an up-or-down vote by the full Senate—on all Presidential nominations covered by those words in the Constitution? No, I think that is not the case. Only for judicial nominations. Would that ruling that constitutional requirement of an up-or-down vote by the full Senate, apply then to all judicial nominations that come to the Senate? No, not as I understand it; not to those that are blocked by the Judiciary Committee, not to those that are blocked by the advice and consent of the majority—i.e., it is not even a written rule or procedure in the Senate—that two Senators, sometimes only one Senator, in the majority, can prevent any vote by anyone, a committee or the full Senate, on a Presidential nominee.

Where, I ask my colleagues in favor of the nuclear option, who contend the Constitution requires this up-or-down vote, does the full text of the Constitution permit the Senate leadership or a Senate committee or one Senator to make those distinctions between one judicial nominee or another or between judicial nominees and other Presidential nominees in that same section of the Constitution?

I believe the ambiguity in the meaning of the term “advice and consent” certainly provides us with reasonable latitude in defining what that term requires the Senate to do. It does not, however, permit us to apply one definition to one group of nominees and apply a different definition, and therefore different Senate rules and procedures, to the other nominees to which those same words equally apply.

Those checks and balances, however, permit us to apply one definition to our own best conscientious interpretation of the Constitution, especially words or clauses where well-informed and well-intentioned people can reasonably differ. We are not entitled, however—in fact we are forbidden—to rewrite, reinterpret, selectively apply, or ignore those words just because we do not like them or agree with them. We have sworn an oath to uphold, to support, and defend them, every one of them. If we disagree with them, if we believe they are not right for our constituents and our country, we have the right to change them. But, according to the rules and the procedures in the Constitution, we do not have the right to change them otherwise; just as we have the right to change Senate rules and procedures, but only by following the rules in the Senate to do so.

Following the rules, obeying the laws, upholding the Constitution—those are the foundation of our country. At a time when we are demonstrating to other parts of the world, other countries and citizens, how to set up democracies and make them successful and make them survive and thrive, we will make a tragic, terrible error if we violate those founding, fundamental principles ourselves. The country and the world will be watching next week to see what we do.

I yield the floor.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Arkansas, Mrs. LINCOLN.

Mr. President, I do not come to the floor often to speak, but today I do come out of a sense of duty and a real spirit of purpose, to express my strong opposition to changing the rules of debate here in the Senate. As a pragmatic Democrat who has raised more than a few eyebrows in my own party over the years for putting
progress on critical issues ahead of loyalty to any political party or ideology. I am alarmed frankly that we have reached a point in the Senate when confrontation is the choice over consensus, considering the history of the debate on this issue, and the consequences of what is being contemplated.

To understand the consequences of the debate in which we find ourselves engaged today, I think it is so helpful to briefly review the basic facts regarding the confirmation of judicial nominees in the Senate in recent years. Since President Bush took office in January of 2001, the Senate has confirmed 208 of the lifetime judicial nominees he has appointed, and the Senate has withheld consent from 10 of those nominees. In other words, the Senate has confirmed more than 95 percent of the judicial nominees put forward by President Bush since he took office more than 4 years ago. As a result, there are only 45 judicial vacancies today, which represents the lowest judicial vacancy rate since President Reagan was in office.

When you compare that to more than 60 judicial nominees who were blocked in the Judiciary Committee under the Republican control during President Clinton’s term in office, I quite frankly think it is a pretty good record of which the President should be proud and with which the Republican leadership should be pleased.

Put another way, when my 8-year-old twin boys come home from school with a 95 percent on their report card or on their test, I don’t stomp my feet and send them to their room. I do not get angry with them and tell them to go back to school tomorrow and break those rules next time so you can get 100 percent on that test.

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No, that is not what we do. That is not the example we set. That is not what is expected of a body of individuals who are guided by rules. That would be outrageous.

I would say to my children: Good job, keep up the good work. Work a little bit harder.

Am I suggesting Democrats of the Senate deserve a medal for fulfilling their constitutional role in considering and confirming judicial nominees through advice and consent? Of course I am not. But I also do not think the record comes close to justifying an attempt to undermine one of the fundamental principles of this institution—freedom of speech and of debate; making sure everyone’s opinion does count—which protects the rights of every citizen in my State and in this entire Nation.

In my view, the proposal put forward by the Senate majority leader to limit the ability of Senators to debate judicial nominees represents what will become a first step, if successful, in weakening the role of the Senate and the role the Senate plays in our system of Government in providing the kind of checks and balances against an overreach by the executive branch or the political parties or any other branch of Government which happens to be in the majority at any given time. And it can be either one of us.

I believe the protections and safeguards that are a fabric of our system of Government have served our Nation well and they are critical, regardless of which political party controls the White House and the Congress.

Most importantly, I sincerely believe what is being proposed by the majority could seriously threaten my ability as a Senator from the great State of Arkansas to effectively represent the needs of my constituents. As I have listened to many of my colleagues debate this issue over the past several weeks, I have reflected on the role of the Senate as an institution and how and why it came into being. Coming from a small State such as Arkansas, which has only 6 voting delegates in Congress, but take into account lightly the fact that the compromise which gave birth to the Senate was based on the principle that all States, regardless of their size, and all Senators privileged to serve in this body, were represented equally, the Senate was deliberately designed to protect the interests of small States such as mine and to provide a restraint on the ability of a temporary majority on any issue before this body to prevail unchecked.

Recently, in order to get the attention of this administration, I had to use tools. I had to use some of those tools I have as a Senator, to simply get an answer, a letter answered on international child abduction, on the way Southern producers in agriculture were being treated in this budget. It was not an issue of me getting all of what I wanted. It was simply an issue of me getting an answer—me, a small State, someone representing a small State, being able to get an answer on principle and on idea and purpose, from the administration. That is what we are talking about, everyone being represented.

The debate we are having and the issues at stake are much more important to me than my political party. With all due respect, they are also more important than any individual nominee or judgeship. If we start down this road, I fear where it will lead us.

I hope not, which is why I am standing up here today to defend the powers vested in me as a Senator from Arkansas, to represent my constituency.

But if getting 100 percent—if that is why we are here, if that is what this debate is about and that is what the majority leader is looking for—if getting 100 percent of what you want all the time is the purpose here, when will we ever be content? When will the majority ever be satisfied? When will we say these things will not happen?

The majority leader stated that he believes filibusters against any judicial nominee are unwise and unreasonable. Well, I disagree with him. I will respect his opinion and his right to debate that issue in the Senate, anywhere else, for that matter, at great length. What troubles me, though, is his willingness to discard an institutional power regarding consideration of judicial nominees, even when, according to reports, the Senate Parliamentarian believes the so-called nuclear option does not conform to the rules of the Senate. Let us all take time and think about what nuclear fallout is like. Look at the photographs of nuclear fallout. Look at what happens when nuclear reaction occurs. There is great devastation.

What happens if the rules of debate in the Senate in the future will be undermined by the majority party that happens to be in charge at any given time as unwise or outdated and dispensable? I do not want to find out. This body is too precious. It does too much. It is too important to the balance that makes our Nation great.

It is my sincere hope and prayer that the Senate as an institution can survive the current impasse intact, and I think we can. I am aware Members on both sides of the aisle are considering a short-term compromise which would, in a limited fashion, preserve the current rules of debate regarding judicial nominees for the remainder of this Congress.

I am hopeful a constructive solution will be found, one that preserves the integrity of our system of checks and balances can be achieved. But I regret that the current political environment has put the Senate in this position and has left us with so few options that we come today in sadness that we have even come this far.

After having served now in the Senate for over 6 years and prior to that in the House of Representatives for 4, I have enormous respect for the role that our Government. Based on that experience, I am convinced that for the sake of the Senate as an institution and the vital role it plays now and will play into the future, long after everyone in this body is gone, I believe the way out of this standoff is for Members of both parties to work together to defend the Senate, to defend our rules, to defend this great deliberative body as an institution while also working to prevent showdowns with the White House over judicial nominees from occurring in the first place.

I met with Miss Owen. She is a nice woman. This is not to say that she is...
not a nice person. We are here to say, when the opportunity comes, we need a clear and substantial amount of this body to say this is the person for this job. Her peers from her own party have labeled her a judicial activist. We are not here to say she is not a nice lady. We are here to say she is not the right person for the job. That should be the opportunity we have in the Senate.

To come to these conclusions will require communicating and cooperating in good faith; it will also require trust, and most of all respect—respect across the aisle and across Pennsylvania Avenue.

I am not probably one of the most typical of politicians or Members. I don’t come from a big legal background or even a big political background. I am a farmer’s daughter from east Arkansas. Right now, one of my biggest responsibilities along with serving in this great Senate is to be a good parent and to show my children what it means to be truthful and respectful.

Last night, I was fortunate enough to sit on the sidelines and watch a Little League game, a precious Little League game of players, who were not the best but they played their heart out. But they still lost. And to see a coach who has made so much difference in their life and in their performance, to sit them down as he always does after the game, making sure he points out all the positive things that each one of them has done, points out some of the things they could do better, but at the end he says to them: Let me tell you, in this game we respect the rules, we respect the umpire, and we respect the other team. And because we do, we are all the better for it.

Those of us in this body need to dig down deep in each of our souls and look for the respect, for the other, the respect for the rules, for the game, the institution, and for the umpire.

We have an opportunity now to set an example for our children. There is a saying on my wall in the kitchen at my home. It says: When I’m dead and gone it’s not going to matter what kind of car I drove. It’s not going to matter how big my house was. All of those things are probably not going to matter, but the fact that I may have in some small impact on the life of a child, my life will have mattered.

This body, this institution has an opportunity to set an example, not just to each of us together as Senators to show one another the trust and the respect this body engenders us to do, but also the opportunity to show this Nation and the world, and more importantly our children, that rules do matter and that you cannot just change the rules in the middle of the game because it does not suit you, and if you don’t get 100 percent of what you want, that rules and the decision of the umpire matters. Most importantly, respecting the other side and the other team in this game is ultimately what makes it worth playing.

I call on my colleagues today to step back and reflect on how the balance of power in our government will change and how the Senate will be weakened, perhaps fatally, if the procedures by which the majority leader acts, by himself, block my possibility to be the Education Secretary. I moved my family up here, I sold my house, my kids are in school, what do I do? He said: Keep your mouth shut. It doesn’t mean you do, keep your mouth shut? This is unjust.

I said: Let me tell you a story. In 1976, President Ford nominated me to be on the Federal Communications Commission, and the Democrat Senator from New Hampshire put a hold on my nomination. I said: What happened?

He said: Well, I just swung there. Nobody knew what was going on. Pretty soon back in New Hampshire they were saying: What is wrong with Warren? Has he done something wrong? Did he beat his wife? Did he steal something? Why won’t the Senate consider him and confirm him? After 4 or 5 months I was embarrassed. I just asked the President to withdraw my nomination. I said: Is that the end of it?

He said: No, then I ran against the so and so who put a block on me, and I was elected to the Senate in his place. So that is how Warren Rudman got over being blocked.

JEFF SESSIONS, our distinguished colleague from Alabama, ran into a nearly similar situation, involved by the committee. He was the U.S. Attorney from Mobile, Alabama and the committee would not send his nomination to the floor. They held him up in the committee.

Senator Sessions got over that. He even got himself elected to the Senate. So Senator Rudman got over it, I got over it, Senator Sessions got over it. I didn’t like it, and I still don’t like it. But I got over it.

There are various ways to get over whatever grievous injustices were done to the Democrats before the distinguished Senator from Texas, who is presiding, and I were elected to the Senate in 2002.

Senator FRIST, the majority leader, has repeatedly offered to fix the problem I just described. He has said let all the nominees from a Democrat President or Republican President, let them come before the committee, let there eventually all come out of committee. He has said there is not enough debate—and I respect the idea of extended debate in the Senate—let there be 100 hours of debate on every single nominee. Then Senator Frist has said, let there eventually be a vote, an up-or-down vote, as there has always been.

Now, it is not believable for my friends on the other side to suggest, as they are, that they are doing nothing new. They know they are. I will give one example.

I remember the Senate debate about Clarence Thomas. Among other things, it made Dave Barry’s career when he wrote columns about the
Senate hearings. Everyone remembers those hearings. Everyone remembers how passionate they were and how much information came out. There was a new saga every day. No television drama approached it. There was never more powerful times before. And there was a vote in October of 1991, up or down. In that case, it was up, he was confirmed 52 to 48.

I have yet to find one single person who even remembers anyone suggesting 14 years ago that the Senate should not vote on Clarence Thomas. Everyone knew that after all the histrionics, all the debates, that the greatest deliberative body in the world would eventually vote.

So Democrats were on the Senate floor conjuring up our own versions of history, inventing nuclear analogies, shouting at each other while gas prices go up and illegal immigrants run across our border. The Democrats are using this block by block is get the ex-nomination in a way they have never used before in 200 years. So we Republicans are now threatening to change the rules to prevent the Democrats from manipulating the rules in a way that never occurred before.

That is what this is all about. I have a simple solution for the unnecessary pickle in which we find ourselves in this body. I offered it 2 years ago. I have offered it several times this year. This is it. I have pledged and I still pledge to give up my right to filibuster any President’s nominee for the appellate courts, including the Supreme Court of the United States. If five more Republicans and six Democrats dissented, there could be no filibuster and there would be no need for a rules change.

For the past 2 weeks, perhaps two dozen different Senators have flirted with variations of this formula. But they have not been successful because they have insisted on including exceptions. I hope these Senators who are still having this discussion succeed. I expect 80 percent of the Senate hopes they succeed. This oncoming train wreck is bad for the Senate. It is bad for the country. It is bad for the Democrats, and it is bad for the Republicans.

We look pretty silly lecturing Iraq on how to set up a government when we cannot agree on having an up-or-down vote on President Bush’s judicial nominees. My suggestion is forget the exceptions. Twelve of us should just give up our right to filibuster, period. Let’s do it. Let’s get on with it. That ends the train wreck.

We are, we are in Iraq. We have natural gas prices at $7—these are record levels. We have highways to build. We have deficits to get under control. We have a health care system that needs transformation. We have judicial vacancies to fill.

I have said I will never filibuster a President’s judicial nominees. I said it 2 years ago when John Kerry might have been President. For me, that meant then—and it means today, and tomorrow—that if a President Kerry or a President Clinton nominates some liberal I do not like, I may talk for a long time about it. I may vote against the person, but I will insist that we eventually vote up or down, as the Senate has for two centuries.

If 11 colleagues would join me in this simple solution, then we could get down to business, then we might look once again like the world’s greatest deliberative body.

I say to the Presiding Officer, when you and I came to the Senate a little over 2 years ago, we talked about what our maiden addresses would be. We still have those appointments. I am disappointed in what I mean to be an American.

But as I sat here listening to the debate on Miguel Estrada, I was so surprised and so disappointed in what I heard that I found myself getting up one night and making a speech on Miguel Estrada, which I had no intention of doing.

During the debate, I was listening to this story of the American dream: This young man from Honduras coming here, speaking no English, going to Columbia, Harvard Law School, being in the Solicitor General’s office. He is the kind of person who when the Presiding Officer and I were in law school, and we would hear about people like that, we would say there are just a handful of people that talented, that able. We were wrong. We were wrong. Here is exactly the kind of person who should have been nominated. Yet we could not even get a vote.

I thought about my time as Governor, for 8 years, of Tennessee. I appointed about 50 judges, and I remember what I looked for when I made those appointments. I looked for good character. I looked for good intelligence. I looked for good temperament, for a good understanding of the law and for the duties of judges. And I especially looked to see if this nominee had an aspect of courtesy toward those who might come before him or her on the bench. I appointed about 50 judges. I appointed the first women appeals judges and the first African-American judges in Tennessee. I thought it was unethical and unnecessary for me to ask questions of those judges about how they might decide cases that might come before them.

I still feel the same way about the Federal judges we nominate. I am distressed that we have turned this process into an election instead of a confirmation. It has become an election about the political issues instead of a confirmation about the character and intelligence and temperament of fair-minded men and women who might be protecting the minority’s rights at that time were the Republicans. There were only 36 Republicans. I came back in 1977 to help Senator Baker set up his office when he was elected Republican leader, and there were only 36 Republicans. So most of us in this body understand that we may be in the minority one day. But that does not mean there should be an abuse of minority rights.

The best way I can think of to stay in the minority for any party, whether it’s a Democratic Party or a Republican Party, is to say what the Senator from New York said in December, in the Washington Post. He said that if the Republicans decide to change the rules to make sure the Senate continues the tradition of voting on the nominees the President sends to us, that it “would make the Senate look like a banana republic . . . and cause us to shut it down in every way.”

Mr. President, shut down the Senate in every way? During a war? During illegal immigration? During a time of deficit spending, with a highway bill pending, with gas prices at record levels, with natural gas at $7? Shut the Senate down in every way?

I can promise you I know what the American people would think of that. Any group they can fix the responsibility on for shutting this body down and not doing its business will be in the minority or stay in the minority. Now, they want to shut us down. We are not allowed to hold hearings in the afternoon because of objections by the other side. The American people need to know that. It is the wrong thing to do.

I had the privilege of hearing, yesterday, when I was presiding, a very helpful speech by our leading historian in the Senate, Senator BYRD. He talked about how extended debate has always been a part of the Senate's tradition. I know that is true. I respect that. And I do not want the Senate to become like the House. I know that George Washington said, or is alleged to have said, that the Senate serves like the saucer for a cup of tea or a cup of coffee. The House heats it up, and you pour it in a saucer to cool it in the Senate. But I do not ever remember George Washington saying it ought to stay in the saucer long enough to evaporate. I think he said just to cool it.

The Constitution and our Founding Fathers have made it very clear that they always intended for Presidents’ judicial nominees to be given an up-or-
down vote. I have studied very carefully, and I will submit, in my full remarks to the RECORD, my understanding of those founding documents. The language of article II, section 2, in the clause immediately before the nomination clause, for example, specifically calls for two-thirds of the Senate to concur, but in the nominations clause there is no such provision. I do not believe that is an inadvertent omission.

During the drafting of the Constitution, Roger Sherman of Connecticut argued at great length for the insertion of a comma instead of a semicolon at one point to make a section on congressional powers crystal clear.

Shortly after the Constitutional Convention, Justice Joseph Story, appointed to the Supreme Court by President James Madison, wrote his Commentaries on the Constitution, and he stated explicitly:

"The President is to nominate, and the Senate has the privilege of refusing to accept the nomination; one cannot confer office, unless approved by a majority of the Senate."

This was Justice Joseph Story.

In some ways, what Members of the Senate are doing would gradually erode the President's power to pick the men and women to serve on our courts.

I suppose the Founders could have allowed the Congress to appoint the justices or the judges, but they did not. Gradually, however, the Senate has inserted itself more and more prominently in that process. I am not sure that the instances I know about suggest that if we were doing it all over again that the Senate would do a better job than our Presidents, Democratic or Republican, in picking the men and women to serve on our courts.

Here is an example from my own experience. Back in the 1960s, I was a law clerk to the Honorable John Minor Wisdom of the Fifth Circuit Court of Appeals in New Orleans. Actually, I wasn't a law clerk; I was a messenger. He had already hired a Harvard law clerk, but he could not have me as a messenger, but if I would come, he would treat me as a law clerk. So I did. The reason I did it was because even at that time, 1965, Judge Wisdom was considered by my law professors at New York University Law School to be the best civil rights judge in America and one of the finest appellate judges in America.

This is what I found when I got there. We were in the midst of school desegregation across the South. It was a time of great turmoil. Judge Wisdom, for example, ordered Mississippi to admit James Meredith to the University of Mississippi. And what was going on during that time was that the district judges across the South were basically upholding segregation and the Fifth Circuit appellate judges were overruling them and desegregating the South.

At that time, the Senate was not as intrusive in the appointment of judges as it is today because the President, President Eisenhower, only had to confer by custom with Senators of his own party in the appointment of circuit judges. Well, we couldn't have the two-century tradition of voting up or down on the President's judicial nominees? I believe we should. I have suggested a way we can remove ourselves from this pickle in which we find ourselves.

I have said, as I did 2 years ago, regardless of who is President, I will never vote to filibuster that President's judicial nominees. If five other Republicans and six other Democrats would say the same thing, we could then get on about our business of confirming or rejecting the President's nominees, of tackling the big deficits, passing the highway bill, trying to lower gas prices, spreading freedom around the world, supporting our troops in Iraq and Afghanistan, and in reestablishing ourselves, in the eyes of America and the rest of the world, as truly the world's greatest deliberative body.

I yield the floor.

Mr. LEAHY. Mr. President, are we now switching to this side of the aisle for an hour?

Mr. ALEXANDER. Mr. President, I would not take that from my friend from Tennessee. He has that available to him.

Mr. ALEXANDER. Mr. President, I am glad to yield that 4 minutes to my friend from Vermont.

Mr. LEAHY. Mr. President, so we will be back to the hour to hour—why don't we go back into the hour-to-hour system?

Mr. LEAHY. Mr. President, today, we are continuing to debate the Republican leader's bid for what I believe is one-party rule through his insistence to trigger the nuclear option. It is kind of a "king of the hill" situation. While playing king of the hill, you say "might makes right," but it doesn't; it makes wrong in this case. Through the misguided efforts to undercut the checks and balances that the Senate provides in our system of government, it is the need to protect the rights of the American people, the independence and fairness of the Federal courts and, of course, minority rights in the Senate.

Our time would be much better used if we were doing something about the dramatic rise in the price of gasoline over the past 5 years, or the enormous and unprecedented increase in the national debt during the past 5 years; or what has happened when we have seen the huge budget surplus that former President Clinton left his successor, which has now turned into the largest...
budget deficit in the lifetime of any-
body in this Chamber. These are things
that could help the American people.

Yesterday I urged that we get on
with the business of the American peo-
pie. I spoke about a number of specific
items, including the bipartisan NOPEC
bill, S. 555, that sit idle. That bill would
provide the Justice Department with
clearer tools to challenge the cartel
price-setting activity of OPEC and help
to lower gas prices for and benefit
Americans. It mentioned defense and
law enforcement measures, as well. The
Democratic leader, Senator CORZINE
and others made similar points about
important legislative priorities. Senator CARPER
and I talked about the effect this ex-
tended debate is having on the bi-
partisan asbestos compensation bill.
On Wednesday the Chairman cancelled
a markup of the bill and on Thursday our
mark up was limited to two hours and
many Senators were unavailable due
to this extended debate.

But instead of bringing us together
to make progress, our friends on the
other side of the aisle insisted the Sen-
ate debate at length a nomination that
has been debated the last 3 years, after
been voted down by the Judiciary Com-
mittee 3 years ago. In fact, a couple of
years ago, the Republican majority staged
a 40-hour talk-a-thon on judicial nomi-
nees. It was at the conclusion of that
cultural exercise, that 40-hour talk-a-thon
that we discovered the Republican staff had been stealing
files from the Judiciary computer serv-
vice for at least 3 years.

That extended debate, staged by the
majority, amounted to significant lost
opportunities for progress on matters
at that time including, ironically, as-
bestos reform, which is something be-
fore us today. At that time, we had
approved a lot of judges. Through Senate
Democratic cooperation we had ap-
proved 204 judges. That is a speed record. By the end
of last year, at the end of President Bush’s first term, we had already con-

confirmed 204 judges. We reduced judicial
vacancies to the lowest level since
President Reagan. We are now at 206
confirmations. So we have confirmed
and, depending upon whose count you go by, we have blocked 5 to 10.
We have confirmed well over 95 percent,
as a practical matter.

I thank the Senators who joined in
the debate yesterday for their con-
tributions: Senator BYRD, Senator
KENNEDY, Senator KERRY, Senator
BAUCUS, Senator BINGMAN, Senator
LAUTENBERG, Senator MIKULSKI, Sen-
ator HARKIN, Senator CARPER, and Sen-
ator NELSON of Florida. They know,
and everybody in this place knows that
if you had a secret ballot on the nu-
clear weapons issue, Senators would
vote yes. The press knows it and Senators know it. We have talked with Members on
the Republican side who say: I don’t
want to vote for this thing. I know it is
wrong. I started asking, What if there
was a secret ballot? Well, of course,
that would go down. That is because
Senators know it is wrong—wrong in
terms of protecting the rights of the
American people, wrong in terms of un-
dercutting the system of checks and
balances, and it is wrong in protecting
the minority rights in the Senate, saying we will have a one-
party rule system.

Well, one-party rule may work in
some countries, but never, ever worked in the United States of America.
We can be thankful for that. We
are the strongest democracy in the
world because we have never let this
country come to one-party rule. Demo-
cratic Senators will not be able to
rescue the Senate and our system of
checks and balances from the breaking
of the Senate rules that the Republican
leader is planning to demand. Demo-
cratic Senators cannot protect the
rights by ourselves; we cannot protect the checks and balances by ourselves.

If the rights of the minority have to be
preserved, if the checks and balances
are to be preserved, if the Senate’s
unique role in our system of Govern-
ment is to be preserved, it is going to
take at least six republicans standing
up for fairness and for checks and
balances.

I know a number of Republican Sen-
ators realize this nuclear option is the
wrong way to go. I have to believe
enough Republican Senators will put
the Senate first, put the Constitution
first and, most importantly, put the
American people first and withstand
momentary political pressures when
they cast their votes.

I have spoken to Senator ISAKSON
about his comment earlier this year
about the effort to bring democracy to
Iraq. I know he spoke about it yester-
day. The Senator observed that a Kur-
dish leader in the middle of Iraq said he
had a “secret weapon” to install de-
mocratic government. What does that
“secret weapon” was, he said it was one word—filibuster.

The Senator went on to observe:
If there were ever a reason for optimism about what this supplemental provides the
people of Iraq and their stability and secu-
rity, it is one of their minority leaders
proudly stating one of the pillars and prin-
ciples of our Government as the way they
would enact a law that the majority never
overran the minority.

He was right. We have that same pil-
lar here. We have had a lot of discus-
sion on the floor of the Senate. A cou-
ple weeks ago, we voted for billions of
dollars to improve law enforcement in
Iraq; at the same time, we voted for a
budget to cut law enforcement in the
United States. We voted billions of dol-
lars to improve infrastructure in Iraq;
we voted for a budget that cuts it in
America. We voted for item after item
for Iraq, then turned down money to cut
similar items in America.

This is not a debate on the Iraq war,
but if we are going to praise the
Iraqis—and I hope and pray that they
will have a democracy someday in that
country—and say the reason they can
have democracy is that they will have
the filibuster and they can protect mi-
nority rights, maybe it is time we say
let’s do as much for the United States
and as much for Iraq.

The Iraqi National Assembly was
elected in January. In April, it acted,
pursuant to its governing law, to select
a presidency council by the required
two-thirds vote in the assembly, a
supermajority.

More recently, Cabinet members for
a number of political parties, and reli-
gious and ethnic groups were an-
nounced, many in the minority parties.
Use of the nuclear option in the Senate
is akin to Iraqis in the majority polit-
ical party in the assembly saying they
have decided to disregard the gov-
erning laws and pick only members of
their own party for the government
and do so by a simple majority. They
made a deal, justified it to the public
to law because the Kurds and Sunnis
were driving a hard bargain.

One thing we have learned through
history is that if you govern through
consensus, it is not easy to rule unilaterally.
That is why dictators can
rule unilaterally. But we have never
been a dictatorship, thank God, in this
country, and I believe we never will be.
That is why our system of government is
the world’s example because we have
democratic protections for all Amer-
icans, majority and minority, and we
have done it in a way through a check
and balance so both sides can be heard.
That way it requires consensus. More
difficult, yes, but then the democracy
lasts, and that is the reward.

If Iraqi Shiite, Sunni, and Kurds can
cooperate in their new government to
make democratic decisions, why can’t
Republicans and Democrats in the Sen-
ate? After all, there are only 106 of us,
and we are not shooting at each other—
not literally, anyway. If the Iraqi law
and assembly can protect minority
rights and participation, so can our
rules and the Senate. That has been
the defining characteristic of the Sen-
ate and one of the principal ways in
which it was designed from the begin-
ning of this country to be distinct from
the other body.

Recently, the Senate passed, as I
said, an emergency supplemental ap-
propriations bill to fund efforts in
Iraq and Afghanistan. The justifica-
tion for spending billions of dollars of
American taxpayers’ money in Iraq is
we are trying to establish democracies.
How ironic that at the same time we
are undertaking these efforts—not just
of money but of the lives of our won-
derful men and women, a great cost to
so many American families—the Re-
publican majority in the Senate is
seeking to undermine the protection of
minority rights and checks and bal-
canes for districts and states, and while our Treasury is spending
the money to bring checks and balances in
Iraq, we are getting rid of it here.
Let me mention some of the recent statements of the President as he discussed democracy in other countries. When he came back, I praised him. Earlier this month, he met with President Putin of Russia. At his press conference from Latvia, President Bush noted:

"The promise of democracy is fulfilled by minority rights, and equal justice under the rule of law, and an inclusive society in which every person belongs."

President Bush was right when he said that the promise of democracy requires the protection of minority rights. It requires that in Latvia; all the more important, it requires it in the world's oldest existing democracy.

On that same recent, foreign trip the President correctly observed: "A true democracy is one that says minorities are important and that the will of the majority can't trample the minority." That which is necessary to constitute a true democracy in Eastern Europe is needed, as well, here in the cradle of democracy.

Again, earlier this year in another press conference with his good friend, President Putin, the President correctly observed—and I praised him for this:

"Democracies always reflect a country's customs and culture, and I know that. But democracies have certain things in common: They have a rule of law and protection of minorities, a free press and a viable political opposition."

The President was right when he spoke in Eastern Europe, but that which is necessary to constitute a true democracy in Eastern Europe is needed as well here in the cradle of democracy. I agree with all of these observations. I commend the President, as I have already. I hope all Senators will read them and agree we have to uphold the rule of law and the rules of the Senate that are designed to protect the minority and to prevent the politicization of this country. This country is never under one-party rule. This country always has checks and balances of both parties.

Others besides the President have spoken. Let me tell you what Secretary Rice said recently while overseas. She said this in Georgia: "A true democracy is one that says minorities are important and that the will of the majority can't trample the minority." That which is necessary to constitute a true democracy in Eastern Europe is needed as well here in the cradle of democracy. I agree with all of these observations. I commend the President, as I have already. I hope all Senators will read them and agree we have to uphold the rule of law and the rules of the Senate that are designed to protect the minority and to prevent the politicization of this country. This country is never under one-party rule. This country always has checks and balances of both parties.

It is not easy to build a democracy... It means having a strong legislative branch. It means having a strong independent judiciary along with freedom of speech, freedom of worship and protection of minority rights, that's how you build a democracy.

I told Secretary Rice that I agree with her, those are the components of a democracy. But we have the same components in the United States. We need to maintain the Senate as a strong legislative branch to serve as a check on the Executive, no matter what party, Democratic or Republican, controls the Executive. We need a strong independent judiciary—not a Republican judiciary, not a Democratic judiciary, but an independent judiciary—to serve as a check on the political branches. We need to protect free speech and freedom of religion, and to maintain our democracy in the United States, we have to protect minority rights.

On her way to Moscow recently, the Secretary of State stated:

"The centralization of State power in the presidential executive and countervailing institutions like the Duma or an independent judiciary is clearly very wrong."

She was speaking about how developments undercut democracy in Russia. But, so, too, here in our great and wonderful country, democracy is undercut by the concentration of power in the Executive, removing checks and balances and undermining the independence of our judiciary. It is ironic that President Bush and Secretary of State Rice speak so eloquently—and I agree with what they have said—about the fundamental requirements of a democratic society when they meet with world leaders outside the United States, but, unfortunately, the Bush administration and the Senate Republicans are intent on employing this nuclear option to consolidate power in this Presidency in this country.

Senators ought to have enough faith in their own ability, Senators ought to have enough understanding of their independence—and the fact that each one of the 100 of us is elected independently—to be willing to stand up. We do not work for the President. We do not work for the Vice President. We represent our country and our States, and we should be independent.

They know, as all Americans know, democracy requires the sharing of power, on checks and balances, and on an independent court system, one that protects minority rights, and on safeguarding human rights and human dignity. This nuclear option is in direct contradiction to maintain those values, those components of our democracy.

Just as Abu Ghraib and other abuses make it more difficult for our country to condemn torture and abuse when we speak to the world, this nuclear option uses a partisan effort to consolidate power in a single political party and institution and will make all the lectures we give to leaders of other countries ring hollow.

I remember when the Soviet Union broke up and it became a democratic country. A group of Russian parliamentarians came to the United States and visited the House of Representatives and the Senate. Several came to see me, and they wanted to talk about our independent judiciary. Finally one of them said: I have this question. It has really been bothering me. I have heard that in the United States people sometimes go into Federal court and sue the Government.

I said, Yes, it happens all the time. He said, But we have also heard that sometimes the Government loses.

I said, That is right.

They said, Well, don't you fire the judge if he lets the Government lose?

I said, No, it is an independent Federal judiciary. They are independent of the executive branch. They are independent of the Senate. They are independent of the House of Representatives. They make those decisions.

This was such an eye opener to them. The rest of that afternoon, that is what we talked about.

They said, It really works, then?

I said, Yes, and if you have it work that way in Russia, you will be a much safer country.

They still haven't gotten that far. Let's hope someday they do.

Chief Justice Rehnquist is right to refer to our independent judiciary as the shining jewel of democracy. It is a dazzling, brilliant, shining crown jewel. Judicial fairness and independence are also essential if we want to maintain our freedom. We have to stop the dangerous and irresponsible rhetoric slamming the Federal judiciary. We do not have to agree with every one of their opinions. I cannot believe that any one of 100 Senators who has followed every single Federal opinion would agree with every single one of them. But I think agreed distinguished Presiding Officer may disagree with the same one, or vice versa. We do not have to agree with every opinion. But let us respect their independence. Let no one say things that might bring about further threats against our judges as they endeavor to do their jobs serving justice. Let us not stand up on the floor of our Congress and speak of impeaching judges if we disagree with them. Justice Sandra Day O'Connor was right to condemn such vitriolic talk.

Judge Joan Lefkow of Illinois testified before the Senate Judiciary Committee this week. This is a woman whose husband and mother were murdered by somebody who disagreed with her decisions. She sacrificed too much for us not to heed her words when she asked us to lower the rhetoric, lower the attacks on Federal judges. We 100, and the 335 in the other body, of all people ought to know better. We ought to be protecting them physically and institutionally. We should not take the easy rhetorical potshots that put judges in real danger when they attack the very independence of our Federal judiciary.

When the U.S. Supreme Court decided the Federal election in 2000, as a lawyer, as a Senator, I thought the 5-to-4 majority engaged in an incredibly overreaching act of judicial activism to effectively decide a Presidential election. But I went on the floor of the Senate and I went before the press and I spoke for America. I spoke for America because the opinion of the Court because it was the final word. I thought the word was wrong, but I believed as Americans we must respect it.

I attended the argument, during the arguments of Bush v. Gore, when my Republican colleague on the Senate Judiciary Committee in order to show the country that we had to get along and work together. You didn't hear
Democrats saying let’s impeach Justice Scalia when we wholeheartedly disagreed with his action.

Part of upholding the Constitution is upholding the independence of the third branch of Government. One political party—neither Democratic nor Republican—controls the judiciary. It has to be independent of all political parties. That was the genius of the Founders of this country. It is the genius that has protected our liberties and our rights for well over 200 years. It is the genius that this country that will continue to protect us unless we allow something to destroy it just for short-term political gain.

It would be a terrible diminution of our rights to remove the independence of the Federal judiciary. It is a diminution of our rights no matter what party we belong to, no matter what part of the country we are from. It would be a diminution of our rights that none of the armies or the parties that are marching against our country has ever been able to do. If you take away the independence of our Federal judiciary, then our whole constitutional fabric unravels.

That is what we Democrats are trying to protect. That is what we are defending. The nuclear option is a threat to the protection of the minority, the independence of our judiciary, the protection of Americans rights and our democracy. It removes checks and balances.

How can the most powerful Nation, the wealthiest Nation history has ever known, be able to maintain itself without the protection of checks and balances? How can we? And how can we represent the rest of the world we are the example they should follow? How can we tell other countries, as they become democratic, this is what they should follow?

I know I will be speaking further. I see the distinguished Senator from North Dakota. I know he is seeking to speak. I will yield the floor.

Mr. DORGAN. Mr. President, I think we are waiting for Senator LIEBERMAN who is to appear on the floor momentarily. I was going to seek to say a few words following Senator LIEBERMAN, but I understand he is on his way to the floor right now and I would prefer not to proceed without him, so I think we will put ourselves in a quorum for a moment.

I make a point of order a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LIEBERMAN. Mr. President, I rise to speak on the so-called nuclear option which cloud hangs over this Senate on this Friday afternoon.

The media, and sometimes Senators, speak of this debate, this possibility that the 60-vote majority requirement for confirmation of judicial nominations will be scrapped, as an internal struggle within the Senate. It is that, of course. But it is not only that. In my opinion, certainly when one judges its effect, it is not primarily that. This is about the judiciary, the judicial branch of our Government.

If you go back to the beginning of our Government, every student who takes a civics course knows there are three branches of the Government: executive, legislative, and judicial. The judicial branch, as I was taught—I presume people are still taught it this way—is the most independent because it is protected at the Federal level from politics, from the passions of the moment. It is there to arbitrate disputes between fundamental liberties, to take the principles in the Constitution in the laws we adopt and relate them to the lives of the American people in every generation.

It is, I want to repeat, charged with a significant responsibility. It is the one responsibility that is to be the one of the three branches of Government that is above political passions, that is there to protect—I would call them the eternal principles on which the Declaration, the Constitution, the Bill of Rights were fashioned. That is what is on the line. It is a direct question. It is a simple question, but it challenges a lot of our values.

The question really is, Will we require nominees to lifetime appointments on the Federal bench, the district court, circuit courts and, of course, the Supreme Court, will we require nominees for lifetime appointments to the Federal bench to receive the votes of at least 60 Members of the Senate? Will we require judges who will have a lot to say about the nature of law, values, freedom, and rights in our country—not just for the term of this President but for as long as they live—to receive the votes of at least 60 Members of the Senate?

In a time in the history of the Senate which is, unfortunately, increasingly partisan and polarized and too often unproductive, I speak really about the partisanship and polarization. Will we require, in having that standard of 60 votes thereby, that any nominee to the lifetime appointment to the Federal bench receive the support of the Members of more than one of our political parties?

Remember, I talked about the judiciary having that unique role in our constitutional system and our governmental system to be independent of political passions and polling and what is popular at the moment, to protect our freedoms to arbitrate disputes, to uphold our best values. Don’t we want to require that 60 votes be obtained for this lifetime appointment, which in the current practical, real political context—with 55 Members of one party, 45 in the other, it could soon switch. Some hope sooner than others hope, but it could switch. Do we want just those 55 Members of one political party today, and it could be another political party tomorrow, to determine the conformation of a lifetime service on the Federal bench?

We are in much better shape as a country if we can look forward with much more of a sense of confidence and with a sense of pride that we have fulfilled the values and the purpose that the Founders of this country put in the judiciary if we require 60 votes. That is what is on the line. The nuclear option would blow that up and say it would require 51.

Others have spoken and can speak about the impact this might have on our working relationships in the Senate, on our ability to deal with other problems. But for me, the fundamental question is, Will we continue to require those 60 votes?

I speak for myself, but I believe I speak for most other Members of the Senate, it is never the first choice to filibuster anything. Not for me. And certainly not on a judicial nomination. I have voted in the past and I have not counted them up—I assume, on hundreds of judicial nominations. As we know from the most famous chart in America today, the President has had confirmed 208 of 218 of his nominees while the first President Bush was in office, so I have voted on several hundred judicial nominees, and I believe I have filibustered maybe 10.

I, as one Senator, want to preserve my right if I believe this President or the next President nominates someone I just do not believe by their record, by their experience, by their testimony before hearings, is qualified or fit to serve on the Federal bench for the rest of their lifetime. I want the right to demand that nominee prove that he or she can obtain the support of at least 60 Senators.

That is what is on the line. It is on the line for the judiciary, but it suggests what is on the line for the Senate overall. Over the years, and I must say my attitude has changed on this as I have watched the Senate become more partisan and polarized, it seems to me, and now I am speaking more broadly than the judiciary, which will be the focus of the nuclear option if the button is pushed, that in a Senate that is increasingly partisan and polarized—and therefore, unproductive—that the institutional requirement for 60 votes is one of the last best hopes of bipartisanship in moderation because to not only confirm a judicial nominee but to pass legislation, if you have the right to demand 60 votes, and the President proposes legislation, individual Members of the Senate do so, you have to go beyond the Members of your own party. I suppose if one party gets 60 votes, that argument is all over but not totally because even within
that 60 they may have to work to get it.

In the current context, that is what we are talking about. It could flip again to another party, my party being in the majority. It requires on every measure that to pass something you have to get more than the Members of your own party. You have to get more than people of one philosophical or ideological point of view. You have to get to 60. It is often not very hard to do that. That is why I say, the 60-vote supermajority requirement is today. In a partisan Senate, one of the last best hopes, pressures, for bipartisanship in the most literal sense. You cannot get to 60 votes with Members of one party, and for moderation, which is where America has always done best, and where I am convinced the majority of the American people still rest.

There were polls that came out this week. The polls are snapshots, and we should never be governed by them, but the one from the Wall Street Journal and NBC should be taken as a warning. People talk about the popularity of the President, up or down, whether people support a Social Security program or don't. But the polling data on Congress, the polling data of the population of Congress, with trust or whatever the word was, is at an all-time low since this particular poll began to be taken in 1994. I think the public is fed up with the partisanship. I think they want us to get something done.

The tragedy of it is that all 100 of us ran for the Senate, not to come and have fights with one another, sound and fury that produce nothing. We came here to get something done. But we are in this cycle where the campaigns never seem to stop.

The Presiding Officer knows from the founding of our country, thank God, there was very spirited politics and campaigns. In some of the early campaigns, more television, people said pretty tough stuff about one another, but I think through most of our history, when the campaigns ended, those elected focused on governance, on leading the country, on doing something for the people who sent us.

It seems to me too often that the campaigns never stop. As a result, we do not get as much accomplished as we should get accomplished, and the needs remain great to keep our country safe, improve the quality of our education, health care, to protect the environment, to continue to work together with business to stimulate the economy.

These are the consequences of the perpetual campaigning and increased partisanship. It is not the place to talk of the causes of it, but I want to de- describe it as I have experienced it and to say that if we end the 60-vote require- ment, I fear it will get worse, that it will get more partisan, less productive, and we will do less for the people's business.

This is why I have been participating over the last week, and a little bit more in the extraordinary, in some sense unprecedented, discussions, negoti- ations between a group of Senators of both political parties who share many of the views that I have just expressed and want to avoid the nuclear option and to bring us back from the precipice.

I hope these negotiations end success- fully. It would not only be in the Senate's interest, it would not only be in the interest of our independent judici- ary, it would not only be in the interest of the American people who want us to get some things done to improve their lives and make them safer.

If those negotiations do not conclude successfully, I hope Members of the Senate individually will, in good con- science, reach a judgment that pushing the button on the nuclear option is a response, in its way, to a passion of the moment, a concern that filibusters have been used against judicial nomi- nes.

Colleagues of mine on this side have said, over and over again, made the point—it is, in my opinion, the fact—208 out of 218 of President Bush's nomi- nes have been confirmed, a much higher percentage than President Clinton had. But there are people, obviously, in this Chamber angry about the small number who have not been approved. It is a anger of the moment.

I appeal to all my colleagues not to yield to the anger of the moment and do serious damage not just to this in- stitution but to the values upon which our Constitution and our country rest. That is what is on the line. It is a big moment in our history. I hope and pray and, ultimately, believe we will rise to the challenge and do what is right.

I thank the Chair and yield the floor.

The PRESIDENT pro tempore. The Senator from North Dakota.

Mr. DORGAN. Mr. President, my under- standing is that I believe, by pre- vious order, there are 5 minutes re- maining on this side. The PRESIDENT pro tempore. There is 3 minutes remaining.

Mr. DORGAN. I spoke to the previous Presiding Officer and indicated I had wished to speak for 15 minutes, I ask unanimous consent to do that, pro- vided that the other side has equal op- portunity to extend their time as well. The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered. The time is extended.

Mr. DORGAN. Mr. President, I have said on a previous occasion how proud I am to be here in the Senate. For these years I have served, it has been an enormous privilege. I come from a small town in ranching country and wheat country in southwestern North Dakota. I never thought I would meet a Senator or a President, but yet, be- cause of the great quilt-work of this democracy, I have been elected to the Senate on three occasions and am enormously proud to serve.

I do not come here to be a partisan. I am proud of my political party, how- ever. I think we have two grand polit- ical parties in this country. Both, from time to time, have made great accom- plishments and have made great mis- takes. I fear we are on the precipice of one of those great mistakes. That is why I came to speak again on this sub- ject.

There is plenty of blame, I suppose, to go around to both parties on a range of issues. I think sometimes about the poem written by Ogden Nash, about a man who drinks too much and a woman who scolds him about it. Ogden Nash wrote this:

He drinks because she scolds, he thinks;
She thinks she scolds because he drinks;
And neither will admit what's true.

That he's a drunk and she's a shrew.

So Ogden Nash described cir- cumstances of blame, circumstances of how two different people see the same situation differently.

We come now to a big decision on the floor of the Senate. David Broder, who I think is one of the excellent writers here in Washington, DC, with the Washington Post, has written a piece about what we are doing. He says:

But dwarfing all these individual dramas (in the debate) is the question of what the vote means (the nuclear option vote means) for the Senate as an institution. Two of the main props of the Senate's identity are at stake. The tradition of unlimited debate, going back to the Senate's earliest years. ... and the continuity of the Senate rules.

What does this mean about "unlim- ited debate" and "the continuity of the Senate rules"? I have the rule book for the Senate. These are the Senate rules. The Senate rules provide that to change the rules of the Senate requires 67 Senators, 67 votes.

The majority now wishes to change the rules, but they do not have 67 votes. They are displeased about that. So they want to ignore the Parliamen- tarian—that would be their strategy—ignore the Parliamentarian, who would tell them what they are attempting to do is not within the rules, and then they would change the rules with 51 votes.

They call this the nuclear option, self-described as a nuclear option by a member of their caucus. I suppose they use that term because they know that for a majority party to violate the rules in order to change the rules would have an enormously destructive impact on this body.

Some years ago, I went to the 200th birthday of the writing of the Constitution. It was held in the assembly room of Constitution Hall in Philadelphia. Again, I have told my colleagues in the Senate, I graduated from a small high school class of nine students. I found myself 1 of 55 people designated to go into that room where, 200 years earlier, 55 people had written the Constitution, this little book that, on page 17, says, "We the People of the United States: They wrote that.

On its 200th birthday, 55 of us went into that room. The chair where George Washington sat as he presided
We want everyone to have a vote. Well, they have all had a vote. It is just that 10 of them only got a cloture vote and did not get the 60 votes required. And because they did not get 60 votes, out of 218 judicial nominees, 208 were approved and 10 were not. So we have convened a Senate that is completely out of shape because 10 out of 218 did not get approved. And, incidentally, the 208 out of the 218 who have been approved for this President represents a much higher percentage than was approved for the President before that. And, we also have the lowest vacancy rate on the Federal bench since many years ago.

But having said all that, we now have a proposal by the majority party to exercise the so-called nuclear option. Why do we have that proposal? I guess they have decided they are going to do it because they can. They can decide to ignore, as David Broder, the dean of the Washington press corps described, the Senate majority party and the Senate Constitution—unlimited debate and the continuity of the Senate rules. There are reasons to have, perhaps, some sort of a self-described nuclear approach on the Senate floor. Perhaps we do have to approach our ability to deal with the losses of jobs. Maybe that would be helpful. Maybe we ought to have this energy, this passion, this demand to explode something here to be in support of American jobs, to stop a dramatic increase in these costs that are devastating families, devastating to businesses, and devastating to the Federal budget. Anything going on, on the floor of the Senate about that? Not at all.

We have two things happening here. One, Air Force One is traveling around this country back on track, such as dealing with the trade deficit, and the hemorrhaging of American jobs. I mentioned General Electric announced a plant closing; 470 people are going to lose their jobs. That was yesterday in the newspapers. They made refrigerators that are now going to be made in Mexico, and those 470 people will be out of work. I would love to come to the floor to talk about that. I have offered amendments. I can’t get to first base. That is not part of what happens around here.

The majority party is upset because they didn’t get every judge, so they want to do what is called a nuclear option. As I said, I am enormously proud to serve here. Most of the things that we face should require us to work together. We all have the same ends. We want the best for the United States of America. We want our country to do well, to expand, to provide opportunities. We want to help with the things that families talk about at night when they sit around the supper table: Do I have a good job; does my job pay well; do I have job security; are we sending our kids to schools that are grazed, are the things that families talk about at night when they sit around the supper table.

This nuclear option is so destructive. It was said once that preceding every great mistake, there is a split second when those who are about to make that mistake have the opportunity to turn the course. This will, indeed, be a great mistake if those who attempt this do not turn back. Abraham Lincoln once said: Die when I may, let it be said of me by those who know me best that I always plucked a thistle where I thought a flower would grow and planted a flower.

The party of Abraham Lincoln is, at this point, not planting flowers, rather, they are plucking thistles. They are planting thistles in the middle of this Chamber. I hope those who think this is a clever move, those who think this is a new strategy that they can win, will understand that ultimately will lose by failing to respect the traditions of the Senate, the rules of the Senate, and the concept of unlimited debate that makes this institution different than any other in the country. We all come from different corners of America, different size cities, different backgrounds, different education. But I believe we are all people of good will. We all came here with the same hope in our heart, hope for a better America.
My hope would be that in the coming 2 or 3 or 4 days, those who have led us to this moment and this position preceeding a great mistake, will rethink that position and see if we can’t get back to the main agenda facing this country and its citizens. Let me yield the floor.

The PRESIDENT pro tempore. The Senator from Texas is recognized for 15 minutes.

Mr. CORNYN. Mr. President, I appreciate the elegant comments of our colleague from North Dakota. I, too, wish we could get on with the Nation’s business dealing with the high price of gasoline, which is hurting our economy and hurting consumers and people who need to commute to and from work to do their job.

I wish we could get on addressing the issues of the uninsured and lack of access to good quality health care by too many Americans. I wish we could talk about specifying our borders and how we deal with our inability to control our borders and the threat that that presents to our national security. If we could simply get the up-or-down vote that was recognized as the Senate tradition for 214 years before the last Congress, we would be addressing those other issues.

But here we are, having debated for 19 days on the floor of the Senate about this nominee, Justice Priscilla Owen. Interestingly, that is 2 more days than the Senate spent debating the 91 nominees of the U.S. Supreme Court.

While our colleagues on the other side of the aisle talk about preservation of the tradition of unlimited debate, this is not about debate. We have heard the distinguished Democratic leader say there is not enough time in the universe to debate these nominees. It is not about debate. Some have complained that on this side we are impeding the free speech rights of Senators. Anybody who has been listening to the debate knows that there has been no impediment of free speech on the floor of the Senate. Some have said this is about minority rights. We respect minority rights in the Senate. We always have, and we always will. But the fact is the American people sent a majority to the Senate that stands ready to confirm these nominees. It is not just people on our side of the aisle. If we were permitted to cast a vote, a bipartisan majority would confirm these nominees today. This amounts to a veto, in effect. A partisan minority has attempted to cast a veto of bipartisan majority rights.

I hope the distinguished Senator from Connecticut, whom I respect enormously, but I disagree with his comments today that somehow he now understands the wisdom of requiring 60 votes before we can confirm a nominee to a Federal court, when the fact is, from time immemorial, since the beginning of this institution, only 51 votes were required to confirm a nominee. And now all of a sudden, President Bush is elected and reelected, and we are going to raise the level to 60 votes. That is changing the rules in the middle of the game. That is not fair. What we need is a resolution of this issue based on principle.

That principle is to be one of fundamental fairness. That is, the same rules apply whether it is a Republican President or a Democratic President, whether there is a Republican majority or a Democratic majority. That, to me, is the fundamental principle. This matter can be resolved—not based on some bogus suggestion or some deal cut by a handful of Senators that would throw some nominees overboard, confirm others, and not leave the issue of a potential U.S. Supreme Court vacancy resolved.

We need this matter resolved after 4 years. After 4 years, patience ceases to be a virtue. We need to get on to the issues the Senator from North Dakota and others have raised. But now is the time to resolve this issue once and for all.

I point out the speciousness of this 60-vote requirement and how it does represent a departure from past practice. As of 1979 through 2000, where judges nominated by President Carter, judges nominated by President Reagan, judges nominated by the first President Bush, and judges nominated by President Clinton were all confirmed in a majority vote on the Federal bench today with less than 60 votes. So any suggestion that we on this side are somehow trying to change the rules just does not withstand scrutiny. It is not true. All we are asking for is a restoration of that majority tradition.

Let me say that for the last 3 days—actually, for the last 4 years—we have debated three key questions on the floor of the Senate. Really, I do think it boils down to these three key issues: First of all, do nominees such as Priscilla Owen, whose picture is to my right—somebody who I know personally and worked with for 3 years on the Texas Supreme Court, who I know to be a fine, decent human being and outstanding judge—deserve confirmation to the Federal bench or, at a minimum, do they deserve an up-or-down vote? No one is suggesting that any Senator violate their conscience. Indeed, if any Senator believes they cannot in good conscience vote yes for any other nominee, of course, we would expect them to cast a ‘no’ vote on the confirmation. But we would expect at least for them to allow there to be a vote.

The second question is: Is this new idea of an up-or-down vote requirement for the confirmation of judges both unprecedented and wrong? Third, is the use of the Byrd option—the constitutional point of order we have heard much discussed, which has been exercised in the past—appropriate in order to restore Senate tradition to the confirmation of judges and to ensure that the rules remain the same, regardless of which party controls the White House and which party has a majority in the Senate?

I firmly believe the case has been made, and that the answer to each of these questions is ‘yes.’

Let me reiterate, do nominees such as Justice Priscilla Owen deserve confirmation to the Federal bench or, at minimum, an up-or-down vote? Of course, they do. This is a distinguished jurist and public servant, who enjoys bipartisan support in the State of Texas of statewide elected officials who are Democrats, 15 members of the State bar association, the premier association for the legal community in our State, which supports this judge because she is a good judge. There are those who oppose Justice Owen’s nomination and, of course, that is their right. Some Senators have even criticized her rulings. Others, including myself, have defended those rulings. The debate has been extensive and Justice Owen’s record, I believe, has been sketched.

Indeed, I submit it is precisely because Justice Owen’s record is so strong that a partisan minority of Senators now insist that she may not be confirmed without the support of at least 60 Senators, regardless of which party controls the Senate. It is clear to me that the confirmation of judges and to ensure the proper functioning of the Federal courts is a core principle of American constitution. The American people know a constitutional requirement is based on principle. Whether there is a Republican majority or a Democratic President, it is clear their complaint is not with the nominee. It is clear their complaint is not with the process. It is clear their complaint is not with the Federal courts. It is clear their complaint is not with the judiciary. It is clear their complaint is not with our society for the legal community in our State, which supports this judge because she is a good judge. There are those who oppose Justice Owen’s nomination and, of course, that is their right. Some Senators have even criticized her rulings. Others, including myself, have defended those rulings. The debate has been extensive and Justice Owen’s record, I believe, has been sketched.

On the day of the announcement of the first group of nominees—that is, by my recollection, on May 9, 2001—more than 4 years ago, the ranking member of the Judiciary Committee said he was encouraged and that he knew them well enough that I would assume they will all go right through.

Just a few short weeks ago, the minority leader announced that Senate Democrats would give Justice Owen an up-or-down vote, albeit only if, Republicains agreed to deny the same courtesy to other nominees. Now, that, as much as anything—and the distinguished Senior Senator from Pennsylvania made this point—really, by the majority leader that has been offered, the political deal that has been offered to allow an up-or-down vote on some nominees and throw others overboard, it is clear their complaint is not with Justice Owen. If, in fact, the minority leader announced he would give her an up-or-down vote if we simply tossed some of the others overboard, to me that demonstrates the lack of merit of their complaints and accusations when it comes to this judge and her record.

In the end, these concessions are understandable because it is true that Justice Owen is simply not convincing. The American people know a controversial ruling from the bench when
they see one, whether it is the radical redefinition of our society’s most basic institution, marriage, or the expulsion of the Pledge of Allegiance and other expressions of faith from our public square, or the elimination of the “three strikes and you’re out” law and other punishment multiplied against multiple-time convicted criminals, or the forced removal of military recruiters from college campuses. Justice Owen’s decisions as a judge fall nowhere near this class or category of cases. There is a world of difference between that and refusing to obey a legislature’s directives altogether and substituting one’s own views for that of the elected representatives of the people.

The second question to reiterate is: Is there any idea for a supermajority requirement for confirmation of judges unprecedented and wrong? The answer is yes and yes. Indeed, our colleagues across the aisle have said so in the past and continue to say so today. To try to determine what legislative intent is by parsing the words of a statute, trying to figure out what did the legislature mean—there is a huge difference between that and refusing to respect disagreements, but I hope they have been respectful disagreements.

It has been suggested by some that we are facing a constitutional crisis. I beg to differ. America is strong. Our constitutional system works. It is perfectly normal and traditional for Senators to debate, to disagree, and to vote. Indeed, it has been on the floor of the Senate of our Nation’s history that we have debated the great constitutional and public policy issues of our day, and this is one of them. But it is not a crisis.

It is perfectly normal and traditional for a majority of Senators to vote on the rules and parliamentary precedents of this body. Senators have been doing that from the beginning of this great institution. There is nothing radical about the need to, under the rules of this body, reconfirm well-qualified judicial nominees. There is nothing radical about a majority of Senators voting to confirm judicial nominees, and there is nothing radical about a majority of Senators voting to establish Senate precedents and rules.

In short, what we have on the floor of the Senate right now is a controversy, a disagreement, not a crisis. This controversy can be resolved, and undoubtedly will be resolved, by an up-or-down vote of the Senate. This controversy can be resolved, as it has always been resolved, by an up-or-down vote of the Senate. This controversy can be resolved, as it has always been resolved, by simply determining which side of the question enjoys the support of a greater number of Senators. And once the controversy is resolved, we can and we should get back to work on the rest of the people’s business.

This is a controversy, a disagreement, not a crisis. And I hope that in the coming days, we will complete our debate and resolve this controversy in a respectful way, consistent with the greatest traditions of the Senate.

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

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

The assistant legislative clerk proceed to call the roll.

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

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

Mr. CORNYN. Mr. President, we have completed our third day of consideration of the nomination of Priscilla Owen and, therefore, I ask unanimous consent that there be an additional 10 hours of debate equally divided on the nomination, and that following that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

Mr. REID. I object.

The PRESIDENT pro tempore. Objection is heard.

Mr. CORNYN. Mr. President, I ask unanimous consent that there be an additional 15 hours of debate equally divided on the nomination, and that following that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Reserving the right to object, Mr. President. The mere fact that I can object shows this is a debatable motion I do object.

The PRESIDING OFFICER. Objection is heard.

Mr. CORNYN. Mr. President, I will refrain from making other offers of unanimous consent for additional debate time at this time.

CLOTURE MOTION

With that objection, on behalf of the majority leader, I send a cloture motion to the desk.

The PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the assistant legislative clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 71, the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.


Mr. CORNYN. Mr. President, on behalf of the majority leader, this cloture vote will occur on Tuesday, and the leader will announce the precise timing of that vote next week.

MORNING BUSINESS

Mr. CORNYN. I now ask unanimous consent there be a period of morning business with Senators permitted to speak up to 10 minutes each.

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

NATIONAL POLICE WEEK

Mr. LEVIN. Mr. President, as we commemorate National Police Week, I would like to recognize the courageous
May 20, 2005

CONGRESSIONAL RECORD — SENATE

men and women who serve our families and communities as law enforcement officers. I would also like to honor the memory of those who gave their lives in the line of duty. These officers, and their families, have paid the ultimate sacrifice for the safety of others.

The first National Police Week was celebrated in 1962 when President John F. Kennedy signed an Executive Order designating May 15th as Peace Officers Memorial Day and the week in which that date falls as “Police Week.” This weeklong tribute to our Nation’s local, State, and Federal police officers honors those who died in the line of duty and those who continue to serve and protect us every day at great personal risk.

According to the National Law Enforcement Memorial Fund, 1,649 law enforcement officers have been killed in the line of duty in the last 10 years. In 2004 alone, 153 officers lost their lives, including 7 from Michigan. As in past years, the names of these officers have been permanently engraved on the National Law Enforcement Officers Memorial along side more than 17,000 others.

We can further honor the sacrifices of these brave men and women by passing important legislation to support our law enforcement officers. That is why I have joined Senator Biden as a cosponsor of his COPS Reauthorization Act. The COPS program was created in 1994 and is designed to assist State and local law enforcement agencies in hiring additional police officers to reduce crime through the use of community policing. Nationwide, the COPS program has awarded more than $11 billion in grants, resulting in the hiring of 118,000 additional police officers. Unfortunately, authorization for the COPS program was permitted to expire at the end of fiscal year 2000. Although the program has survived through continued appropriations, its funding has been significantly cut. The COPS Reauthorization Act would continue the COPS program for another 6 years at a funding level of $1.15 billion per year, nearly double the amount appropriated for fiscal year 2005. Among other things, this funding would allow State and local governments to hire an additional 50,000 police officers and improve their ability to analyze crime data and DNA evidence. At a time when there are more of our police departments than ever before, I believe we should be devoting more resources to the COPS program, not less.

Supporting our law enforcement officers also requires that we take up and pass common sense legislation to help keep them safe while they carry out their duties. Shootings have been the leading cause of death for law enforcement officers over the last ten years and more can be done to keep powerful weapons out of the hands of violent criminals. We must listen to law enforcement groups like the International Association of Chiefs of Police, the International Brotherhood of Police Officers, and the National Fraternal Order of Police which have called for reauthorization of the 1994 assault weapons ban. In addition we should be working to pass legislation to close loopholes that allow potential criminals to buy dangerous weapons like the P90 seven, and piercing handgun. Our law enforcement community deserves no less.

In honor of their memories, the names of law enforcement officers from Michigan who died in the line of duty during 2004 are:

Officer Matthew E. Bowens of Detroit, died February 16, 2004;
Officers Gary Cooper Davis of Bloomfield Township, died May 13, 2004;
Officer Jennifer T. Pettig of Detroit, died February 16, 2004;
Deputy Sheriff Perry Austin Fillmore of Clinton County, died March 27, 2004;
Deputy Sheriff John Kevin Gunsell of Otsego County, died September 12, 2004;
Deputy Sheriff Mark Anthony Sawyers of Sterling Heights, died June 5, 2004; and

ADDITIONAL STATEMENTS

TRIBUTE TO ALABAMA’S WINNERS OF THE WE THE PEOPLE: THE CITIZEN AND THE CONSTITUTION COMPETITION

• Mr. SESSIONS. Mr. President, I would like to take this opportunity to recognize a group of students in my home State of Alabama. On April 30, 2005, students from Vestavia Hills High School in Birmingham, AL, traveled to Washington, D.C. to take part in the national finals of We the People: The Citizen and the Constitution national competition. This competition is an extensive educational program developed specifically to educate young people about the United States Constitution and Bill of Rights.

More than 1,200 students from across the country participated in a 3-day academic competition. They participated in a simulated congressional hearing in which they “testified” before a panel. Students got to demonstrate their knowledge and understanding of constitutional principles. Additionally, they had the opportunity to evaluate, take, and defend positions on relevant historical and present day issues.

Prior to their trip to Washington, these outstanding students from Vestavia Hills High School proved their knowledge of the United States Constitution, by winning their state-wide competition, thus earning them the chance to come to our Nation’s capital to compete at the national level. I am proud these students represented the State of Alabama on a national level in this year’s We the People competition.

I would like to pay special tribute to the teacher of the class, Amy Maddox, the students of Vestavia Hills High School participating in the We the People: The Citizens and the Constitution competition are the following: Matthew Barley, Katie Barzler, Maria Begamaz, Michelle Blackburn, Brandon Demyan, Lory Feagin, Anne Hackney, Alan Horvath, Anna Jarzabski, Staci Karpova, Thomas Lide, Kristin McDonal, Freman Meri-Glenn, Tucker Reeves, Luke Romano, Erin Snow, and Christopher Willoughby. I would like to applaud their efforts.

Mr. President, the achievements of these students are continued proof that the civic education initiative we approved in this chamber is paying dividends. We the People, which is part of the civic education initiative of the No Child Left Behind legislation, is giving students the lifelong skills they need to be effective, engaged, and informed citizens. I commend the Center for Civic Education and the National Conference of State Legislatures for their leadership in sponsoring this excellent service learning-type program. I also would like to commend Janice Cowin, the state coordinator from the Alabama Center for Law & Civic Education for her work in administering the program in my State.

MESSAGE FROM THE HOUSE

At 2:22 p.m., a message from the House of Representatives, delivered by one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2361. An act making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 2361. An act making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes; to the Committee on Appropriations.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 1084. A bill to eliminate child poverty, and for other purposes.

S. 1085. A bill to provide for paid sick leave to ensure that Americans can address their own health needs and the health needs of their families.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:
EC-2291. A communication from the Under Secretary of Defense for Acquisition, Technology, and Logistics, Department of Defense, transmitting, pursuant to law, a report on the impact of the improvements to the Technology, and Logistics (T&L) budgets that are not certified by the Director of the Defense Test Resource Management Center (DTRMC) to be adequate; to the Committee on Armed Services.

EC-2292. A communication from the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report on the impact of the improvements to the compensation and benefits made by the National Defense Authorization Act for Fiscal Year 2000 on recruiting and retention programs of the Armed Forces; to the Committee on Armed Services.

EC-2293. A communication from the Under Secretary of Defense for Acquisition, Technology, and Logistics, Department of Defense, transmitting, pursuant to law, a report relative to the Defense Base Closure and Realignment Act of 1990, as amended; to the Committee on Armed Services.

EC-2294. A communication from the Under Secretary of Defense, Personnel and Readiness, Department of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC-2295. A communication from the Under Secretary of Defense, Personnel and Readiness, Department of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC-2296. A communication from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Under Secretary of Defense (Logistics and Materiel Readiness), received on May 18, 2005; to the Committee on Armed Services.

EC-2297. A communication from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary of the Army (Civil Works), received on May 18, 2005; to the Committee on Armed Services.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time, referred as indicated:

By Mrs. PEYSTEIN (for herself and Mr. SNOWE):

S. 1090. A bill to provide certain required authorizations to the siting of new liquefied natural gas import terminals, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SALAZAR:

S. 1091. A bill to establish a Federal Incentive program as part of a national gasification strategy to stimulate commercial deployment of integrated gasification combined cycle and industrial gasification technology; to the Committee on Energy and Natural Resources.

By Mr. ENZI:

S. 1094. A bill to amend the Mineral Leasing Act to establish procedures for the reinstatement of leases terminated due to unforeseeable circumstances; to the Committee on Energy and Natural Resources.

By Mr. CORNYN (for himself and Mr. WYDEN):

S. 1095. A bill to amend chapter 113 of title 18, United States Code, to clarify the prohibition against the trafficking in goods or services, and for other purposes; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 65

At the request of Mr. INHOFE, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 65, a bill to amend the age restrictions for pilots.

S. 420

At the request of Mr. KYL, the name of the Senator from Texas (Mrs. S. 65.
HUTCHISON] was added as a cosponsor of S. 420, a bill to make the repeal of the estate tax permanent.

S. 875.

At the request of Mr. BINGAMAN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 875, a bill to amend the Internal Revenue Code of 1986 to allow a credit to holders of qualified bonds issued to finance certain energy projects, and for other purposes.

S. 962.

At the request of Mr. GRASSLEY, the name of the Senator from Arkansas (Mr. PRIOR) was added as a cosponsor of S. 962, a bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for the purchase of hearing aids.

S. 1060.

At the request of Mr. COLEMAN, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1060, a bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for the purchase of defense base closure and realignment.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CORNYN (for himself and Mr. LEAHY):

S. 1085. A bill to amend chapter 113 of title 18, United States Code, to clarify the prohibition on the trafficking in goods or services, and for other purposes; to the Committee on the Judiciary.

Mr. CORNYN. Mr. President, today I am pleased to join Senator LEAHY to offer important legislation in our continued bipartisan effort to combat the trafficking of illegitimate goods throughout the world.

Recently, we have worked together on a matter near and dear to my heart. This important legislation relates to the Freedom of Information Act, and it is indeed a pleasure to work with the Ranking Member of the Judiciary Committee again.

The rampant distribution of illegitimate goods—be it counterfeit products, illegal copies of copyrighted works or any other form of piracy—undermines property rights, threatens American jobs, decreases consumer safety and, often times, supports organized crime and terrorist activity.

Amazingly, it is estimated that between 5 percent and 7 percent world wide trade is conducted with counterfeit goods and services. According to FBI estimates, counterfeiting costs U.S. businesses as much as $200-$250 billion annually—and that costs Americans their jobs—more than 750,000 jobs according to U.S. Customs.

In recent years, this plague on global trade has grown. According to the World Customs Organization and Interpol, the global trade in illegitimate goods has increased from $5.5 billion in 1992 to more than $600 billion per year today. That is—$600 billion per year illegally extracted from the global economy.

But perhaps most troubling, the counterfeit trade threatens our safety and our security. Counterfeit goods undermine our confidence in the reliability of our goods and service. For example, the Federal Aviation Administration estimates that 2 percent the 26 million airline parts installed each year are counterfeit. And the Federal Drug Administration estimates that as much as 10 percent pharmaceuticals are counterfeit. Worse yet—evidence indicates that the counterfeit trade supports terrorist activities. Indeed, Al Qaeda training manuals recommended the sale of fake goods to raise revenue.

And the reach of counterfeiting runs deep in my State of Texas. Data is difficult to collect, but a 1997 piece detailing Microsoft’s efforts to combat counterfeiting and piracy—while dated—pointed out that this type of activity costs Texas over 10,000 jobs and almost $600 million per year. Today, we know those numbers are much higher.

We must act to stop this illegal activity.

The legislation we offer today, the Protecting American Goods and Services Act of 2005:

SEC. 2. PROHIBITION ON TRAFFICKING OF CERTAIN GOODS AND SERVICES.

(a) IN GENERAL.—Section 2320 of title 18, United States Code, is amended—

(1) by striking subsection (a) and inserting the following:

'(a) Any person who intentionally traffics or attempts to traffic in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services—

'(A) if an individual, shall be fined not more than $2,000,000, imprisoned not more than 10 years, or both; and

'(B) if a person other than an individual, shall be fined not more than $5,000,000, imprisoned not more than 10 years, or both; and

'(2) in subsection (b), by striking paragraph (2) and inserting the following:

'(2) the term ‘traffic’ means—

'(A) transport, transfer, or otherwise dispose of, to another for consideration for any thing of value or without consideration; or

'(B) make or obtain control of with intent to so transport, transfer, or dispose of; and

'(B) the term ‘copies’ and ‘phonorecords’ have the respective meanings given under section 101 of title 17;

'(C) the term ‘copyrighted works’ or ‘unauthorized copies and phonorecords of copyrighted works’ means each of the several States of the United States, the
The bill will criminalize the possession of counterfeit goods with the intent to traffic in those goods, and it expands the definition of “traffic” to include any distribution of counterfeits with the expectation of gaining something of value—criminals should not be able to skirt the law simply by handling illegal goods and services in exchange for their illicit wares. Finally, the bill will criminalize the importation and exportation of counterfeit goods, as well as of bootleg copies of copyrighted works into and out of the United States.

By tying off these loopholes and improving U.S. laws on counterfeiting, we will be sending a powerful message to the criminals who belong in jail, and to our innovators.

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

On Tuesday, May 17, 2005, the Senate passed H.R. 3, as follows:

H. R. 3

Resolved. That the bill from the House of Representatives (H.R. 3) entitled “An Act to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.” do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
(a) SHORT TITLE.—This Act may be cited as the “Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:
Sec. 1. Short title; table of contents.
Sec. 2. General definitions.
Sec. 3. Definitions for title 23.

TITLES I—FEDERAL-AYD HIGHWAYS

Subtitle A—Funding
Sec. 101. Authorization of appropriations.
Sec. 102. Obligation ceiling.
Sec. 103. Apportionments.
Sec. 104. Equity bonus programs.
Sec. 105. Revenue aligned budget authority.
Sec. 106. Use of excess funds and funds for inactive projects.

Subtitle B—New Programs
Sec. 1201. Infrastructure performance and maintenance program.
Sec. 1202. Future of surface transportation system.
Sec. 1203. Freight transportation gateways; freight intermodal connections.
Sec. 1204. Construction of ferry boats and ferry terminal and maintenance facilities; coordination of ferry construction and maintenance.
Sec. 1205. Designation of interstate highways.
Sec. 1206. State-by-State comparison of highway construction costs.

Subtitle C—Finance
Sec. 1301. Federal share.
Sec. 1302. Transfer of highway and transit funds.
Sec. 1303. Transportation Infrastructure Finance and Innovation Act Amendments.
Sec. 1304. State infrastructure banks.
Sec. 1305. Public-private partnerships pilot program.

Subtitle D—Safety
Sec. 1401. Highway safety improvement program.
Sec. 1402. Operation lifesaver.
Sec. 1403. Increased penalties for higher-risk drivers driving while intoxicated or driving under the influence.
Sec. 1404. Bus axle weight exemption.
Sec. 1405. Safe routes to schools program.
Sec. 1406. Purchases of equipment.
Sec. 1407. Workzone safety.
Sec. 1408. Worker injury prevention and free flow of vehicular traffic.
Sec. 1409. Open container requirements.
Sec. 1410. Safe intersection.
Sec. 1411. Presidential commission on alcohol-impaired driving.
Sec. 5305. Build America Corporation.
Sec. 5306. Increase in dollar limitation for qualified transportation fringe benefits.
Sec. 5307. Treasury study of highway fuels used by trucks for non-transportation purposes.
Sec. 5308. Tax-exempt financing of highway projects and rail-truck transfer facilities.
Sec. 5309. Tax treatment of State ownership of railroad real estate investment trust.
Sec. 5310. Incentives for the installation of alternative fuel refueling stations.
Sec. 5311. Modification of recapture rules for amortizable section 197 intangibles.
Sec. 5312. Diesel fuel tax evasion report.
Subtitle E—Fuels-Related Technical Corrections
Sec. 5401. Fuel-related technical corrections.
Subtitle F—Revenue Offset Provisions
PART I—GENERAL PROVISIONS
Sec. 5501. Treatment of contingent payment convertible debt instruments.
Sec. 5502. Frivolous tax submissions.
Sec. 5503. Increase in certain criminal penalties.
Sec. 5504. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangements.
Sec. 5505. Modifications of interaction between Subpart F and passive foreign investment company rules.
Sec. 5506. Declaration by chief executive officer relating to Federal annual corporate income tax return.
Sec. 5507. Treasury regulations on foreign tax credit.
Sec. 5508. Whistleblower reforms.
Sec. 5509. Denial of deduction for certain fines, penalties, and other amounts.
Sec. 5510. Freeze of interest suspension rules with respect to listed transactions.
Sec. 5512. Imposition of mark-to-market tax on individuals who expatriate.
Sec. 5513. Disallowance of deduction for punitive damages.
Sec. 5514. Application of earnings stripping rules to partners which are C corporations.
Sec. 5515. Prohibition on deferral of gain from the early use of stock options and restricted stock gains through deferred compensation arrangements.
Sec. 5516. Limitation of employer deduction for certain entertainment expenses.
Sec. 5517. Increase in penalty for bad checks and money orders.
Sec. 5518. Elimination of double deduction on mining exploration and development costs under the minimum tax.
PART II—ECONOMIC SUBSTANCE DOCTRINE
Sec. 5521. Clarification of economic substance doctrine.
Sec. 5522. Penalty for understatement attributable to transactions lacking economic substance, etc.
Sec. 5523. Denial of deduction for interest on underpayments attributable to noneconomic substance transactions.
PART III—IMPROVEMENTS IN EFFICIENCY AND SAFEGUARDS IN INTERNAL REVENUE SERVICE COLLECTION
Sec. 5531. Waiver of user fee for installment agreements using automated withdrawals.
Sec. 5532. Termination of installment agreements.
Sec. 5533. Office of Chief Counsel review of offers-in-compromise.
Sec. 5534. Partial payments required with submission of offers-in-compromise.
Sec. 5535. Joint task force on offers-in-compromise.
Subtitle F—Additional Revenue Provisions
PART I—GENERAL PROVISIONS
Sec. 5601. Suspension of transfers from Highway Trust Fund for certain reimbursement and credits.
Sec. 5602. Temporary dedication of gas guzzler tax to Highway Trust Fund.
PART II—PROVISIONS TO COMBAT FUEL FRAUD
Sec. 5603. Treatment of kerosene for use in aircraft.
Sec. 5604. Repeal of ultimate vendor refund claims with respect to farming.
Sec. 5612. Penalty with respect to certain adulterated fuels.
PART VI—PUBLIC TRANSPORTATION
Sec. 6001. Short title.
Sec. 6002. Amendments to title 49, United States Code; updated terminology.
Sec. 6003. Policies, findings, and purposes.
Sec. 6004. Definitions.
Sec. 6005. Metropolitan transportation planning.
Sec. 6006. Wide area transportation planning.
Sec. 6007. Transportation management areas.
Sec. 6008. Private enterprise participation.
Sec. 6009. Urbanized area formula grants.
Sec. 6010. Planning programs.
Sec. 6011. Capital investment program.
Sec. 6012. New freedom for elderly persons and persons with disabilities.
Sec. 6013. Formula grants for other than urbanized areas.
Sec. 6014. Research, development, demonstration, and deployment projects.
Sec. 6015. Transit cooperative research program.
Sec. 6016. National research programs.
Sec. 6017. National transit institute.
Sec. 6018. Bus testing facility.
Sec. 6019. Bilingual facilities.
Sec. 6020. Suspended light rail technology pilot project.
Sec. 6021. Crime prevention and security.
Sec. 6022. General provisions on assistance.
Sec. 6023. Special provisions for capital projects.
Sec. 6024. Contract requirements.
Sec. 6025. Project management oversight and review.
Sec. 6026. Project review.
Sec. 6027. Investigations of safety and security risk.
Sec. 6028. State safety oversight.
Sec. 6029. Terrorist attacks and other acts of violence against public transportation systems.
Sec. 6030. Controlled substances and alcohol misuse testing.
Sec. 6031. Employee protective arrangements.
Sec. 6032. Administrative procedures.
Sec. 6033. Reports and audits.
Sec. 6034. Apportionments of appropriations for formula grants.
Sec. 6035. Apportionments for fixed guideway modernization.
Sec. 6036. Authorizations.
Sec. 6037. Apportionments based on growing States formula factors.
Sec. 6038. Job access and reverse commute grants.
Sec. 6039. Over-the-road bus accessibility program.
Sec. 6040. Alternative transportation in parks and public lands.
Sec. 6041. Obligation ceiling.
Sec. 6043. Disadvantaged business enterprises.
Sec. 6044. Transit pass transportation fringe benefits.
Sec. 6045. Funding for ferry boats.
Sec. 6046. Commuter rail.
TITLe VII—SURFACE TRANSPORTATION SAFETY IMPROVEMENT
Sec. 7001. Short title.
Sec. 7002. Amendment of United States Code.
SUBTITLE A—MOTOR CARRIER SAFETY
CHAPTER 1—MOTOR CARRIERS
Sec. 7101. Short title.
Sec. 7102. Contract authority.
Sec. 7103. Authorization of appropriations.
Sec. 7104. High risk carrier compliance reviews.
Sec. 7105. Overdue reports, studies, and rulemakings.
Sec. 7106. Amendments to the listed reports, studies, and rulemakings proceedings.
Sec. 7107. Motor carrier safety grants.
Sec. 7108. Technical corrections.
Sec. 7109. Penalty for denial of access to records.
Sec. 7110. Medical program.
Sec. 7111. Operation of commercial motor vehicles by individuals who use insulin to treat diabetes mellitus.
Sec. 7112. Financial responsibility for private motor carriers.
Sec. 7113. Increased penalties for out-of-service violations and false records.
Sec. 7114. Intrastate operations of interstate motor carriers.
Sec. 7115. Authority to stop commercial motor vehicles.
Sec. 7116. Revocation of operating authority.
Sec. 7117. Pattern of safety violations by motor carrier management.
Sec. 7118. Motor carrier research and technology program.
Sec. 7119. International cooperation.
Sec. 7120. Performance and registration information system management.
Sec. 7121. Commercial vehicle information systems and networks deployment.
Sec. 7122. Outreach and education.
Sec. 7123. Social motor vehicles.
Sec. 7124. Pre-employment safety screening.
Sec. 7125. Class or category exemptions.
Sec. 7126. Decals.
Sec. 7127. Roadability.
Sec. 7128. Motor carrier regulations.
Sec. 7129. Vehicle towing.
Sec. 7130. Certification of vehicle emission performance standards.
CHAPTER 2—UNIFIED CARRIER REGISTRATION
Sec. 7211. Short title.
Sec. 7212. Relationship to other laws.
Sec. 7213. Inclusion of motor private and exempt carriers.
Sec. 7214. Unified carrier registration system.
Sec. 7215. Registration of motor carriers by States.
Sec. 7216. Identification of vehicles.
Sec. 7217. Use of UCR agreement revenues as matching funds.
Sec. 7218. Certification of international registration plans and international fuel tax agreements.
Sec. 7219. Availability of funds.
Sec. 7220. Certification of vehicle emission performance standards.
CHAPTER 3—COMMERCIAL DRIVER’S LICENSES
Sec. 7311. CDL task force.
Sec. 7152. CDL learner’s permit program.
Sec. 7153. Grants to States for commercial driver’s license improvements.
Sec. 7154. Modernization of CDL information systems.
Sec. 7155. School bus endorsement knowledge test requirement.

SUBTITLE B—HIGHWAY AND VEHICULAR SAFETY
Sec. 7201. Short title.
CHAPTER 1—HIGHWAY SAFETY GRANT PROGRAM
Sec. 7211. Short title.
Sec. 7212. Authorization of appropriations.
Sec. 7213. Highway safety programs.
Sec. 7214. Highway safety research and outreach programs.
Sec. 7215. National Highway Safety Advisory Committee technical correction.
Sec. 7216. Occupant protection grants.
Sec. 7217. Older driver safety; law enforcement training.
Sec. 7218. Emergency medical services.
Sec. 7219. Repeal of authority for alcohol traffic safety programs.
Sec. 7220. Impaired driving program.
Sec. 7221. State traffic safety information system improvements.
Sec. 7222. NHTSA accountability.
Sec. 7223. Grants for improving child passenger safety programs.
Sec. 7224. Motorcyclist safety training and motorcycle awareness programs.

CHAPTER 2—SPECIFIC VEHICLE SAFETY-RELATED RULINGS
Sec. 7251. Vehicle rollover prevention and crash mitigation.
Sec. 7252. Side-impact crash protection rulemaking.
Sec. 7253. Tire research.
Sec. 7254. Vehicle backover avoidance technology study.
Sec. 7255. Nontraffic incident data collection.
Sec. 7256. Safety belt use reminders.
Sec. 7257. Amendment of Automobile Information Disclosure Act.
Sec. 7258. Power window switches.
Sec. 7259. 15-passenger van safety.
Sec. 7260. Updated fuel economy labeling procedure.
Sec. 7261. Identification of certain alternative fueled vehicles.
Sec. 7262. Authorization of appropriations.

SUBTITLE C—HAZARDOUS MATERIALS ON TRANSPORTATION OF HAZARDOUS MATERIALS
Sec. 7301. Short title.
CHAPTER 1—GENERAL AUTHORITIES ON TRANSPORTATION OF HAZARDOUS MATERIALS
Sec. 7321. Purpose.
Sec. 7322. Definitions.
Sec. 7323. General regulatory authority.
Sec. 7324. Limitation on issuance of hazmat licenses.
Sec. 7325. Background checks for drivers handling hazardous materials.
Sec. 7326. Representation and tampering.
Sec. 7327. Transporting certain material.
Sec. 7328. Hazmat employee training requirements and grants.
Sec. 7329. Registration.
Sec. 7330. Shipping papers and disclosure.
Sec. 7331. Rail tank cars.
Sec. 7332. Ununsatisfactory safety ratings.
Sec. 7333. Training curriculum for the public sector.
Sec. 7334. Planning and training grants; emergency preparedness fund.
Sec. 7335. Spill permits and exclusions.
Sec. 7336. Uniform forms and procedures.
Sec. 7337. Hazardous materials transportation safety and security.
Sec. 7338. Enforcement.
Sec. 7339. Civil penalties.
Sec. 7340. Criminal penalties.
Sec. 7341. Preemption.
Sec. 7342. Subrogation to other laws.
Sec. 7343. Judicial review.
Sec. 7344. Authorization of appropriations.

Sec. 7345. Additional civil and criminal penalties.
Sec. 7346. Technical corrections.
CHAPTER 2—OTHER MATTERS
Sec. 7361. Administrative authority for Pipeline and Hazardous Materials Safety Administration.
Sec. 7362. Mailability of hazardous materials.
Sec. 7363. Criminal matters.
Sec. 7364. Cargo inspection program.
Sec. 7365. Information on hazmat registrations.
Sec. 7366. Report on applying hazardous materials regulations to persons who reject hazardous materials.
Sec. 7367. National first responder transportation incident response system.
Sec. 7368. Hazardous material transportation plan requirement.
Sec. 7369. Welded rail and tank car safety improvements.
Sec. 7370. Hazardous materials cooperative research program.

CHAPTER 3—SANITARY FOOD TRANSPORTATION
Sec. 7381. Short title.
Sec. 7382. Responsibilities of the Secretary of Health and Human Services.
Sec. 7383. Department of Transportation requirements.
Sec. 7384. Effective date.

CHAPTER 4—HOUSEHOLD GOODS MOVERS
Sec. 7401. Short title.
Sec. 7402. Definitions; application of provisions.
Sec. 7403. Payment of rates.
Sec. 7404. Household carrier operations.
Sec. 7405. Liability of carriers under receipts and bills of lading.
Sec. 7406. Arbitration requirements.
Sec. 7407. Enforcement of regulations related to transportation of household goods.
Sec. 7408. Working group for development of practices and procedures to enhance Federal-State relations.
Sec. 7409. Information about household goods transportation on carriers’ websites.
Sec. 7410. Consumer complaints.
Sec. 7411. Review of liability of carriers.
Sec. 7412. Civil penalties relating to household goods brokers.
Sec. 7413. Civil and criminal penalty for failing to give up possession of household goods.
Sec. 7414. Progress report.
Sec. 7415. Additional registration requirements for motor carriers of household goods.

SUBTITLE E—SPORTFISHING AND RECREATIONAL BOATING SAFETY
Sec. 7501. Short title.
CHAPTER 1—FEDERAL AID IN SPORT FISH RESTORATION ACT AMENDMENTS
Sec. 7511. Amendment of Federal Aid in Sport Fishing Act.
Sec. 7512. Authorization of appropriations.
Sec. 7513. Division of annual appropriations.
Sec. 7514. Authorization of appropriations.
Sec. 7515. Payments of funds to and cooperation with the States.
Sec. 7516. Requirements and restrictions concerning use of amounts for expenses for administration.
Sec. 7517. Payments of funds to and cooperation with the States.
Sec. 7518. Waterfowl habitat and conservation grants.
Sec. 7519. Expenditures from boat safety account.

CHAPTER 2—CLEAN VESSEL ACT AMENDMENTS
Sec. 7531. Grant program.

CHAPTER 3—RECREATIONAL BOATING SAFETY PROGRAM AMENDMENTS
Sec. 7551. State matching funds requirement.
Sec. 7552. Availability of allocations.
Sec. 7553. Authorization of appropriations for State recreational boating safety programs.
Sec. 7554. Maintenance of effort for State recreational boating safety programs.

SUBTITLE F—MISCELLANEOUS PROVISIONS
Sec. 7601. Office of intermodalism.
Sec. 7602. Capital grants for rail line relocation projects.
Sec. 7603. Rehabilitation and improvement financing.
Sec. 7604. Report regarding impact on public safety of train travel in communities without grade separation.
Sec. 7605. First responder vehicle safety program.
Sec. 7606. Federal school bus driver qualifications.

SEC. 2. GENERAL DEFINITIONS.
In this Act:
(1) DEPARTMENT.—The term ‘‘Department’’ means the Department of Transportation.
(2) SECRETARY.—The term ‘‘Secretary’’ means the Secretary of Transportation.

SEC. 3. DEFINITIONS FOR TITLE 23.

Section 101 of title 23, United States Code, is amended by striking subsection (a) and inserting the following:

‘‘(a) DEFINITIONS.—In this title:
(1) APPORTIONMENT.—The term ‘‘apportionment’’ includes an unexpended apportionment made under a law enacted before the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005.
(2) CARPOOL PROJECT.—
(A) IN GENERAL.—The term ‘‘carpool project’’ means any project to encourage the use of carpools and vanpools.
(B) INCLUSIONS.—The term ‘‘carpool project’’ includes a project—
(i) to provide carpooling opportunities to the elderly and individuals with disabilities;
(ii) to develop and implement a system for locating potential riders and informing the riders of carpool opportunities;
(iii) to acquire vehicles for carpool use;
(iv) to designate highway lanes as preferential carpool lanes;
(v) to provide carpool-related traffic control devices; and
(vi) to designate facilities for use for preferential parking for carpools.
(3) CONSTRUCTION.—
(A) IN GENERAL.—The term ‘‘construction’’ means the supervision, inspection, and actual building of, and incurring of all costs incidental to the construction of or reconstruction of a highway, including bond costs and other costs relating to the issuance in accordance with section 122 of bonds or other debt financing instruments and costs incurred by the State in performing Federal-aid project related audits that directly benefit the Federal-aid highway program.
(B) INCLUSIONS.—The term ‘‘construction’’ includes—
(i) locating, surveying, and mapping (including the establishment of temporary and permanent geometric markers in accordance with specifications of the National Oceanic and Atmospheric Administration);
(ii) resurfacing, restoration, and rehabilitation;
(iii) acquisition of rights-of-way;
(iv) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;
(v) elimination of hazards of railway grade crossings;
(vi) elimination of roadside obstacles;
(vii) improvements that directly facilitate and control traffic flow, such as—
(I) grade separation of intersections;
(II) widening of lanes;
(III) channelization of traffic; and
(IV) traffic control systems; and
“(V) passenger loading and unloading areas; “(vi) capital improvements that directly facilitate an effective vehicle weight enforcement program, such as— “(1) (i) scale pits; “(ii) scale installation; and “(iii) scale houses; “(x) improvements directly relating to securing transportation infrastructures for detection, preparedness, response, and recovery; “(xii) operational improvements; and “(xiii) transportation system management and operation. “(4) COUNTY.—The term ‘county’ includes— “(A) a corresponding unit of government under any other name in a State that does not have operating areas; and “(B) in those States in which the county government does not have jurisdiction over highways, any local government unit vested with jurisdiction over local highways. “(5) FEDERAL-AID HIGHWAY.— “(A) IN GENERAL.—The term ‘Federal-aid highway’ means a highway eligible for assistance under this chapter. “(B) EXCLUSIONS.—The term ‘Federal-aid highway’ does not include a highway classified as a local road or rural minor collector. “(6) FEDERAL.—The term ‘Federal-aid system’ means any of the Federal-aid highway systems described in section 103. “(7) FEDERAL LANDS HIGHWAY.—The term ‘Federal lands highway’ means— “(A) a forest highway; “(B) a recreation road; “(C) a public Forest Service road; “(D) a park road; “(E) a parkway; “(F) a refuge road; “(G) an Indian reservation road; and “(H) a public lands highway. “(8) FOREST HIGHWAY.—The term ‘forest highway’ means a forest road that is— “(A) under the jurisdiction of, and maintained by, a public authority; and “(B) open to public travel. “(9) FOREST ROAD OR TRAIL.— “(A) IN GENERAL.—The term ‘forest road or trail’ means a road or trail wholly or partly within, or adjacent to, and serving National Forest System land that is necessary for the protection, administration, use, and development of the resources of that land. “(B) INCLUSIONS.—The term ‘forest road or trail’ includes— “(i) a classified forest road; “(ii) an unclassified forest road; “(iii) a temporary forest road; and “(iv) the customary use of a forest road. “(10) FREIGHT TRANSPORTATION GATEWAY.— “(A) IN GENERAL.—The term ‘freight transportation gateway’ means a nationally or regionally significant transportation part of entry or hub for domestic and global trade or military mobilization. “(B) INCLUSIONS.—The term ‘freight transportation gateway’ includes freight intermodal and Strategic Highway Network connections that provide access to and from a port or hub described in subparagraph (A). “(11) HIGHWAY.—The term ‘highway’ includes— “(A) a road, street, and parkway; “(B) a right-of-way, bridge, railroad-highway crossing, tunnel, overpass, and viaduct; “(C) a portion of any interstate or intercity system of bridges or tunnel; and “(D) a road the Secretary may designate by, a public authority; and “(E) any highway through unappropriated or unreserved public land, present or former public lands highway, or any other Federal reservation (including a main highway through such land or reservation that is the Federal-aid system that is— “(i) under the jurisdiction of, and maintained by, a public authority; and “(ii) open to public travel. “(29) PUBLIC ROAD.—The term ‘public road’ means any road or street that is— “(A) under the jurisdiction of, and maintained by, a public authority; and “(B) open to public travel. “(30) RECREATIONAL ROAD.—The term ‘recreational road’ means a road that— “(A) provides access to a museum, lake, reservoir, visitors center, gateway to a major wilderness area, public use area, or recreational or historic site; and “(B) for which title is vested in the Federal Government. “(21) REFUGE ROAD.—The term ‘refuge road’ means a public road that— “(A) provides access to or within a unit of the National Wildlife Refuge System or a national fish hatchery; and “(B) for which title and maintenance responsibility is vested in the United States Government. “(22) RURAL AREA.—The term ‘rural area’ means an area of a State that is not included in an urban area. “(B) EXCLUSIONS.—The term ‘operational improvement’ does not include— “(i) a resurfacing, restorative, or rehabilitative improvement; “(ii) construction of an additional lane, interchange, or grade separation; or “(iii) construction of a new facility on a new location. “(22) RURAL AREA.—The term ‘rural area’ means an area of a State that is not included in an urban area.
management, roadway weather management, traveler information services, commercial vehicle operations, traffic control, freight management, and coordination of highway, rail, transit, bicycle, and pedestrian systems.

(40) **Urban Area.**—The term ‘urban area’ means:

(i) an urbanized area (or, in the case of an urbanized area that is more than one State, the portion of the urbanized area in each State);

(ii) an urban area designated by the Bureau of the Census that—

(A) has a population of 5,000 or more;

(B) is designated by the Bureau of the Census; and

(C) is located within boundaries that—

(i) are fixed cooperatively by responsible State and local officials, subject to approval by the Secretary; and

(ii) encompass, at a minimum, the entire urbanized area within a State as designated by the Bureau of the Census.

**TITLE I—FEDERAL-AID HIGHWAYS**

**Subtitle A—Funding**

**SEC. 1101. AUTHORIZATION OF APPROPRIATIONS.** The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) **Interstate Maintenance Program.** For the Interstate maintenance program under section 119 of title 23, United States Code:

(A) $5,171,723,801 for fiscal year 2005; and

(B) $5,258,525,160 for fiscal year 2006; and

(C) $5,267,479,750 for fiscal year 2007; and

(D) $5,589,235,166 for fiscal year 2008; and

(E) $6,685,150,152 for fiscal year 2009.

(2) **National Highway System.** For the National Highway System under section 103 of that title:

(A) $7,316,858,660 for fiscal year 2005; and

(B) $7,606,591,948 for fiscal year 2006; and

(C) $7,628,384,160 for fiscal year 2007; and

(D) $8,067,988,062 for fiscal year 2008; and

(E) $8,124,634,110 for fiscal year 2009.

(3) **Bridge Program.** For the bridge program under section 144 of that title:

(A) $5,171,723,801 for fiscal year 2005; and

(B) $3,435,099,649 for fiscal year 2006; and

(C) $3,499,259,875 for fiscal year 2007; and

(D) $3,647,754,080 for fiscal year 2008; and

(E) $3,729,786,635 for fiscal year 2009.

(4) **Surface Transportation Program.** For the surface transportation program under section 133 of that title:

(A) $7,582,894,742 for fiscal year 2005; and

(B) $7,870,361,598 for fiscal year 2006; and

(C) $7,900,976,158 for fiscal year 2007; and

(D) $8,294,904,735 for fiscal year 2008; and

(E) $8,415,808,100 for fiscal year 2009.

(5) **Congestion Mitigation and Air Quality Improvement Program.** For the congestion mitigation and air quality improvement program under section 110 of that title:

(A) $5,349,259,875 for fiscal year 2005; and

(B) $5,698,542,735 for fiscal year 2006; and

(C) $6,513,168,976 for fiscal year 2007.

(6) **Highway Safety Improvement Program.** For the highway safety improvement program under section 402 of that title:

(A) $1,253,007,425 for fiscal year 2005; and

(B) $1,291,977,089 for fiscal year 2006; and

(C) $1,389,408,993 for fiscal year 2007; and

(D) $1,365,007,731 for fiscal year 2008; and

(E) $1,369,468,771 for fiscal year 2009; and

(F) $1,389,468,993 for fiscal year 2009.

(7) **Appalachian Development Highway System Program.** For the Appalachian development highway system program under section 170 of that title, $552,048,803 for each of fiscal years 2005 through 2009.

(8) **Recreational Trails Program.** For the recreational trails program under section 206 of that title, $36,140,537 for each of fiscal years 2006 through 2009.

(9) **Federal Lands Highway Program.**

(A) **Indian Reservation Roads.**—For Indian reservation roads under section 204 of that title:

(i) $302,000,000 for fiscal year 2005; and

(ii) $330,000,000 for each of fiscal years 2006 through 2009.

(B) **Park Roads and Parkways.**—In general:

(i) For park roads and parkways under section 204 of that title:

(A) $20,000,000 for fiscal year 2005; and

(B) $20,000,000 for each of fiscal years 2006 through 2009.

(10) **Multimodal Transportation Program.** For the multimodal transportation program under section 171 of that title:

(A) $124,987,840 for fiscal year 2005; and

(B) $145,819,146 for fiscal year 2006; and

(C) $166,650,453 for fiscal year 2007; and

(D) $187,481,760 for fiscal year 2008; and

(E) $208,313,966 for fiscal year 2009.

(11) **Border Planning, Operations, and Technology Program.** For the border planning, operations, and technology program under section 172 of that title:

(A) $57,154,157 for each of fiscal years 2005 through 2009.

(12) **Multistate Corridor Program.** For the multistate corridor program under section 171 of that title:

(A) $124,987,840 for fiscal year 2005; and

(B) $145,819,146 for fiscal year 2006; and

(C) $166,650,453 for fiscal year 2007; and

(D) $187,481,760 for fiscal year 2008; and

(E) $208,313,966 for fiscal year 2009.

(13) **Infrastructure Performance and Maintenance Program.** For carrying out the infrastructure performance and maintenance program under section 129 of that title:

(A) $3,232,013 for fiscal year 2005; and

(B) $3,379,642 for each of fiscal years 2006 through 2009.

(14) **Construction of Ferry Boats and Ferry Terminal Facilities.**—For construction of ferry boats and ferry terminal facilities under section 109 of that title:

(A) $16,133,000 for fiscal year 2005; and

(B) $20,926,000 for each of fiscal years 2006 through 2009.
(15) COMMONWEALTH OF PUERTO RICO HIGHWAY PROGRAM.—For the Commonwealth of Puerto Rico highway program under section 173 of that title—
(A) $295,101,195 for fiscal year 2005;
(B) $139,855,711 for fiscal year 2006;
(C) $144,549,855 for fiscal year 2007;
(D) $139,150,000 for fiscal year 2008; and
(E) $152,996,516 for fiscal year 2009.

(16) PUBLIC-PRIVATE PARTNERSHIPS PILOT PROGRAM.—For the public-private partnerships pilot program under section 104(c)(3) of that title, $8,386,289 for each of fiscal years 2005 through 2009.


(18) DELTA REGION TRANSPORTATION DEVELOPMENT PROGRAM.—For planning and construction activities authorized under the Delta Regional Authority, $73,090,314 for each of fiscal years 2005 through 2009.

(19) INTERMODOAL PASSENGER FACILITIES.—For intermodal passenger facilities under subchapter III of chapter 55 of title 49, United States Code, $9,386,289 for each of fiscal years 2005 through 2009.

SEC. 1102. OBLIGATION CEILING.

(A) GENERAL LIMITATION.—Subject to subsections (b), (c), and (d), the obligation authority made available from the Highway Trust Fund for a fiscal year shall not exceed—
(1) $4,000,000,000 for fiscal year 2005;
(2) $3,924,000,000 for fiscal year 2006;
(3) $3,952,000,000 for fiscal year 2007;
(4) $4,304,000,000 for fiscal year 2008; and
(5) $4,507,000,000 for fiscal year 2009.

(b) EXCEPTIONS.—The limitations under subsection (a) shall not apply to obligations under or for—
(1) section 125 of title 23, United States Code;
(2) section 147 of the Surface Transportation Assistance Act of 1978 (23 U.S.C. 144 note; 92 Stat. 2711);
(3) section 9 of the Federal-Aid Highway Act of 1981 (Public Law 97–134; 95 Stat. 1761);
(4) subsections (b) and (i) of section 131 of the Surface Transportation Assistance Act of 1982 (Public Law 97–424; 96 Stat. 2119);
(5) subsections (b) and (c) of section 149 of the Surface Transportation and Uniform Federal Aid Highway Act of 1992 (Public Law 102–230; 106 Stat. 198);
(6) sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1997 (Public Law 105–170; 111 Stat. 826);
(7) section 157 of title 23, United States Code (as in effect on June 8, 1998);
(8) section 165 of title 23, United States Code (as in effect for fiscal years 1998 through 2001, but only in an amount equal to $639,000,000 for each of those fiscal years);
(9) Federal-aid highway programs for which obligation authority was made available under the Transportation Equity Act for the 21st Century (Public Law 106–17; 122 Stat. 67) or subsequent multiple-year programs to remain available until used, but only to the extent that the obligation authority has not lapsed or been used;
(10) section 165 of title 23, United States Code (but, for each of fiscal years 2005 through 2009, only in an amount equal to $639,000,000 per fiscal year); and
(11) section 1106 of this Act, to the extent that funds obligated in accordance with that section were not subject to a limitation on obligations at the time at which the funds were initially made available under section 104(a), and notwithstanding any other provision of law, the obligation authority made available under sections 104(a)(3) of that title, $8,386,289 for each of fiscal years 2005 through 2009.

(c) DISTRIBUTION OF OBLIGATION AUTHORITY.—For each of fiscal years 2005 through 2009, the Secretary—
(1) shall distribute obligation authority provided by subsection (a) for the fiscal year for (A) amounts authorized for administrative expenses and programs by section 104(a) of title 23, United States Code;
(B) programs funded from the administrative takedown account under section 104(a)(1)(H) of title 23, United States Code; and
(C) amounts authorized for the highway use tax evasion program and the Bureau of Transportation Statistics;
(2) shall not distribute an amount of obligation authority provided by subsection (a) that is equal to the unobligated balance of amounts made available from the Highway Trust Fund (other than the Mass Transit Account) for Federal-aid highway and highway safety programs for previous fiscal years and the funds for which are allocated by the Secretary;
(3) shall determine the ratio that—
(A) the obligation authority provided by subsection (a) for the fiscal year; or (B) the total of the sums authorized to be appropriated for the Federal-aid highway and highway safety construction programs (other than those made available for provisions of law described in paragraphs (1) through (2) of section 14501 of title 40, United States Code, that the obligation authority available for that section is equal to the amount determined by multiplying—
(A) the ratio determined under paragraph (3); by
(B) the sums authorized to be appropriated for that section for the fiscal year;
(5) shall distribute among the States the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2), for each of the programs that are allocated by the Secretary under this Act and title 23, United States Code (other than to programs which paragraph (1) applies), by—
(A) the ratio determined under paragraph (3); by
(B) the amounts authorized to be appropriated for such program for the fiscal year; and
(6) shall distribute the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2) and the amounts distributed under paragraphs (4) and (5), for Federal-aid highway and highway safety construction programs (other than the amounts apportioned for the equity bonus program, but only to the extent that the amounts apportioned for the equity bonus program for the fiscal year are greater than $639,000,000, and the Appalachian development highway system program) that are apportioned by the Secretary under this Act and title 23, United States Code (other than to programs which paragraph (1) applies), by—
(A) the ratio determined under paragraph (3); by
(B) the amounts authorized to be appropriated for the programs that are apportioned to each State for the fiscal year, but to
(C) the total of the amounts authorized to be appropriated for the programs that are apportioned to all States for the fiscal year.

(d) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Notwithstanding any other provision of law, the Secretary shall, after August 1 of each of fiscal years 2005 through 2009—
(1) revise a distribution of the obligation authority made available under subsection (c) if an amount distributed cannot be obligated during that fiscal year; and
(2) redistribute sufficient amounts to those States whose obligation authority made available under subsection (c) remains in excess over those previously distributed during that fiscal year, giving priority to those States having large unobligated balances of funds apportioned under sections 104 and 144 of title 23, United States Code.

(e) APPLICABILITY OF OBLIGATION LIMITATION TO TRANSPORTATION RESEARCH PROGRAMS.—
(1) IN GENERAL.—Except as provided in paragraph (2), obligation limitations imposed by subsection (a), (b), and (c) of this section do not apply to transportation research programs carried out under—
(A) chapter 5 of title 23, United States Code; and
(B) title II of this Act.

(2) EXCEPTION.—Obligation authority made available under subsection (a) or (b) of this section shall remain available for a period of 3 fiscal years; and

(f) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—
(1) IN GENERAL.—Not later than 30 days after the date of distribution of obligation authority under subsection (c) for each of fiscal years 2005 through 2009, the Secretary shall distribute to the States any funds that—
(A) are authorized to be appropriated for the fiscal year for Federal-aid highway programs; and
(B) the Secretary determines will not be allocated to the States, and will not be available for obligation, in the fiscal year due to the imposition of any obligation limitation for the fiscal year.

(2) RATIO.—Funds shall be distributed under paragraph (1) in the same ratio as the distribution of obligation authority under subsection (c)(6).

(g) AVAILABLE.—Funds distributed under paragraph (1) shall be available for any purpose described in section 133(b) of title 23, United States Code.

(h) SPECIAL RULE.—Obligation authority made available under subsection (c)(4) for the provision specified in subsection (c)(4) shall—
(1) remain available until used for obligation of funds for that provision; and
(2) be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

(i) ADJUSTMENT IN OBLIGATION LIMIT.—
(1) IN GENERAL.—A limitation on obligations imposed by subsection (a)(1) shall be adjusted by an amount equal to the amount determined in accordance with section 251(b)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(1)(B)) for the fiscal year.

(2) DISTRIBUTION.—An adjustment under paragraph (1) shall be distributed in accordance with this section.

(j) LIMITATIONS ON OBLIGATIONS FOR ADMINISTRATIVE EXPENSES.—Notwithstanding any other provision of law, the total amount of all obligations for administrative expenses under section 104(a) of title 23, United States Code, shall not exceed—
(1) $43,652,453 for fiscal year 2005;
(2) $45,541,487 for fiscal year 2006;
(3) $46,521,321 for fiscal year 2007; and
(4) $47,700,755 for fiscal year 2008.

(k) NATIONAL HIGHWAY SYSTEM COMPONENT.—Subsection (a)(9)(B) of title 23, United States Code, is amended by striking "$36,400,000" and inserting "$46,931,447".

SEC. 1103. APPORTIONMENTS.

(A) ADMINISTRATIVE EXPENSES.—
(1) IN GENERAL.—Section 104 of title 23, United States Code, is amended by striking subsection (a) and inserting the following:

"(a) ADMINISTRATIVE EXPENSES.—
(1)"
(other than the Mass Transit Account) to be made available to the Secretary of Transportation for administrative expenses of the Federal Highway Administration.

SEC. 104. (A) For fiscal year 2005:

1. $45,000,000 for each of fiscal years 2006 and 2007;

2. $478,700,753 for fiscal year 2008;

3. $464,621,321 for fiscal year 2007;

4. $450,541,887 for fiscal year 2006; and


SEC. 105. Equity bonus program

(a) PROGRAM.—(1) In general.—Subject to subsections (c) and (d), for each of fiscal years 2005 through 2009, the Secretary shall allocate among the States amounts sufficient to ensure that no State receives a combined total of amounts allocated under subsection (a)(1), apportionments for the fiscal year for the programs specified in paragraph (2) that is less than the percentage determined under subsection (b).

(2) SPECIFIC PROGRAMS.—The programs referred to in subsection (a) are—

(A) the Interstate maintenance program under section 119;

(B) the national highway system program under section 103;

(C) the bridge program under section 144;

(D) the surface transportation program under section 133;

(E) the highway safety improvement program under section 149;

(F) the congestion mitigation and air quality improvement program under section 149;

(G) metropolitan planning programs under section 104(f) and surface transportation programs funded by amounts provided under the equity bonus program under this section;

(H) the Appalachian development highway system program under subtitle IV of title 40;

(I) the equity bonus programs under this section;

(J) the Appalachian development highway system program under subtitle IV of title 40;

(K) the recreational trails program under section 206;

(L) the safe routes to schools program under section 150;

(M) the rail-highway grade crossing program under section 130;

(N) the border planning, operations, technology, and capacity program under section 172.

(b) METROPOLITAN PLANNING.—Section 104(f) of title 23, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

(1) by striking “the deduction authorized by subsection (a)” and

(2) in the first sentence of subsection (c)(1), by striking “, and also” and all that follows through “this section”; and

(3) in subsection (f), by striking “deducted” and inserting “made available”.

(c) ALASKA HIGHWAY.

(4) by adding at the end the following:

(4) by adding at the end the following:

Any funds that are not used to carry out section 134 shall be made available by a metropolitan planning organization to the State to fund activities under section 135.

(d) by adding at the end the following:

(6) FEDERAL SHARE.—Funds apportioned to a State under this subsection shall be matched in accordance with section 120(b) unless the Secretary determines that the interests of the Federal-aid highway program would be best served without the match.

(e) INTERSTATE HIGHWAY.—Section 104(b)(1)(A) of title 23, United States Code, is amended by striking “$350,000,000 for each of fiscal years 1998 through 2002” and inserting “$300,000,000 for each of fiscal years 1998 through 2002.”

SEC. 1104. EQUITY BONUS PROGRAM.

(a) IN GENERAL.—Section 105 of title 23, United States Code, is amended to read as follows:

“§ 105. Equity bonus program

(a) PROGRAM.—

(1) In general.—Subject to subsections (c) and (d), for each of fiscal years 2005 through 2009, the Secretary shall allocate among the States funds sufficient to ensure that no State receives a percentage of the total amounts for the fiscal year for the programs specified in paragraph (2) that is less than the percentage determined under subsection (b).

(2) SPECIFIC PROGRAMS.—The programs referred to in subsection (a) are—

(A) the Interstate maintenance program under section 119;

(B) the national highway system program under section 103;

(C) the bridge program under section 144;

(D) the surface transportation program under section 133;

(E) the highway safety improvement program under section 149;

(F) the congestion mitigation and air quality improvement program under section 149;

(G) metropolitan planning programs under section 104(f) and surface transportation programs funded by amounts provided under the equity bonus program under this section;

(H) the Appalachian development highway system program under subtitle IV of title 40;

(I) the equity bonus programs under this section;

(J) the Appalachian development highway system program under subtitle IV of title 40;

(K) the recreational trails program under section 206;

(L) the safe routes to schools program under section 150;

(M) the rail-highway grade crossing program under section 130;

(N) the border planning, operations, technology, and capacity program under section 172.

(b) PERCENTAGES.—The percentages referred to in subparagraph (A) are—

(A) for fiscal year 2005, 105 percent;

(B) for fiscal year 2006, 128 percent;

(C) for fiscal year 2007, 131 percent;

(D) for fiscal year 2008, 137 percent;

(E) for fiscal year 2009, 145 percent.

(c) PROGRAMMATIC DISTRIBUTION OF FUNDS.—The Secretary shall allocate the amounts made available under this section so that the amount apportioned to each State under this section for each program referred to in subparagraphs (A) through (G) of subsection (a) is equal to the amount determined by multiplying the amount to be apportioned to such State under this section by the percentage that—

(1) the amount of funds apportioned to each State for each program referred to in subparagraphs (A) through (G) of subsection (a) for a fiscal year bears to the total amount of funds apportioned to each State for all such programs for the fiscal year.

(d) METROPOLITAN PLANNING SET ASIDE.—Notwithstanding section 104(f), no set aside provided for under that section shall apply to funds allocated under this section.

SEC. 1105. AUTHORITY OF APPROPRIATIONS.

There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to carry out this section for each of fiscal years 2005 through 2009.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by striking the item relating to section 105 and inserting the following:

“105. Equity bonus program.”

SEC. 1106. REVENUE AlIGNED BUDGET AUTHORITY.

Section 110 of title 23, United States Code, is amended—
S5590

CONGRESSIONAL RECORD — SENATE

May 20, 2005

SEC. 1201. INFRASTRUCTURE PERFORMANCE AND MAINTENANCE PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter I of title 23, United States Code, is amended by inserting after section 133 of that title the following:

"§139. Infrastructure performance and maintenance program

(1) ESTABLISHMENT.—The Secretary shall establish and implement an infrastructure performance and maintenance program in accordance with this section.

(2) ELIGIBLE PROJECTS.—A State may obligate funds allocated to the State under this section only for projects eligible under the Interstate maintenance program under section 119, the National Highway System program under section 103, the surface transportation program under section 130(d), the highway safety improvement program under section 125, and the surface transportation program under section 135.

(3) AVAILABLE FOR STP PURPOSES.—Eligible funds shall remain available for:

(A) the purpose for which initially obligated; and

(B) maintenance and operation of the National Highway System program, the surface transportation program, the highway safety improvement program, and the Interstate maintenance program under section 119.

(4) RETENTION FOR ORIGINAL PURPOSE.—

(1) IN GENERAL.—The Secretary may determine that eligible funds identified as inactive funds shall remain available for the purpose for which the funds were initially obligated if the applicable State certifies that the funds are necessary for that initial purpose.

(2) REPORT.—A certification provided by a State under paragraph (1) shall include a report on the status of, and an estimated completion date for, the project that is the subject of the certification.

(5) AUTHORITY TO OBLIGATE.—Notwithstanding the original source or period of availability of eligible funds, the Secretary may, on the request by a State, obligate the funds for any eligible purpose under section 133 of title 23, United States Code, or distribute the funds for any eligible purpose under this section.

(6) PERIOD OF AVAILABILITY; TITLE 23 REQUIREMENTS.—

(1) IN GENERAL.—Notwithstanding the original source or period of availability of eligible funds, the funds obligated under this section shall remain available for obligation for a period of 3 fiscal years after the fiscal year in which the funds are made available.

(2) EXCEPTION.—With respect to eligible funds described in paragraph (1)—

(A) section 133(d) of title 23, United States Code, shall not apply; and

(B) the period of availability of the eligible funds shall be determined in accordance with this section.

(7) SENSE OF CONGRESS REGARDING USE OF ELIGIBLE FUNDS.—It is the sense of Congress that eligible funds made available under this Act or title 23, United States Code, should be available for the use of the funds in accordance with section 1101 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005.

(b) APPLICABILITY.—

It is the sense of Congress that:

(1) preserve, maintain, or otherwise extend, in a cost-effective manner, the useful life of existing highway infrastructure elements and hurricane evacuation routes on the Federal-aid system; or

(2) provide operational improvements (including traffic management and intelligent transportation systems and strategies and limited capacity enhancements) at points of recurring highway congestion or through transportation network redesign and reconfiguration to manage or ameliorate congestion.

(c) PERIOD OF AVAILABILITY.—

(1) OBLIGATION WITHIN 180 DAYS.—

(A) IN GENERAL.—Funds allocated to a State under this section shall be obligated by the State not later than 180 days after the date of apportionment to a State.

(B) UNOBLIGATED FUNDS.—Any amounts that remain unobligated at the end of that period shall be allocated in accordance with subsection (d).

(2) OBLIGATION BY END OF FISCAL YEAR.—

(A) IN GENERAL.—All funds allocated or reallotted under this section shall remain available for obligation until the last day of the fiscal year for which the funds are apportioned.

(B) UNOBLIGATED FUNDS.—Any amounts allocated that remain unobligated at the end of the fiscal year shall lapse.

(d) DISTRIBUTION OF ALLOCATED FUNDS AND OBLIGATION AUTHORITY.—

(1) IN GENERAL.—

(A) The obligation of the funds and the use of the funds for the purpose for which the funds are made available under this section before the end of the fiscal year shall lapse.

(B) EQUITY BONUS.—The calculation and distribution of funds under section 105 shall be adjusted as a result of the allocation of funds under this subsection.

(c) RETENTION FOR ORIGINAL PURPOSE.—

(1) ACCELERATION OF CONSTRUCTION OF FEDERAL- AID HIGHWAY SYSTEMS.—Congress declares that it is the sense of Congress, in the second paragraph, by striking "It is hereby declared to be" and inserting the following:

"(b) ELIGIBLE PROJECTS.—A State may obligate funds allocated to the State under this section only for projects eligible under the Interstate maintenance program under section 119, the National Highway System program under section 103, the surface transportation program under section 131, the highway safety improvement program under section 148, the highway bridge program under section 144, and the congestion mitigation and air quality improvement program under section 139.

(2) RETENTION FOR ORIGINAL PURPOSE.—

(A) It is in the national interest to preserve and enhance the surface transportation system to meet the needs of the United States for the 21st Century.

(B) The current urban and long distance personal travel and freight movement demands..."
have surpassed the original forecasts and travel demand patterns are expected to change;

“(C) continued planning for and investment in surface transportation is critical to ensure the surface transportation system adequately meets the changing travel demands of the future;

“(D) among the foremost needs that the surface transportation system must meet is to provide for a strong and vigorous national economy that are safe, efficient, and reliable—

(i) national and interregional personal mobility (including essential mobility in rural and urban areas) and reduced congestion;

(ii) flow of interstate and international commerce and freight transportation; and

(iii) travel movements essential for national security;

“(E) special emphasis should be devoted to provisions ensuring efficient access for the type and size of commercial and military vehicles that access designated National Highway System intermodal freight terminals;

“(F) it is in the national interest to seek ways to eliminate barriers to transportation investment created by the current modal structure of transportation financing;

“(G) the environment, and sustaining the quality of infrastructure is significant;

“(H) transportation should play a significant role in promoting economic growth, improving the environment, and sustaining the quality of life; and

“(i) the Secretary should take appropriate actions to preserve and enhance the Interstate System and the national system of the 21st Century.

(b) NATIONAL SURFACE TRANSPORTATION POLICY STUDY COMMISSION—

(1) ESTABLISHMENT.—There is established a commission to be known as the “National Surface Transportation Policy Study Commission” (referred to in this subsection as the “Commission”).

(2) MEMBERSHIP.—

(A) COMPOSITION.—The Commission shall be composed of 12 members, of whom—

(i) 1 member shall be the Secretary, who shall serve as Chairperson;

(ii) 3 members shall be appointed by the President;

(iii) 2 members shall be appointed by the Speaker of the House of Representatives;

(iv) 2 members shall be appointed by the minority leader of the House of Representatives;

(v) 2 members shall be appointed by the majority leader of the Senate; and

(vi) 2 members shall be appointed by the minority leader of the Senate.

(B) DUTIES.—Members appointed under paragraph (1)—

(i) shall include individuals representing State and local governments, metropolitan planning organizations, transportation-related industries, academic and technical institutions, and public interest organizations involved with scientific, regulatory, economic, and environmental transportation activities; and

(ii) shall be balanced geographically to the extent consistent with maintaining the highest level of expertise on the Commission.

(C) TERMS.—The appointment of a member of the Commission shall be made not later than 120 days after the date of establishment of the Commission.

(D) TITLES.—A member shall be appointed for the life of the Commission.

(E) VACANCIES.—A vacancy on the Commission—

(i) shall not affect the powers of the Commission; and

(ii) shall be filled in the same manner as the original appointment was made.

(F) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold an initial meeting of the Commission.

(G) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(H) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(1) VICE CHAIRPERSON.—The Commission shall select a Vice Chairperson from among the members of the Commission.

(2) DUTIES.—

(A) IN GENERAL.—The Commission shall—

(i) conduct a complete and comprehensive investigation and study of—

(I) the current condition and future needs of the surface transportation system; and

(ii) a comprehensive study of alternatives to replace or to supplement the fuel tax as the principal revenue source to support the Highway Trust Fund revenue considerations;

(D) consult with representatives of State departments of transportation and metropolitan planning organizations and other key interested stakeholders in conducting the study to ensure that—

(i) the views of the stakeholders on alternative revenue sources to support State transportation improvement programs are considered; and

(ii) any recommended Federal financing strategy takes into account State financial requirements; and

(E) based on the study, make specific recommendations regarding—

(i) actions that should be taken to develop alternative revenue sources to support the Highway Trust Fund; and

(ii) the time frame for taking those actions.

(4) RELATED WORK.—To the maximum extent practicable, the study shall build on related work that has been completed by—

(A) the Secretary of Transportation;

(B) the Secretary of Energy;

(C) the Transportation Research Board, including the findings, conclusions, and recommendations of the recent study conducted by the Transportation Research Board on alternative revenue sources for the Highway Trust Fund; and

(D) other entities and persons.

(B) SURFACE TRANSPORTATION NEEDS.—With respect to surface transportation needs, the investigation and study shall specifically address—

(A) the current condition and performance of the Interstate System (including the physical condition of bridges and pavements and operational characteristics and performance), relying primarily on existing data sources;

(B) the future of the Interstate System, based on a range of legislative and policy approaches for the 15-, 30-, and 50-year timeframe;

(C) the expected demographics and business uses that impact the surface transportation system;

(D) the expected use of the surface transportation system, including the effects of changing vehicle types, modes of transportation, fleet size and weight, and traffic volumes;

(E) desirable performance and standards for future improvements of the surface transportation system, including additional access points;

(F) the identification of urban, rural, national, and international needs for the surface transportation system;

(G) the potential for expansion, upgrades, or other changes to the surface transportation system, including—

(i) deployment of advanced materials and intelligent technologies;

(ii) critical multi-state, urban, and rural corridors needing capacity, safety, and operational enhancements;

(iii) improvements to intermodal linkages;

(iv) security and military deployment enhancements;

(v) strategies to enhance asset preservation; and

(vi) implementation strategies;

(6) FINANCING.—With respect to financing, the study shall address—

(A) the advantages and disadvantages of alternative revenue sources to meet anticipated Federal surface transportation financial requirements;

(B) recommendations concerning the most promising revenue sources to support long-term Federal surface transportation financing requirements;

(C) development of a broad transition strategy to move from the current tax base to new funding mechanisms, including the time frame for various components of the transition strategy;

(D) recommendations for additional research that may be needed to implement recommended alternatives; and

(E) the extent to which revenues should reflect the relative use of the highway system.

(F) FINANCING RECOMMENDATIONS.—In developing financing recommendations for the purposes of this subsection, the Commission shall consider—

(A) the ability to generate sufficient revenues from all modes to meet anticipated long-term surface transportation financing needs;

(B) the roles of the various levels of government and the private sector in meeting future surface transportation financing needs;

(C) administrative costs (including enforcement costs) to implement each option;

(D) the expected increase in nontaxed fuels and the impact of taxing those fuels;

(E) the likely technological advances that could ease implementation of each option;

(F) the equity and economic efficiency of each option;

(G) the flexibility of different options to allow various pricing alternatives to be implemented; and

(H) potential compatibility issues with State and local tax mechanisms under each alternative.

(B) TECHNICAL ADVISORY COMMITTEE.—The Secretary shall establish a technical advisory committee, in a manner consistent with the Federal Advisory Committee Act (5 U.S.C. App.), to collect and evaluate technical input from—

(A) the Department of Defense;

(B) appropriate Federal, State, and local officials with responsibility for transportation;

(C) appropriate State and local elected officials;

(D) transportation and trade associations;

(E) emergency management officials;
(F) freight providers;
(G) the general public; and
(H) other entities and persons determined to be appropriate by the Secretary to ensure a diverse representation of interests.

9 REPORT AND RECOMMENDATIONS.—Not later than September 30, 2007, the Commission shall submit to Congress a final report that contains—
(A) a detailed statement of the findings and conclusions of the Commission; and
(B) recommendations of the Commission for such legislation and administrative actions as the Commission considers to be appropriate.

10 POWERS OF THE COMMISSION.—
(A) The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this section.

(B) INFORMATION FROM FEDERAL AGENCIES.—
(i) In GENERAL.—The Commission may secure directly from a Federal agency such information as the Commission considers necessary to carry out this section.
(ii) PROVISION OF INFORMATION.—On request of the Chairperson of the Commission, the head of a Federal agency shall provide the requested information to the Commission.

(C) SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.

(D) DONATIONS.—The Commission may accept, use, and dispose of donations of services or property.

11 COMMISSION PERSONNEL MATTERS.—
(A) MEMBERS.—A member of the Commission shall serve without pay but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

(B) CONTRACTORS.—The Commission may enter into contracts with an appropriate organization, agency, or entity to conduct the study required under this section, under the strategic guidance of the Commission.

(C) ADMINISTRATIVE SUPPORT.—On the request of the Commission, the Administrator of the Federal Highway Administration shall provide to the Commission, on a reimbursable basis, the administrative support and services necessary to carry out the duties of the Commission under this section.

(D) DETAILED PERSONNEL.—
(i) In GENERAL.—From the request of the Commission, the Secretary may detail, on a reimbursable basis, any of the personnel of the Department to the Commission to assist the Commission in carrying out the duties of the Commission under this section.

(ii) CIVIL SERVICE STATUS.—The detail of the employee shall be without interruption or loss of civil service status or privilege.

12 COOPERATION.—The staff of the Secretary shall cooperate with the Commission in the study required under this section, including providing such nonconfidential data and information as are necessary to conduct the study.

13 RELATIONSHIP TO OTHER LAW.—
(A) In GENERAL.—Except as provided in subparagraphs (B) and (C), funds made available to carry out this section shall be available in the same manner as if the funds were appropriated under chapter 1 of title 23, United States Code.

(B) FEDERAL SHARE.—The Federal share of the cost of the study and the Commission under this section shall be 20 percent.

(C) AVAILABILITY.—Funds made available to carry out this section shall remain available until expended.

14 DEFINITION OF SURFACE TRANSPORTATION SYSTEM.—In this subsection, the term ‘‘surface transportation system’’ includes—
(A) the National Highway System;
(B) the Interstate System;
(C) the strategic highway network;
(D) congressional high priority corridors;
(E) international transportation corridors;
(F) freight facilities;
(G) navigable waterways;
(H) mass transportation;
(I) freight and intercity passenger rail infrastructure and facilities; and
(J) surface access to airports.

15 AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $2,815,886 for fiscal year 2005.

16 TERMINATION.—
(A) In GENERAL.—The Commission shall terminate on the date that is 180 days after the date on which the Commission submits the report of the Commission under paragraph (10).

(B) RECORDS.—Not later than the date of termination of the Commission under subparagraph (A), all records and papers of the Commission shall be delivered to the Archivist of the United States for deposit in the National Archives.

SEC. 1203. FREIGHT TRANSPORTATION GATEWAYS; FREIGHT INTERMODAL CONNECTIONS.

(a) FREIGHT TRANSPORTATION GATEWAYS.—Chapter 3 of title 23, United States Code, is amended by adding at the end the following:

§325. Freight transportation gateways

(‘‘A) IN GENERAL.—
(i) ESTABLISHMENT.—The Secretary shall estab- lish a freight transportation gateways program to improve productivity, security, and safety of freight transportation gateways, while mitigating congestion and community impacts in the areas of the gateways.
(ii) PURPOSE.—The purposes of the freight transportation gateways program shall be—
(A) to facilitate and support multimodal freight transport at the State and local levels in order to improve freight transportation gateways and mitigate the impact of congestion in the environment in the area of the gateways;
(B) to provide capital funding to address infras- tructure and freight operational needs at freight transportation gateways;
(C) to encourage States to leverage new financing strategies to leverage State, local, and private investment in freight transportation gateways;
(D) to facilitate access to intermodal freight transfer facilities; and
(E) to increase economic efficiency by facili- tating the movement of goods.

(b) ELIGIBILITY FOR SURFACE TRANSPORTATION PROGRAM FUNDS.—Section 103(b) of title 23, United States Code, is amended by inserting after paragraph (11) the following:

(12) Intermodal freight transportation projects; and

(c) FREIGHT INTERMODAL CONNECTIONS TO NHS.—Section 103(b) of title 23, United States Code, is amended by adding at the end the following:

(f) FUNDING SET-ASIDE.—Of the funds apportioned to a State for each fiscal year under section 104(b)(1), an amount determined in accordance with subparagraph (B) shall only be available to the State to be obligated for projects on—
(A) National Highway System routes connecting to intermodal freight terminals identified according to criteria specified in the report to Congress entitled ‘‘Pulling Together: The National Highway System and its Connections to Major Intermodal Terminals’’ dated May 24, 1998, referred to in sub-paragraph (A), and any modifications to the connections that are consistent with paragraph (4);
(B) strategic highway network connectors to strategic military deployment ports; and
(C) projects to eliminate railroad crossings or make railroad crossing improvements.

(d) DETERMINATION AND AMOUNT.—The amount of funds for each State for each fiscal year that shall be set aside under subparagraph (A) shall be equal to the greater of—
(I) the product obtained by multiplying—
(ii) the total amount of funds apportioned to the State under section 104(b)(1); by

(ii) the percentage of miles that routes specified in subparagraph (A) constitute of the total miles on the National Highway System in the State; or

(III) coordination with other States, agencies, and organizations to find regional solutions to freight transportation problems; and
(IV) coordination with local officials of the Department of Defense and the Department of Homeland Security, and with other organizations, to develop regional solutions to military and homeland security transportation needs; and
(II) provide programs that build professional capability to better plan, coordinate, integrate, and understand freight transportation needs for the State.

(e) INNOVATIVE FINANCE STRATEGIES.—

(f) IN GENERAL.—States and localities are en- couraged to adopt innovative financing strategies for freight transportation gateway improve- ments, including—
(i) new user fees;
(ii) modifications to existing user fees, in- cluding trade facilitation charges;
(iii) public-private partnerships that incorporate private sector investment; and

(g) A blending of Federal-aid and innovative funding programs.

(h) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to States and localities with respect to the strategies.

(i) INTERMODAL FREIGHT TRANSPORTATION PROJECTS.—

(j) USE OF SURFACE TRANSPORTATION PROGRAM FUNDS.—A State may obligate funds ap- portioned to the State under section 259(b)(3) for publicly-owned intermodal freight transportation projects that provide community and highway benefits by addressing economic, con- gestion, system reliability, security, or environ- mental issues associated with freight transportation gateways.

(k) ELIGIBLE PROJECTS.—A project eligible for funding under this section—

(I) may include publicly-owned intermodal freight transfer facilities, access to the facilities, and operational improvements for the facilities (including capital investment for intelligent transportation systems), except that projects lo- cated within the boundaries of port terminals shall only include the surface transportation infrastructure modifications necessary to facilitate direct intermodal interchange, transfer, and ac- cess into and out of the port; and

(II) may involve the combining of private and public funds.

(l) ELIGIBILITY FOR SURFACE TRANSPORTATION PROGRAM FUNDS.—Section 133(b) of title 23, United States Code, is amended by inserting after paragraph (11) the following:

(12) Intermodal freight transportation projects;
“(ii) 2 percent of the annual apportionment to the State of funds under 104(b)(1).”

“(C) EXEMPTION FROM SET-ASIDE.—For any fiscal year, a State may obligate the funds otherwise provided in this paragraph for any project that is eligible under paragraph (6) and is located in the State on a segment of the National Highway System specified in paragraph (2), if the State certifies to the Secretary concern that—

“(i) the designated National Highway System intermodal connectors described in subparagraph (A) are in good condition and provide an adequate level of service for military vehicle and civilian commercial vehicle use; and

“(ii) on significant needs on the designated National Highway System intermodal connectors are being met or do not exist.”

“(d) FEDERAL SHARE PAYABLE.—Section 120 of title 23, United States Code, is amended by adding at the end the following:

“(m) INCREASED FEDERAL SHARE FOR CONNECTORS.—In the case of a project to support a National Highway System intermodal freight connection or strategic highway network connector to a strategic military deployment port described in section 103(b)(7), except as otherwise provided in section 120, the Federal share of the total cost of the project shall be 90 percent.”

“(e) LENGTH LIMITATIONS.—Section 31111(e) of title 49, United States Code, is amended—

“(1) by striking ‘The’ and inserting the following:

“(1) IN GENERAL.—The”; and

“(2) by adding at the end the following:

“(2) LENGTH LIMITATIONS.—In the interests of economic competitiveness, security, and intermodal connectivity, not later than 3 years after the date of enactment of this paragraph, States shall update the list of those qualifying highways to include—

“(A) strategic highway network connectors to strategic military deployment ports; and

“(B) National Highway System intermodal freight connections serving military and commercial truck traffic going to major intermodal terminals, as described in section 103(b)(7)(A)(ii).”

“(f) CONFORMING AMENDMENT.—The analysis of chapter 119 of title 49, United States Code, is amended by adding at the end the following:

“325. Freight transportation gateways.”

“SEC. 1204. CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL AND MAINTENANCE FUNDS; COORDINATION OF FERRY CONSTRUCTION AND MAINTENANCE.

(a) IN GENERAL.—Section 147 of title 23, United States Code, is amended to read as follows:

“§147. Construction of ferry boats and ferry terminal and maintenance facilities; coordination of ferry construction and maintenance

“(a) CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.—

“(1) IN GENERAL.—The Secretary shall carry out a program for construction of ferry boats and ferry terminal facilities in accordance with section 129(e).

“(B) FEDERAL SHARE.—The Federal share of the cost of construction of ferry boats and ferry terminals and maintenance facilities under this subsection shall be 80 percent.

“(2) AMOUNT.—In determining the project cost applicable to the Federal share, the Secretary shall give priority in the allocation of funds to those ferry systems, and ferry terminal facilities in accordance with section 129(e), (f) and (g), that—

“(A) carry the greatest number of passengers and vehicles;

“(B) carry the greatest number of passengers in passenger-only service; or

“(C) provide critical access to areas that are not well-served by other modes of surface transportation.

“(B) NON-CONTRACT AUTHORITY AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) $69,931,447 for each fiscal year to carry out this section.

“(2) AVAILABILITY.—Notwithstanding section 118(a), funds made available under paragraph (1) shall not be available in advance of an annual apportionment of funds.

“(b) CONFORMING AMENDMENTS.—

“(1) The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by striking the section reference to section 147 and inserting the following:

“147. Construction of ferry boats and ferry terminal and maintenance facilities.


“SEC. 1205. DESIGNATION OF INTERSTATE HIGHWAYS.

(a) DESIGNATION OF DANIEL PATRICK MOYNIHAN INTERSTATE HIGHWAY.—

“(1) DESIGNATION.—Interstate Route 86 in the State of New York, extending from the Pennsylvania new York State border through Orange County, New York, shall be known and designated as the ‘Daniel Patrick Moynihan Interstate Highway’.

“(2) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the highway referred to in paragraph (1) shall be deemed to be a reference to the Daniel Patrick Moynihan Interstate Highway.

(b) DESIGNATION OF AMOHUHTON BYPASS.—

“(1) DESIGNATION.—The 3-mile segment of Interstate Route 86 between the interchange of Interstate Route 86 with New York State Route 15 in the vicinity of Painted Post, New York, and the interchange of Interstate Route 86 and New York State Route 352 in the vicinity of Corning, New York, shall be known and designated as the ‘Amon Houghton Bypass’.

“(2) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the highway referred to in paragraph (1) shall be deemed to be a reference to the Amon Houghton Bypass.

“SEC. 1206. STATE-BY-STATE COMPARISON OF HIGHWAY CONSTRUCTION COSTS.

(a) COLLECTION OF DATA.—

“(1) IN GENERAL.—The Administrator of the Federal Highway Administration (referred to in this section as the ‘Administrator’) shall collect from States any bid price data that is necessary to make State-by-State comparisons of highway construction costs.

“(2) DATA REQUIRED.—In determining which data to collect and the procedures for collecting data, the Administrator shall take into account the data collection deficiencies identified in the report prepared by the General Accounting Office numbered GAO-04-113R.

“(b) REPORT.—

“(1) IN GENERAL.—The Administrator shall submit to Congress an annual report on the bid price data collected under subsection (a).

“(2) INCLUSIONS.—The report shall include—

“(A) State-by-State comparisons of highway construction costs for the previous fiscal year (including the cost to construct a 1-mile road segment of a standard design, as determined by the Administrator); and

“(B) a description of the competitive bidding procedures used in each State; and

“(C) a determination by Administrator as to whether the competitive bidding procedures described under subparagraph (B) are effective.

“(c) INNOVATIVE AND COST-EFFECTIVE MATERIALS.—The Secretary shall encourage and provide for the maximum use of innovative and cost-effective materials and products in highway construction.

“SEC. 1301. FEDERAL SHARE.

Section 120 of title 23, United States Code, is amended—

“(1) in subsection (a), by striking paragraph (1) and inserting the following:

“(1) IN GENERAL.—Except as otherwise provided in this chapter, the Federal share payable on account of any project on the Interstate System supported by a project and that adds high occupancy vehicle lanes and a project to add a bridge project auxiliary lanes but excluding a project to add any other lanes shall be 90 percent of the total cost of the project; and

“(2) in subsection (b)—

“(A) by striking ‘Except as otherwise’ and inserting the following:

“(1) IN GENERAL.—Except as otherwise; and

“(B) by striking ‘shall be—’ and all that follows and inserting ‘shall be 80 percent of the cost of the project’; and

“(C) by adding at the end the following:

“(2) STATE-DETERMINED LOWER FEDERAL SHARE.—In the case of any project subject to this subsection, a State may determine a lower Federal share than the Federal share determined under paragraph (1);”

“(3) by striking subsection (d) and inserting the following:

“(d) INCREASED FEDERAL SHARE.—

“(1) IN GENERAL.—The Federal share payable under subsection (a) or (b) may be increased for projects and activities in each State in which is located—

“(A) a nontaxable Indian land;

“(B) public land (reserved or unreserved);

“(C) a national forest; or

“(D) a national park or monument.

“(2) AMOUNT.—

“(A) IN GENERAL.—The Federal share for States described in paragraph (1) shall be increased by a percentage of the remaining cost that—

“(i) is equal to the percentage that—

“(I) the area of all land described in paragraph (1) in a State; bears to

“(II) the total area of the State; but

“(ii) does not exceed 95 percent of the total cost of the project or activity for which the Federal share is provided.

“(B) ADJUSTMENT.—The Secretary shall adjust the Federal share for States under subparagraph (A) as the Secretary determines to be necessary, on the basis of data provided by the Federal agencies that are responsible for maintaining the data.

“SEC. 1302. TRANSFER OF HIGHWAY AND TRANSIT FUNDS.

Section 104 of title 23, United States Code, is amended by striking subsection (k) and inserting the following:

“(k) Transfer of Highway and Transit Funds.—

“(1) TRANSFER OF HIGHWAY FUND TO TRANSIT PROJECTS.—

“(A) IN GENERAL.—Subject to subparagraph (B), funds made available for transit projects or transportation planning under this title may be transferred to and administrated by the Secretary in accordance with chapter 53 of title 49.

“(B) NON-FEDERAL SHARE.—The provisions of this title relating to the non-Federal share shall apply to the transferred funds.

“(2) TRANSFER OF TRANSIT FUNDS FOR HIGHWAY PROJECTS.—Funds made available for highway projects or transportation planning under section 53 of title 49 shall be transferred to and administrated by the Secretary in accordance with this title.

“(3) TRANSFER OF HIGHWAY FUNDS TO OTHER FEDERAL AGENCIES.—

“(A) IN GENERAL.—Except as provided in clauses (i) and (ii) and subparagraph (B), funds made available under this title or any other Act referred to in this title may be transferred to another Federal agency if—
“(ii) a State transportation department consents to the transfer of funds; and
“(iii) the other Federal agency agrees to accept the transfer of funds and to administer the projects under this subsection.

(b) ADMINISTRATION.—
“(1) PROCEDURES.—A project carried out with funds transferred to a Federal agency under subparagraph (A) shall be administered by the Federal agency under the procedures of the Federal agency.

(ii) APPLICABILITY.—Funds transferred to a Federal agency under subparagraph (A) shall not be considered an augmentation of the appropriations of the Federal agency.

(iii) NON-FEDERAL SHARE.—The provisions of this title, or an Act described in subparagraph (A), relating to the non-Federal share shall apply to a project carried out with the transferred funds, unless the Secretary determines that it is in the best interest of the United States that the non-Federal share be waived.

(iv) TRANSFER OF FUNDS AMONG STATES OR TO FEDERAL AGENCY.—
“(A) IN GENERAL.—Subject to subparagraphs (B) through (D), the Secretary may, at the request of a State, transfer funds apportioned or allocated to that State to another State, or to a Federal agency, for the purpose of funding 1 or more specific projects.

(B) ADMINISTRATION.—The transferred funds shall be transferred to the same purpose and in the same manner for which the transferred funds were authorized.

(C) APPOINTMENT.—The transfer shall have no effect on any apportionment formula used to distribute funds to States under this section or section 105 or 144.

(D) SURFACE TRANSPORTATION PROGRAM.—Funds that are apportioned or allocated to a State under subsection (b)(3) and attributed to an urbanized area of a State with a population of over 200,000 individuals under section 133(d)(2) may be transferred under this paragraph only if the metropolitan planning organization designated for the area concurs, in writing, with the transfer.

“(5) TRANSFER OF OBLIGATION AUTHORITY.—

(iii) Obligation authority for funds transferred under this subsection shall be transferred in the same manner for which the transferred funds were obligated.

SEC. 1303. TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT AMENDMENTS.

(a) DEFINITIONS.—Section 181 of title 23, United States Code, is amended—

(1) in paragraph (3), by striking “category” and “offered into the capital markets”;

(2) by striking paragraph (7) and redesignating paragraphs (8) through (15) as paragraphs (7) through (14), respectively;

(3) in paragraph (8) (as redesignated by paragraph (2))—

(A) in subparagraph (A), by striking the period at the end and inserting a semicolon; and

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

“(D) In general—

(i) (I) is a project for—

(aa) a public freight rail facility or a private facility providing public benefit;

(bb) a freight transfer facility;

(cc) a means of access to a facility described in item (aa) or (bb) (including a capital investment for an intelligent transportation system); or

(dd) comprises a series of projects described in subclause (I) with the common objective of improving the flow of goods;

(ii) may involve the combining of private and public sector funds, including investment of public funds in private sector facility improvements; and

(iii) is located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port; and

(4) in paragraph (10) (as redesignated by paragraph (2)) by striking “bond” and inserting “credit”.

(b) DETERMINATION OF ELIGIBILITY AND PROJECT SELECTION.—Section 182 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraphs (1) and (2) and inserting the following:

“(1) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—The project shall satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to enter into the Federal credit instrument is entered into under this subchapter.

“(2) APPLICATION.—A State, local government, public authority, public-private partnership, or any other legal entity undertaking the project and authorized by the Secretary shall submit a project application to the Secretary.

“(B) in paragraph (3)(A)—

(i) in clause (i), by inserting after “$100,000,000” and inserting “$50,000,000”;

(ii) in clause (ii), by striking “50” and inserting “20”;

(C) in paragraph (4)—

(i) by striking “Project financing” and inserting “The Federal credit instrument”;

(ii) by inserting before the period at the end of clause (A) the following:

“shall also secure the project obligations;”

and

(2) in subsection (b)—

(A) in paragraph (1), by striking “criteria” and inserting “criteria”;

(B) in paragraph (2)(B), by inserting “(which may be the Federal credit instrument)” after “obligations”;

(c) SECURED LOANS.—Section 183 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking “of any project selected under section 182” and the period;

(ii) in subparagraphs (A) and (B), by inserting “of any project selected under section 182” after “costs”;

(iii) in subparagraph (B), by striking the semicolon at the end and inserting a period; and

(B) in paragraph (4)—

(i) by striking “funding” and inserting “execution”;

(ii) by striking “rating,” and all that follows and inserting a period; and

(2) in subsection—

(A) by striking paragraph (2) and inserting the following:

“(2) MAXIMUM AMOUNT.—The amount of the secured loan shall not exceed the lesser of—

“A. 33 percent of the reasonably anticipated eligible project costs; or

B. the amount of the senior project obligations.”;

(B) in paragraph (3)(A)(i), by inserting “that also secure the senior project obligations” after “sources;”;

(C) in paragraph (4), by striking “marketable” and inserting “secured”;

(d) LINES OF CREDIT.—Section 184 of title 23, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (3), by striking “interest,” and inserting “rate of interest,” and in any other available reserve” and inserting “interest (but not including reasonably required financing reserve)”;

(B) in paragraph (4), by striking “marketable United States Treasury securities as of the date on which the line of credit is obligated” and inserting “United States Treasury securities as of the date of execution of the line of credit agreement”;

and

(C) in paragraph (5)(A)(i), by inserting “that also secure the senior project obligations” after “sources;” and

(2) in subsection—

(A) by striking “scheduled”;

(ii) by inserting “scheduled” after “shall”; and

(C) by striking “be fully repaid, with interest,” and inserting “to conclude, with full repayment of principal and interest,”;

and

(B) by striking paragraph (3).

(e) PROGRAM ADMINISTRATION.—Section 185 of title 23, United States Code, is amended to read as follows:

“§ 185. Program administration

(a) REQUIREMENT.—The Secretary shall establish a uniform system to service the Federal credit instruments made available under this subchapter.

(b) MAINTENANCE.—The Secretary may establish fees at a level to cover all or a portion of the costs to the Federal government of servicing the Federal credit instruments.

(c) SERVICER.—

“(1) IN GENERAL.—The Secretary may appoint a financial entity to assist the Secretary in servicing the Federal credit instruments.

“(2) DUTIES.—The servicer shall act as the agent for the Secretary.

“(3) FEE.—The servicer shall receive a servicing fee, subject to approval by the Secretary.

“(4) ASSISTANCE FROM EXPERT FIRMS.—The Secretary may retain the services of expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.”.

(f) FUNDING.—Section 188 of title 23, United States Code, is amended to read as follows:

“§ 188. Funding

(a) FUNDING.—

“(1) IN GENERAL.—There is authorized to be appropriated to the Highway Trust Fund (apart from the Mass Transit Account) to carry out this subchapter $122,021,761 for each of fiscal years 2005 through 2009.

“(2) ADMINISTRATIVE COSTS.—Of amounts made available under paragraph (1), the Secretary may use for the administration of this subchapter not more than $1,877,258 for each of fiscal years 2005 through 2009.

“(3) COLLECTED FEES AND SERVICES.—In addition to funds provided under paragraph (2)—

“(A) all fees collected under this subchapter shall be made available without further appropriation to the Secretary to use, as he considers necessary, for use in administering this subchapter; and

“(B) the Secretary may accept and use payment, in cash or in kind, of services provided by transaction participants, third parties, and other persons, paid for by transaction participants from transaction proceeds, for due diligence, legal, financial, or technical services.

“(4) AVAILABILITY.—Any funds made available under paragraph (1) shall remain available until expended.

“(b) CONTRACT AUTHORITY.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, approval by the Secretary of a Federal credit instrument that uses funds made available under this subchapter shall be deemed to be approval by the United States of a contract obligation to fund the Federal credit investment.”.
“(2) AVAILABLE.—Amounts authorized under this section for a fiscal year shall be available for obligation on October 1 of the fiscal year.

(g) REAL.—Section 189 of title 23, United States Code, is repealed.

(h) CONFORMING AMENDMENTS.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 185 and inserting the following:

‘‘185. Program administration.’’; and

(2) by striking the item relating to section 189.

SEC. 1304. STATE INFRASTRUCTURE BANKS.

Section 131(b)(1)(A) of the Transportation Equity Act for the 21st Century (23 U.S.C. 111 note; 112 Stat. 251) is amended by striking ‘‘Missouri,’’ and all that follows through ‘‘for the establishment’’ and inserting ‘‘Missouri, Rhode Island, Texas, and any other State that seeks such an agreement for the establishment’’.

SEC. 1305. PUBLIC-PRIVATE PARTNERSHIPS PILOT PROGRAM.

Section 109(c) of title 23, United States Code, is amended by adding at the end the following:

‘‘(3) PUBLIC-PRIVATE PARTNERSHIPS PILOT PROGRAM.—

(A) IN GENERAL.—The Secretary may undertake a pilot program to demonstrate the advantages of public-private partnerships for critical capital development projects, including highway, bridge, and intermodal connector projects authorized under this title.

(B) PROJECTS.—In carrying out the program, the Secretary shall—

(1) select not less than 9 qualified public-private partnership projects that are authorized under applicable State and local laws; and

(2) ensure that funds made available to carry out the program to provide to sponsors of the projects assistance for development phase activities described in section 109(c)(1)(A), to enhance project delivery and reduce overall costs.’’.

SUBTITLE D—SAFETY

SEC. 1401. HIGHWAY SAFETY IMPROVEMENT PROGRAM.

(a) SAFETY IMPROVEMENT.

(1) IN GENERAL.—Section 140 of title 23, United States Code, is amended to read as follows:

‘‘§148. Highway safety improvement program.

(1) DEFINITIONS.—In this section:

(I) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term ‘highway safety improvement program’ means the program carried out under this section.

(II) ESTIMATED COSTS.—The term ‘estimated costs’ means projects or strategies identified; the ability to perform safety problem identification and countermeasure analysis; the analysis of identified countermeasures and strategies that any resources described as the capacity for any resources described as the capacity for

(III) IMPEDIMENTS TO IMPLEMENTATION.—The term ‘impediments to implementation other than cost associated with those remedies. Safety Projec

(IV) ELIGIBILITY.—(A) SAFETY IMPROVEMENT.

(A) IN GENERAL.—The term ‘safety project under any other section’ includes a project to—

(i) install, maintain, and operate signs and signals to reduce identified safety problems;

(ii) upgrade bridges to meet current standards;

(iii) ensure the accuracy of the data and priority of projects; and

(iv) educate the public concerning highway safety

(B) SAFETY IMPROVEMENT UNDER ANY OTHER SECTION.—

(i) a highway safety representative of the Governor of the State;

(ii) regional transportation planning organizations and metropolitan planning organizations, if any;

(iii) representatives of major modes of transportation;

(iv) State and local traffic enforcement officials;

(v) persons responsible for administering section 130 at the State level;

(vi) representatives conducting Operation Lifesaver;

(vii) representatives conducting a motor carrier safety program under section 31104 or 31107 of title 49;

(viii) motor vehicle administration agencies; and

(ix) other major State and local safety stakeholders;

(B) analyzes and makes effective use of data, if any, and

(C) are coordinated with other State and local road safety programs;

(D) enhance the capabilities of the State for traffic records data collection, analysis, and integration with other sources of safety data (such as road inventories) in a manner that—

(E) analyzes and makes effective use of data, if any, and

(F) enhances the State’s capability to develop transportation safety plans under section 11502 of title 49;

(ii) includes all public roads;

(iii) identifies hazardous locations, sections, and elements on public roads that constitute a danger to motorists (including motorcycleists), bicyclists, pedestrians, and other highway users; and

(iv) is coordinated with other State and local road safety programs;

(3) CONSTRUCTION OF A MODEL SAFETY IMPROVEMENT PROGRAM.—The term ‘model safety improvement program’ means projects or strategies included in the State strategic highway safety plan carried out as part of the State transportation improvement program under section 135(f).

(4) STATE STRATEGIC HIGHWAY SAFETY PLAN.—The term ‘State strategic highway safety plan’ means a plan developed by the State transportation department that—

(A) is developed after consultation with—

(i) the Governor of the State;

(ii) the leadership of the county, city, or town or other entity responsible for transportation planning in the State; and

(iii) regional and local transportation and highway safety planning processes;
(E)(i) determine priorities for the correction of hazardous road locations, sections, and elements (including railway-highway crossing improvements), as identified through crash data analysis;

(ii) identify opportunities for preventing the development of such hazardous conditions; and

(iii) establish and implement a schedule of highway safety improvement projects for hazard correction and hazard prevention; and

(F)(i) establish an evaluation process to analyze and assess results achieved by highway safety improvement projects carried out in accordance with procedures and criteria established by this section; and

(ii) the information obtained under clause (i) in setting priorities for highway safety improvement projects.

(d) ELIGIBLE PROJECTS.—

(1) IN GENERAL.—A State may obligate funds apportioned to the State under section 104(b)(5) to carry out—

(A) any highway safety improvement project on any public road or publicly owned bicycle or pedestrian pathway or trail; or

(B) as provided in subsection (e), for other safety projects.

(2) USE OF OTHER FUNDS.—(A) EFFECT OF SECTION.—Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

(B) USE OF OTHER FUNDS.—States are encouraged to address the full scope of their safety needs and opportunities by using funds made available under this Act. Notwithstanding anything in this section (except a provision that specifically prohibits that use).

(e) FLEXIBLE FUNDING FOR STATES WITH A STRATEGIC HIGHWAY SAFETY PLAN.—

(I) IN GENERAL.—To further the implementation of a State strategic highway safety plan, a State may use up to 25 percent of the amount of funds made available to the State under this section for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan.

(2) OTHER TRANSPORTATION AND HIGHWAY SAFETY PLANS.—Nothing in this subsection requires a State to revise any State process, plan, or program in effect on the date of enactment of this section.

(f) REPORTS.—

(1) IN GENERAL.—A State shall submit to the Secretary a report each year relating to—

(A) describes progress being made to implement highway safety improvement projects under this section;

(B) the effectiveness of those improvements; and

(C) describes the extent to which the improvements funded under this section contribute to the goals of—

(i) reducing the number of fatalities on roadways;

(ii) reducing the number of roadway-related injuries;

(iii) reducing the occurrences of roadway-related crashes;

(iv) mitigating the consequences of roadway-related crashes; and

(v) reducing the occurrences of railroad-highway grade crossing crashes.

(2) REQUIREMENTS FOR REPORT.—The Secretary shall establish the content and schedule for a report under paragraph (1).

(3) TRANSPARENCY.—The Secretary shall make reports under subsection (c)(1)(D) available to the public through—

(A) the Internet site of the Department; and

(B) such other means as the Secretary determines appropriate.

(4) DISCOVERY AND ADMISSION INTO EVIDENCE OF CERTAIN REPORTS, SURVEYS, AND INFORMATION.—Notwithstanding any other provision of law, none of the information or data compiled or collected for any purpose directly relating to paragraph (1) or subsection (c)(1)(D), or published by the Secretary in accordance with paragraph (3), shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes as information or data for damages arising from any occurrence at a location identified or addressed in such reports, surveys, schedules, lists, or other data.

(g) FEDERAL SHARE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.—Except as provided in sections 120 and 130, the Federal share of the cost of a highway safety improvement project carried out with funds made available under this section shall be 90 percent.

(h) FUNDS FOR BICYCLE AND PEDESTRIAN SAFETY.—A State shall allocate for bicycle and pedestrian improvements in the State a percentage of the funds remaining after implementation of sections 130(e) and 139, in an amount that is equal to or greater than the percentage of all fatal crashes in the State involving bicyclists and pedestrians.

(i) ROADWAY SAFETY IMPROVEMENTS FOR OLDER DRIVERS AND PEDESTRIANS.—For each fiscal years 2005 through 2009, $23,465,723 is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for projects in all States to improve traffic signs and pavement markings in a manner consistent with the recommendations included in the publication of the Federal Highway Administration entitled Recommendations to Accommodate Older Drivers and Pedestrians (FHWA-DR-01-103) and dated October 2001.

(j) ALLOCATIONS OF APPORTIONED FUNDS.—Section 133(d) of title 23, United States Code, is amended—

(1) by striking paragraph (1);

(2) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(3) by amending subsection (B) of paragraph (2) (as redesignated by subparagraph (C)) by striking “(B)” and inserting “(C)”; and

(4) by striking “80 percent” and inserting “90 percent”.

(k) MINIMUM APPORTIONMENT.—(A) Nothing in this section prohibits the use of funds available under other provisions of this title (except a provision that specifically prohibits that use).

(2) AMENDMENTS TO TITLE 23, UNITED STATES CODE.—(A) The analysis for chapter 1 of title 23, United States Code, is amended by striking paragraphs (3)(B)(i), (5)(A), and (5)(B) of subsection (2) (as redesignated by subparagraph (C)) (as redesignated by section 301 of this Act).

(2) by striking “90 percent” and inserting “90 percent”.

(l) ALLOCATIONS OF APPORTIONED FUNDS.—Section 133(d) of title 23, United States Code, is amended—

(1) by striking paragraph (1);

(2) by designating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(3) by amending subsection (C) of paragraph (2) (as redesignated by subparagraph (C)) by striking “(C)” and inserting “(D)”; and

(4) by striking “80 percent” and inserting “90 percent”.

(m) MINIMUM APPORTIONMENT.—(A) Section 133(d) of title 23, United States Code, is amended by inserting before “At least” the following:

“5 percent of the funds apportioned under this paragraph.”.

(2) ELIMINATION OF HAZARDS RELATING TO RAILWAY-HIGHWAY CROSSINGS.—

(1) FUNDS FOR RAILWAY-HIGHWAY CROSSINGS.—Section 130(e) of title 23, United States Code, is amended by inserting before “At least” the following:

“5 percent of the funds apportioned under this paragraph.”.

(2) BIENNIAL REPORTS TO CONGRESS.—Section 130(g) of title 23, United States Code, is amended to read—

(A) by inserting “and” in the second sentence; and

(B) by striking “not later than April of each year” and inserting “not later than October 1 of each year”.

(3) EXPENDITURE OF FUNDS.—Section 130 of title 23, United States Code, is amended by adding the following:

“(k) EXPENDITURE OF FUNDS.—(A) Funds made available to carry out this section shall be—

(B) available for expenditure in the compilation and analysis of data in support of activities carried out under subsection (g); and

(C) apportioned in accordance with section 106(d)(5).”.

(n) TRANSITION.—

(1) IMPLEMENTATION.—(A) Except as provided in paragraph (2), the Secretary shall approve obligations of funds apportioned, under section 104(b)(5) of title 23, United States Code (as added by subsection (b)) to carry out section 148 of that title, only if, not later than October 1 of the second fiscal year after the date of enactment of this Act, a State has developed and implemented a State strategic highway safety plan as required under section 148(c) of that title.

(2) EXISTING LAW.—(A) IN GENERAL.—Before October 1 of the second fiscal year after the date of enactment of this Act and until the date on which a State develops and implements a State strategic highway safety plan, the Secretary shall apportion funds to a State for the highway safety improvement
program and the State may obligate funds apportioned to the State for the highway safety improvement program under section 148 for projects that were eligible for funding under sections 130 and 152 of title 23, United States Code, on October 1 of the second fiscal year after the date of enactment of this Act.

(2) NON STRATEGIC HIGHWAY SAFETY PLANS.—If a State has not developed a strategic highway safety plan required by section 128 of title 23, United States Code, on October 1 of the second fiscal year after the date of enactment of this Act, but certifies to the Secretary that progress is being made toward developing and implementing such a plan, the Secretary shall continue to apportion funds for 1 additional fiscal year for the highway safety improvement program under section 148 of title 23, United States Code, to the State, and the State may continue to obligate funds apportioned to the State under this section for projects that were eligible for funding under sections 130 and 152 of that title, as in effect on the day before the date of enactment of this Act.

(C) PENALTY.—If a State has not adopted a strategic highway safety plan by the date that is 2 years after the date of enactment of this Act, funds made available to the State under section 1101(6) shall be redistributed to other States in accordance with section 104(b)(3) of title 23, United States Code.

SEC. 1402. OPERATION LIFESAVER.
Section 104(d)(1) of title 23, United States Code, is amended—

(1) by striking subsection (b)(2) and inserting “subsection (b)(5)”;
(2) by striking “$500,000” and inserting “$563,177”;

SEC. 1403. INCREASED PENALTIES FOR HIGHER-RISK DRIVERS DRIVING WHILE INTOXICATED OR DRIVING UNDER THE INFLUENCE.

(a) GENERAL.—Section 164 of title 23, United States Code, is amended to read as follows:—

§164. Increased penalties for higher-risk drivers driving while intoxicated or driving under the influence

(1) Definitions.—In this section:

(1) Blood Alcohol Concentration.—The term ‘blood alcohol concentration’ means grams of alcohol per 210 liters of breath.

(2) Driving While Intoxicated; Driving Under the Influence.—The terms ‘driving while intoxicated’ and ‘driving under the influence’ mean driving or being in actual physical control of a motor vehicle while having a blood alcohol concentration above the permitted limit as established by each State.

(3) Higher-Risk Impaired Driver Law.—

(A) In General.—The term ‘higher-risk impaired driver law’ means a State law that provides, as a minimum penalty, that—

(i) an individual described in subparagraph (B) shall—

(ii) receive a driver’s license suspension; and

(iii) be subject to a treatment program or impaired driving education program, as determined by the assessment and paid for by the individual; and

(iv) be imprisoned for not less than 10 days, or have an electronic monitoring device for not less than 10 days; and

(ii) an individual who is convicted of driving while intoxicated or driving under the influence with a blood alcohol concentration level of 0.15 percent or greater shall—

(2) STATE ACTION.—No State or political subdivision of a State, or any political authority of 2 or more States, shall impose any azeot concentration limitation on any vehicle described in paragraph (1) on a school bus or on a vehicle in which such a vehicle is using the Dwight D. Eisenhower System of Interstate and Defense Highways.

SEC. 1405. SAFE ROUTES TO SCHOOLS PROGRAM.

(a) General.—Subchapter I of chapter 1 of title 23, United States Code, is amended by inserting after section 149 the following:

§145. Safe routes to schools program

(1) Definitions.—In this section:

(A) Primary and Secondary School.—The term ‘primary and secondary school’ means a school that provides educational opportunity to children in any grades kindergarten through 12.

(B) Program.—The term ‘program’ means the safe routes to schools program established under subsection (b).

(2) Vicinity of a school.—The term ‘vicinity of a school’ means the area within 2 miles of a primary or secondary school.

(b) Establishment.—The Secretary shall establish and carry out a safe routes to school program for the benefit of children in primary and secondary schools in accordance with this section.

(c) Purposes.—The purposes of the program shall be—

(i) to enable and to encourage children to walk and bicycle to school;

(ii) to encourage a healthy and active lifestyle by making schools safer and more appealing transportation alternatives;

(iii) to facilitate the planning, development, and implementation of projects and activities that will improve safety in the vicinity of schools.

(d) Eligible Recipients.—A State shall use amounts apportioned under this section to provide financial assistance to State, regional, and local agencies that demonstrate an ability to meet the requirements of this section.

(e) Eligible Projects and Activities.—

(1) Infrastructure-related Projects.—

(A) In General.—Amounts apportioned to a State under this section may be used for the planning, design, and construction of infrastructure-related projects to encourage walking and bicycling to school, including—

(i) sidewalk improvements;

(ii) traffic calming and speed reduction improvements;

(iii) pedestrian and bicycle crossing improvements;

(iv) on-street bicycle facilities;

(v) off-street bicycle and pedestrian facilities;

(vi) secure bicycle parking facilities;

(vii) traffic signal improvements;

(viii) pedestrian-railroad grade crossing improvements.

(B) Location of Projects.—Infrastructure-related projects under subparagraph (A) may be carried out on—

(i) any public road in the vicinity of a school;

(ii) any bicycle or pedestrian pathway or trail in the vicinity of a school.

(2) Behavioral Activities.—

(A) In General.—In addition to projects described in paragraph (1), amounts apportioned to a State under this section may be used for behavioral activities to encourage walking and bicycling to school, including—

(i) public awareness campaigns and outreach to press and community leaders;

(ii) traffic education and enforcement in the vicinity of schools;

(iii) public awareness campaigns and outreach to press and community leaders;

(iv) traffic education and enforcement in the vicinity of schools.

(B) Allocation.—Of the amounts apportioned to a State under this section for a fiscal year, not less than 10 percent shall be used for behavioral activities under this paragraph.
(1) SET ASIDE.—Before apportioning amounts to carry out section 148 for a fiscal year, the Secretary shall set aside and use $65,704,024 to carry out this section.

(2) APPLICABILITY.—Amounts made available to carry out this section shall be apportioned to States in accordance with section 104(b).

(3) ADMINISTRATION OF AMOUNTS.—Amounts apportioned to a State under this section shall be administered by the State transportation department.

(4) FEDERAL SHARE.—As excepted in sections 120 and 130, the Federal share of the cost of a project or activity funded under this section shall be 90 percent.

(5) PERIOD OF AVAILABILITY.—Notwithstanding section 110(b)(2), amounts apportioned under this section shall remain available until expended.

(b) CONFORMING AMENDMENTS.—The analysis for subchapter I of chapter 1 of title 23, United States Code is amended by inserting after the item relating to section 149 the following: "150. Safe routes to school programs."

SEC. 1406. PURCHASES OF EQUIPMENT.

(a) IN GENERAL.—Section 152 of title 23, United States Code is amended to read as follows:

"§152. Purchases of equipment

"(a) IN GENERAL.—Subject to subsection (b), a State carrying out a project under this chapter shall purchase device, tool or other equipment needed to carry out or monitor projects only after completing and providing a written analysis demonstrating the cost savings associated with purchasing the equipment compared with renting the equipment from a qualified equipment rental provider before the project commences.

"(b) APPLICABILITY.—This section shall apply to—

"(1) earth moving, road machinery, and material handling equipment, or any other item, with a purchase price in excess of $75,000; and

"(2) aerial work platforms with a purchase price in excess of $25,000.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code is amended by striking the item relating to section 152 and inserting the following: "152. Purchases of equipment."

SEC. 1407. WORKZONE SAFETY.

Section 358(b) of the National Highway System Designation Act of 1995 (108 Stat. 625) is amended by adding at the end the following:

"(7) Recommending all federally-assisted projects in excess of $15,000,000 to enter into contracts only with work zone safety contractors, traffic control contractors, and trench safety and shoring contractors that carry general liability insurance in an amount not less than $15,000,000.

(b) Recommending federally-assisted projects the costs of which exceed $15,000,000 to include work zone intelligent transportation systems that are—

"(A) provided by a qualified vendor; and

"(B) monitored continuously.

(b) Recommending federally-assisted projects to include work zone safety contractors, traffic control contractors, and trench safety and shoring contractors that carry general liability insurance in an amount not less than $15,000,000.

(b) Recommending federally-assisted projects the costs of which exceed $15,000,000 to include work zone intelligent transportation systems that are—

"(A) provided by a qualified vendor; and

"(B) monitored continuously.

(b) Recommending federally-assisted projects to include work zone safety contractors, traffic control contractors, and trench safety and shoring contractors that carry general liability insurance in an amount not less than $15,000,000.

(b) Recommending federally-assisted projects the costs of which exceed $15,000,000 to include work zone intelligent transportation systems that are—

"(A) provided by a qualified vendor; and

"(B) monitored continuously.

(b) Recommending federally-assisted projects to include work zone safety contractors, traffic control contractors, and trench safety and shoring contractors that carry general liability insurance in an amount not less than $15,000,000.

(b) Recommending federally-assisted projects the costs of which exceed $15,000,000 to include work zone intelligent transportation systems that are—

"(A) provided by a qualified vendor; and

"(B) monitored continuously.

(b) Recommending federally-assisted projects to include work zone safety contractors, traffic control contractors, and trench safety and shoring contractors that carry general liability insurance in an amount not less than $15,000,000.

(b) Recommending federally-assisted projects the costs of which exceed $15,000,000 to include work zone intelligent transportation systems that are—

"(A) provided by a qualified vendor; and

"(B) monitored continuously.

(b) Recommending federally-assisted projects to include work zone safety contractors, traffic control contractors, and trench safety and shoring contractors that carry general liability insurance in an amount not less than $15,000,000.

(b) Recommending federally-assisted projects the costs of which exceed $15,000,000 to include work zone intelligent transportation systems that are—

"(A) provided by a qualified vendor; and

"(B) monitored continuously.

(b) Recommending federally-assisted projects to include work zone safety contractors, traffic control contractors, and trench safety and shoring contractors that carry general liability insurance in an amount not less than $15,000,000.

(b) Recommending federally-assisted projects the costs of which exceed $15,000,000 to include work zone intelligent transportation systems that are—

"(A) provided by a qualified vendor; and

"(B) monitored continuously.

(b) Recommending federally-assisted projects to include work zone safety contractors, traffic control contractors, and trench safety and shoring contractors that carry general liability insurance in an amount not less than $15,000,000.

(b) Recommending federally-assisted projects the costs of which exceed $15,000,000 to include work zone intelligent transportation systems that are—

"(A) provided by a qualified vendor; and

"(B) monitored continuously.

(b) Recommending federally-assisted projects to include work zone safety contractors, traffic control contractors, and trench safety and shoring contractors that carry general liability insurance in an amount not less than $15,000,000.

(b) Recommending federally-assisted projects the costs of which exceed $15,000,000 to include work zone intelligent transportation systems that are—

"(A) provided by a qualified vendor; and

"(B) monitored continuously.

(b) Recommending federally-assisted projects to include work zone safety contractors, traffic control contractors, and trench safety and shoring contractors that carry general liability insurance in an amount not less than $15,000,000.

(b) Recommending federally-assisted projects the costs of which exceed $15,000,000 to include work zone intelligent transportation systems that are—

"(A) provided by a qualified vendor; and

"(B) monitored continuously.

(b) Recommending federally-assisted projects to include work zone safety contractors, traffic control contractors, and trench safety and shoring contractors that carry general liability insurance in an amount not less than $15,000,000.

(b) Recommending federally-assisted projects the costs of which exceed $15,000,000 to include work zone intelligent transportation systems that are—

"(A) provided by a qualified vendor; and

"(B) monitored continuously.

(b) Recommending federally-assisted projects to include work zone safety contractors, traffic control contractors, and trench safety and shoring contractors that carry general liability insurance in an amount not less than $15,000,000.

(b) Recommending federally-assisted projects the costs of which exceed $15,000,000 to include work zone intelligent transportation systems that are—

"(A) provided by a qualified vendor; and

"(B) monitored continuously.

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(b) Recommending federally-assisted projects the costs of which exceed $15,000,000 to include work zone intelligent transportation systems that are—

"(A) provided by a qualified vendor; and

"(B) monitored continuously.
SEC. 1412. SENSE OF THE SENATE IN SUPPORT OF INTEGRATION OF NATURAL RESOURCE CONCERNS INTO STATE AND METROPOLITAN TRANSPORTATION PLANS.

(a) METROPOLITAN PLANNING.—Section 134(g)(5) of title 23, United States Code, is amended—

(1) in paragraph (2)—

(A) by redesignating paragraphs (B) through (D) as paragraphs (C) through (E), respectively; and

(B) by inserting after subparagraph (A) the following:

(2) COMPARISON AND CONSIDERATION.—Before approving the metropolitan transportation plan for the metropolitan area to consider—

(A) in general, the long-range transportation plan shall be developed, as appropriate, in consultation with State and local governments and independent organizations to increase public awareness of—

(i) the results

(ii) the dangers of drinking and driving.

(iii) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkage areas.

(3) by adding at the end the following:

(B) M ETHODS.—In carrying out subparagraph (A), the metropolitan planning organization shall—

(i) evaluate the potential for minimizing adverse health effects from mobile source air pollution and promoting the linkage of the transportation and development goals of the metropolitan area;

(ii) employ methods to determine which of the projects and strategies described in paragraph (1) are most appropriate for the State to consider.

(b) STATEWIDE PLANNING.—Section 135(c) of title 23, United States Code, is amended—

(1) in paragraph (1)—

(A) by redesignating subparagraph (D) as paragraph (G); and

(B) by inserting after “environment” the following:

(II) comparison of transportation plans to inventories of natural or historic resources, if available; and

(III) environmental protection;

(2) in paragraph (2)—

(A) by redesignating paragraphs (1) and (4) as paragraphs (4) and (7), respectively; and

(B) by inserting after paragraph (2) the following:

(4) MITIGATION ACTIVITIES.—The long-range transportation plan shall include a discussion of—

(i) the types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetlands, and other environmental functions; and

(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

(3) in paragraph (3), by redesignating subparagraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively; and

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

(4) CONSULTATION.—In general, the long-range transportation plan shall include a discussion of—

(V) historic preservation.

(c) FUNDING.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the purpose of carrying out this section $5,000,000 for each of the fiscal years 2006 through 2009.
United States Code (as redesignated by section 1502(a)(1)), is amended by inserting before the semicolon the following: ‘‘, including (to the maximum extent practicable) in electronically accessible formats and means such as the World Wide Web’’.

(b) STATEWIDE PLANNING.—

(1) PARTICIPATION BY INTERESTED PARTIES.—Section 153(f)(3) of title 23, United States Code, is amended by striking subparagraph (B) and inserting the following:

‘‘(B) METHODS.—In carrying out subparagraph (A), the State shall, to the maximum extent practicable—

(i) hold any public meetings at convenient and accessible locations and times;

(ii) employ visualization techniques to describe plans; and

(iii) make public information available in electronically accessible formats and means, such as the World Wide Web.’’

(2) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Section 135(e) of title 23, United States Code (as amended by section 1502(b)(2)), is amended by adding at the end the following:

‘‘(8) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each long-range transportation plan prepared by a State shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.’’

SEC. 1505. PROJECT MITIGATION.

(a) MITIGATION FOR NATIONAL HIGHWAY SYSTEM PROJECTS.—Section 103(b)(6)(M) of title 23, United States Code (as amended by section 1502(b)(2)), is amended by—

(1) inserting ‘‘(i)’’ after ‘‘(M);’’ and

(2) adding at the end the following:

‘‘(ii) State habitat, streams, and wetlands mitigation efforts under section 155.’’

(b) MITIGATION FOR SURFACE TRANSPORTATION PROGRAM PROJECTS.—Section 133(b)(11) of title 23, United States Code, is amended—

(1) inserting ‘‘(ii)’’ and

(2) by adding at the end the following:

‘‘(B) State habitat, streams, and wetlands mitigation efforts under section 155.’’

(c) STATE HABITAT, STREAMS, AND WETLANDS MITIGATION FUND.—Section 155 of title 23, United States Code, is amended to read as follows:

§155. State habitat, streams, and wetlands mitigation funds

‘‘(a) ESTABLISHMENT.—A State should establish a habitat, streams, and wetlands mitigation fund (referred to in this section as a ‘State fund’).

‘‘(b) PURPOSE.—The purpose of a State fund is to encourage efforts for habitat, streams, and wetlands mitigation in advance of or in connection with highway or transit projects to—

(1) ensure that the best habitat, streams, and wetland mitigation sites now available are used; and

(2) accelerate transportation project delivery by making high-quality habitat, streams, and wetland mitigation credits available when needed.

‘‘(c) FUND.—A State may deposit into a State fund part of the funds apportioned to the State under—

(1) section 104(b)(1) for the National Highway Trust Fund; and

(2) section 104(b)(3) for the surface transportation program.

‘‘(d) USE.—

(1) IN GENERAL.—Amounts deposited in a State fund shall be used (in a manner consistent with this section) for habitat, streams, or wetlands mitigation related to 1 or more projects funded under the environmental review process for the project during the transportation improvement program of the State developed under section 135(f).

(2) ENDANGERED SPECIES.—In carrying out this section, each State that receives funding for any transportation project shall give consideration to mitigation projects, on-site or off-site, that restore and preserve the best available sites to conserve biodiversity and habitat for—

(‘‘(A) Federal or State listed threatened or endangered species of plants and animals; and

(‘‘B) State listing of wetlands as threatened or endangered, as determined by the Secretary of the Interior in accordance with section 4(b)(2)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(2)).’’

(3) MITIGATION IN CLOSED BASINS.—

(A) IN GENERAL.—A State may use amounts deposited in the State fund for projects to protect existing roadways from anticipated flooding of a closed basin lake, including—

(i) construction—

(1) necessary to restore the continuation of roadway services and the impoundment of water, as the State determines to be appropriate; or

(2) for a grade raise to permanently restore a roadway the use of which is lost or reduced, or could be lost or reduced, as a result of an actual or predicted water level that is within 3 feet of causing inundation of the roadway in a closed lake basin;

(ii) monitoring, studies, evaluations, design, or preliminary engineering relating to construction; and

(iii) monitoring and evaluations relating to proposed construction.

(B) REIMBURSEMENT.—The Secretary may permit a State that expends funds under subparagraph (A) to be reimbursed for the expenditures through the use of amounts made available under section 125(c)(1).

(c) CONSISTENCY WITH APPLICABLE REQUIREMENTS.—Contributions from the State fund to mitigation efforts may occur in advance of project construction only if the efforts are consistent with all applicable requirements of Federal law (including regulations).

(d) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by striking the item relating to section 155 and inserting the following:

‘‘155. State habitat, streams, and wetlands mitigation funds.’’

CHAPTER 2—TRANSPORTATION PROJECT DEVELOPMENT PROCESS

SEC. 1511. TRANSPORTATION PROJECT DEVELOPMENT PROCESS

(a) IN GENERAL.—Chapter 3 of title 23, United States Code (as amended by section 1206(a)), is amended by inserting after section 325 the following:

§326. Transportation project development process

‘‘(2) DEFINITIONS.—In this section:

(‘‘A) AGENCY means any agency, department, or other unit of Federal, State, local, or federally recognized tribal government.

(‘‘B) ENVIRONMENTAL IMPACT STATEMENT.—The term ‘environmental impact statement’ means a detailed statement of the environmental impacts of a project required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(‘‘C) ENVIRONMENTAL REVIEW PROCESS.—

(A) IN GENERAL.—The term ‘environmental review process’ means the process for preparing, for a project—

(i) an environmental impact statement; or

(ii) any related analysis required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) INCLUSIONS.—The term ‘environmental review process’ includes the process for and proper, within the authority of the lead agency, to facilitate the expeditious resolution of the environmental review process for the project; and

(C) DETERMINATION OF PROJECT.—The term ‘project’ means any highway or transit project that requires the approval of the Federal-aid highway program.

‘‘(D) PROJECT SPONSOR.—The term ‘project sponsor’ means an agency or other entity (including any private or public-private entity), that seeks approval of the Secretary for a project.’’

(6) STATE TRANSPORTATION DEPARTMENT.—The term ‘State transportation department’ means any statewide agency of a State with responsibility for transportation.

(7) PROCESS.—

(A) IN GENERAL.—The Department of Transportation shall be the lead Federal agency in the environmental review process for a project.

(B) JOINT LEAD AGENCIES.—Nothing in this section precludes another agency from being a joint lead agency in accordance with regulations under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(C) CONCURRENCE OF PROJECT SPONSOR.—The lead agency may carry out the environmental review process in accordance with this section only with the concurrence of the project sponsor.

(8) REQUEST FOR PROCESS.—

(A) IN GENERAL.—A project sponsor may request that the lead agency carry out the environmental review process for a project or group of projects in accordance with this section.

(B) GRANT OF REQUEST; PUBLIC NOTICE.—The lead agency shall—

(i) grant a request under subparagraph (A); and

(ii) provide public notice of the request.

(C) EFFECTIVE DATE.—The environmental review process described in this section may be applied to a project only after the date on which public notice is provided under subparagraph (B)(ii).

(D) ROLES AND RESPONSIBILITIES OF LEAD AGENCY.—With respect to the environmental review process for any project, the lead agency shall have authority and responsibility to—

(i) identify and involve cooperating agencies in accordance with subsection (d);

(ii) develop an agency coordination plan with review, schedule, and timelines in accordance with subsection (e);

(iii) determine the purpose and need for the project in accordance with subsection (f);

(iv) determine the range of alternatives to be considered in accordance with subsection (g);

(E) CONVERSE DISPUTE-RESOLUTION AND DECISION RESOLUTION MEETINGS AND RELATED EFFORTS IN ACCORDANCE WITH SUBSECTION (H);

(F) TAKE OTHER ACTIONS AS ARE NECESSARY AND PROPER, WITHIN THE AUTHORITY OF THE LEAD AGENCY, TO FACILITATE THE EXPEDITIOUS RESOLUTION OF THE ENVIRONMENTAL REVIEW PROCESS FOR THE PROJECT; AND

(G) PREPARE OR ENSURE THAT ANY REQUIRED ENVIRONMENTAL IMPACT STATEMENT OR OTHER DOCUMENT REQUIRED TO BE COMPLETED UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (42 U.S.C. 4321 ET SEQ.) IS COMPLETED IN ACCORDANCE WITH THIS SECTION AND APPLICABLE FEDERAL LAW.

(D) ROLES AND RESPONSIBILITIES OF COOPERATING AGENCIES.—

(A) IN GENERAL.—With respect to a project, each Federal agency shall carry out any obligations of the Federal agency in the environmental review process in accordance with this section and applicable Federal law.

(B) INVITATION.—

(A) IN GENERAL.—The lead agency shall—

(1) identify, as early as practicable in the environmental review process for a project, any other agencies that may have an interest in the project, including—

(i) agencies with jurisdiction over environmentally related matters that are affected by the project or may be required by law to conduct an environmental-related independent review or analysis of the project or determine whether to prepare an environmental impact statement, permit license, or approval for the project; and

(ii) agencies with special expertise relevant to the project.

(B) INVITATION.—

(1) LEAD AGENCY.—The lead agency identified in clause (i) to become cooperating agencies in the environmental review process for that project; and
workplan under clause (i), the lead agency shall
carry out those obligations; and
(iii) resources available to the cooperating
agencies.
(iii) overall size and complexity of a project;
(iv) the overall schedule for and cost of a
project; and
(v) the sensitivity of the natural and historic
resources that could be affected by the project.
(D) CONSISTENCY WITH OTHER TIME PERI-
ODS.—A schedule under subparagraph (C) shall
be consistent with any other relevant time peri-
ods established under paragraph (1).
(E) MODIFICATION.—The lead agency may
(i) lengthen a schedule established under
subparagraph (C) for good cause; and
(ii) shorten a schedule only with the concur-
dent of the affected cooperating agencies.
(F) DISSEMINATION.—A copy of a schedule
under subparagraph (C), and of any modific-
ations to the schedule, shall be
(i) provided to all cooperating agencies and
to the State transportation department of the
State in which the project is located (and, if the
State is not the project sponsor, to the project
sponsor); and
(ii) made available to the public.
(2) Comment concerning a schedule.—(A) IN
GENERAL.—A schedule established under
paragraph (1)(C) shall include
(i) an opportunity for comment by agencies
and the public on a draft or final environmental
impact statement for a period of not more than
60 days longer than the minimum period re-
quired under section 139 of the National Environ-
mental Policy Act of 1969 (42 U.S.C. 4321 et seq.),
and
(ii) except as otherwise provided under para-
graph (1)
(B) EFFECT ON EXISTING STANDARDS.—In
any Federal law relating to a project (including
regulations), if available; or
 aan minimum period is not required
under Federal law (including regulations), 30
days.
(B) EXTENSION OF COMMENT PERIODS.—The
lead agency may extend a period of comment es-
ablished under this paragraph for good cause.
(C) AMENDMENTS.—If the lead agency deter-
mines that any of the following factors
are relevant new circumstances or information
in accordance with sections 1501.7 and 1502.9
(D) DEADLINES FOR DECISIONS UNDER OTHER LA-
W.—In any Federal law relating to a project (includ-
ing the issuance or denial of a permit or license) is
required to be made by the later of the date that
is 180 days after the date on which the
Secretary made all final decisions of the lead
agency with respect to the project, or 180 days after
the date on which an application was submitted
for the permit or approval. If the Secretary
submits to the Committee on Environment and Public
Projects, and other environmental resources.
(E) Any publicly available plans or policies
related to the national defense, national secu-
ity, or foreign policy of the United States.
(4) DEVELOPMENT OF PROJECT ALTE-
RATIVES.—(1) IN GENERAL.—With respect to the envi-
ronmental review process for a project, the alter-
natives shall be determined in accordance with this
subsection.

(ii) units of State, local, or tribal govern-
ment;
(iii) economic development plans adopted
by—
(A) a project.

(ii)佥tern the decision of the Federal agency that
remain outstanding as of the date of the addi-
tional notice.

(iv) the responsible Federal agency under
the project

(iii) grant requests to become cooperating
agencies from agencies not originally invited.
'(B) RESPONSES.—The deadline for receipt of
a response from an agency that receives an invi-
tation shall be 30 days after the date of receipt
by the agency of the invitation; but
(C) MAY be extended by the lead agency for
good cause.

(iii) the cooperation of the Federal agency
under this subsection shall not imply that the co-operating
agency—
(A) has no jurisdiction or authority with re-
spect to the project;
(B) formulate and implement administrative,
policy, and procedural mechanisms to enable the
government to ensure completion of the envi-
ronmental review process in a timely, coordinated,
and environmentally responsible manner.

(iii) the development of flexible process and
timeline.—(A) COORDINATION PLAN.—(1) IN
GENERAL.—The lead agency shall es-
stablish a coordination plan, which may be incor-
porated into a memorandum of under-
standing, to coordinate agency and public par-
ticipation in and comment on the environmental
review process for a project or category of
projects.

(B) WORKPLAN.—(1) IN GENERAL.—The lead agency shall de-
velop, as part of the coordination plan, a
workplan for completing the collection, anal-
ysis, and estimation of baseline data and future
impacts modeling necessary to complete the en-
vironmental review process, including any data,
analyses, and modeling necessary for related
permits, approvals, reviews, or studies required for
the project.
(ii) each cooperating agency for the project;
(iii) the State in which the project is located;
and
(iii) the State is not the project sponsor,
the project sponsor.

(C) SCHEDULE.—(1) IN GENERAL.—The lead agency shall es-
stablish a schedule of the coordination plan, after
consultation with each cooperating agency for
the project and with the State in which the
project is located (and, if the State is not the
project sponsor), a schedule for completion of the
environmental review process for the project.
“(2) AUTHORITY.—The lead agency shall determine the alternatives to be considered for a project.

(3) INVOLVEMENT OF COOPERATING AGENCIES AND PUBLIC PARTICIPATION.—

“(A) IN GENERAL.—Before determining the alternatives for a project, the lead agency shall solicit for 30 days and consider any relevant comments or alternate proposed alternatives received from the public and cooperating agencies.

“(B) ALTERNATIVES.—The lead agency shall consider—

(i) alternatives that meet the purpose and need of the project; and

(ii) the alternative of no action.

“(C) EFFECT ON OTHER REVIEW.—Any other agency acting under or applying Federal law with respect to a project shall consider only the alternatives determined by the lead agency.

“(D) SAVINGS.—Nothing in this subsection preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency under applicable law (including regulations) with respect to a project.

“(E) FACTORS TO CONSIDER.—The lead agency may determine that any of the following factors and considerations are appropriate for consideration in determining the alternatives for a project:

(A) The overall size and complexity of the project.

(B) The sensitivity of the potentially affected resources.

(C) The overall schedule and cost of the project.

(D) Transportation plans and related planning documents developed through the statewide and metropolitan transportation planning process, including sections 134 and 135 of title 23 of the United States Code.

(E) Land use plans adopted by units of State, local, or tribal government (or, in the case of Federal land, by the applicable Federal land management agencies).

(F) Economic development plans adopted by—

(i) units of State, local, or tribal government; or

(ii) established economic development planning organizations or authorities.

(G) Environmental protection plans, including plans for the protection or treatment of—

(i) air quality;

(ii) water quality and runoff;

(iii) habitat needs of plants and animals;

(iv) threatened and endangered species;

(v) invasive species;

(vi) historic properties; and

(vii) other environmental resources.

(H) Any publicly available plans or policies relating to the national defense, national security, or foreign policy of the United States.

(I) PROMPT ISSUE IDENTIFICATION AND RESOLUTION PROCESS.—

“(1) IN GENERAL.—The lead agency, the project sponsor, and the cooperating agencies shall work cooperatively, in accordance with this section, to identify and resolve issues that could—

(A) delay completion of the environmental review process; or

(B) result in denial of any approvals required for the project under applicable laws.

“(2) LEAD AGENCY RESPONSIBILITIES.—

(A) IN GENERAL.—The lead agency, with the assistance of the project sponsor, shall make information available to the cooperating agencies, as early as practicable in the environmental review process, regarding—

(i) the environmental and socioeconomic resources located within the project area; and

(ii) the general locations of the alternatives under consideration.

(B) BASIS FOR INFORMATION.—Information about resources in the project area may be based on existing data sources, including geographic information systems mapping.

“(3) COOPERATING AGENCY RESPONSIBILITIES.—

(A) IN GENERAL.—Based on information received from the lead agency, cooperating agencies shall promptly identify to the lead agency any major issues of concern regarding the potential environmental or socioeconomic impacts of a project.

(B) MAJOR ISSUES OF CONCERN.—A major issue of concern referred to in subparagraph (A) may include any issue that could substantially delay or prevent an agency from granting a permit or other approval that is needed for a project, as determined by a cooperating agency.

(C) MAJOR ISSUES OF CONCERN IDENTIFICATION.—The lead agency shall promptly identify a major issue of concern under paragraph (2), or at any time upon the request of a project sponsor or the Governor of a State, the lead agency shall promptly provide the Secretary with representatives of each of the relevant cooperating agencies, the project sponsor, and the Governor to address and resolve the issue.

“(4) NOMINEE.—If a resolution of a major issue of concern under paragraph (4) cannot be achieved by the date that is 30 days after the date on which a meeting under that paragraph is convened, the lead agency shall—

(A) the heads of all cooperating agencies;

(B) the project sponsor;

(C) the Governor involved;

(D) the Committee on Environment and Public Works of the Senate;

(E) the Committee on Transportation and Infrastructure of the House of Representatives; and

(F) the Council on Environmental Quality.

“(5) PERFORMANCE MEASUREMENT.—

“(1) PROGRESS REPORTS.—The Secretary shall establish a program to measure and report on progress toward improving and expediting the planning and environmental review process.

“(2) MINIMUM REQUIREMENTS.—The program shall include, at a minimum—

(A) the establishment of criteria for measuring consideration of—

(i) State and metropolitan planning, project planning, and design criteria; and

(ii) environmental processing times and costs;

(B) the collection of data to assess performance based on the established criteria; and

(C) the annual reporting of the results of the performance measurement studies.

“(3) INVOLVEMENT OF THE PUBLIC AND COOPERATING AGENCIES.—

(A) IN GENERAL.—The Secretary shall biennially conduct a survey of agencies participating in the environmental review process under this section to assess the expectations and experiences of each surveyed agency with regard to the planning and environmental review process for projects reviewed under this section.

(B) PUBLIC PARTICIPATION.—In conducting the survey, the Secretary shall solicit comments from the public.

“(2) SOLE RESPONSIBILITY.—The State that as a matter of State law has sole responsibility for determining the range of alternatives for a project under section 136 of title 23 of the United States Code has sole responsibility for determining the alternatives for a project under section 136 of the Transportation Equity Act for the 21st Century (112 Stat. 222) is repealed.

“(3) EXISTING ENVIRONMENTAL REVIEW PROCESS.—Nothing in this section affects any existing State or Federal environmental review process, procedure, agreement, or funding arrangement approved by the Secretary under section 1309 of the Transportation Equity Act for the 21st Century (112 Stat. 232; 23 U.S.C. 109 note).

SECTION 1512. ASSUMPTION OF RESPONSIBILITY FOR CATEGORICAL EXCLUSIONS.

“(1) IN GENERAL.—The Secretary may assume responsibility for determining the range of alternatives for a project determined by a State, under section 136 of title 23 of the United States Code, and carry out the requirements of section 327. Assumption of responsibility for categorical exclusions.

“(2) SCOPE OF AUTHORITY.—A determination described in paragraph (1) shall be made by a State in accordance with criteria established by the Secretary, and the Secretary's responsibilities of activities specifically designated by the Secretary.

“(3) CRITERIA.—The criteria under paragraph (2) shall include procedures for availability of information consistent with section 552 of title 5 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(4) OTHER APPLICABLE FEDERAL LAWS.—

(A) IN GENERAL.—If a State assumes responsibility under subsection (a), the Secretary may also assign and the State may assume all or part of the responsibilities of the Secretary for environmental review, consultation, or other related actions required under any Federal law applicable to activities that are classified by the Secretary as categorical exclusions, except in the event that any Federal law provides for the assumption of government-to-government consultation with Indian tribes, subject to the same procedural and substantive requirements as would be required if that responsibility were carried out by the Secretary.

“(B) SOLE RESPONSIBILITY.—A State that assumes responsibility under paragraph (1) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

“(C) MEMORANDUM OF UNDERSTANDING.—

(A) IN GENERAL.—The Secretary and the State, after providing public notice and opportunity for comment, shall enter into a memorandum of understanding setting forth the responsibilities to be assigned under this section and the terms and conditions under which the

“(1) JUDICIAL REVIEW.—Nothing in this section shall affect the reusability of any final Federal agency action in any United States district court or State court.

“(2) CONFORMING AMENDMENTS.—Nothing in this section shall—

(A) the applicability of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or any other Federal environmental statute; or

(B) the responsibility of any Federal officer to comply with or enforce such a statute.”.

(2) CONFORMING AMENDMENTS.—

(1) The analysis for chapter 3 of title 23, United States Code, is amended by inserting “section 136 of the Transportation Equity Act for the 21st Century (112 Stat. 222; 23 U.S.C. 109 note)” after section 1204(f) the following:

“326. Transportation project development process.”.

(2) Section 1309 of the Transportation Equity Act for the 21st Century (112 Stat. 222) is repealed.

SEC. 1512. ASSUMPTION OF RESPONSIBILITY FOR CATEGORICAL EXCLUSIONS.

“(1) IN GENERAL.—The Secretary may assign, and a State may assume, responsibility for determining the range of alternatives for a project under section 136 of the Transportation Equity Act for the 21st Century (112 Stat. 232; 23 U.S.C. 109 note) to a project if—

(A) the applicability of the National Environmental Policy Act (as in effect on October 1, 2003).

(B) the project sponsor;

(C) the annual reporting of the results of the performance measurement studies.

“(2) MAJOR ISSUES OF CONCERN.

“(1) IN GENERAL.—The Secretary may approve a request by a State or recipient to provide funds made available under this title for a highway project, or made available under chapter 53 of title 49 for a mass transit project, to agencies participating in the coordinated environmental review process established under this section in order to provide the resources necessary to meet any time limits established under this section.

“(2) AMOUNTS.—Such requests under paragraph (1) shall be approved only—

(A) if the Secretary determines that the Secretary determines are necessary for the affected Federal and State agencies to meet the time limits necessary for environmental review; and

(B) if they are no less than the customary time necessary for that review.

“(3) CRITERIA.—The criteria under paragraph (2) shall include procedures for availability of information consistent with section 552 of title 5 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(4) OTHER APPLICABLE FEDERAL LAWS.—

(A) IN GENERAL.—If a State assumes responsibility under subsection (a), the Secretary may also assign and the State may assume all or part of the responsibilities of the Secretary for environmental review, consultation, or other related actions required under any Federal law applicable to activities that are classified by the Secretary as categorical exclusions, except in the event that any Federal law provides for the assumption of government-to-government consultation with Indian tribes, subject to the same procedural and substantive requirements as would be required if that responsibility were carried out by the Secretary.

“(B) SOLE RESPONSIBILITY.—A State that assumes responsibility under paragraph (1) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

“(C) MEMORANDUM OF UNDERSTANDING.—

(A) IN GENERAL.—The Secretary and the State, after providing public notice and opportunity for comment, shall enter into a memorandum of understanding setting forth the responsibilities to be assigned under this section and the terms and conditions under which the
assignments are made, including establishment of the circumstances under which the Secretary would reassume responsibility for categorical exclusion determinations.

(2) IN GENERAL.—A memorandum of understanding—

(A) shall have term of not more than 3 years; and

(B) shall be renewable.

(3) ACCEPTANCE OF JURISDICTION.—In a memorandum of understanding, the State shall consent to the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

(A) MONITORING. The Secretary shall—

(1) monitor compliance by the State with the memorandum of understanding and the provision by the State of financial resources to carry out the memorandum of understanding; and

(2) take into account the performance by the State when considering renewal of the memorandum of understanding.

(b) TERMINATION.—The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination to surface transportation project delivery pilot program, unless the Secretary had the Secretary taken the action described in subsection (n) of this section.

(c) STATE AGENCY DEEMED TO BE FEDERAL AGENCY.—A State agency that is assigned a responsibility under a memorandum of understanding shall be deemed to be a Federal agency for the purposes of the Federal law under which the responsibility is exercised.

(d) CHANGES TO PROGRAM.—The analysis for chapter 3 of title 23, United States Code (as amended by section 131(b)), is amended by inserting after the item relating to section 326 the following:

"327. Assumption of responsibility for categorical exclusions.

SEC. 1512. SURFACE TRANSPORTATION PROJECT DELIVERY PILOT PROGRAM

(a) IN GENERAL.—Chapter 3 of title 23, United States Code (as amended by section 1512(a)), is amended by inserting after section 327 the following:

"328. Surface transportation project delivery pilot program.

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Secretary shall carry out a surface transportation project delivery pilot program (referred to in this section as the "program").

(B) ASSUMPTION OF RESPONSIBILITY.—

(1) NOTICE OF ASSIGNMENTS AND ENSURING EFFECTIVE IMPLEMENTATION.—(A) In General.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign to the State, and the State may assume, the responsibilities of the Secretary with respect to 1 or more highway projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ADDITIONAL RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

(i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental review and other actions required under any Federal environmental law pertaining to the review or approval of a specific project; but

(ii) the Secretary may not assign—

(A) responsibility for any conformity determination required under section 176 of the Clean Air Act (42 U.S.C. 7506) or

(B) any responsibility imposed on the Secretary by section 134 or 135.

(C) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary under the Secretary.

(D) FEDERAL RESPONSIBILITY.—Any responsibility of the Secretary not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary.

(E) NO EFFECT ON AUTHORITY.—Nothing in this paragraph shall affect with any power, jurisdiction, responsibility, or authority of an agency, other than the Department of Transportation, under applicable law (including regulations) with respect to a project.

(B) STATE PARTICIPATION.—

(1) NUMBER OF PARTICIPATING STATES.—The Secretary may permit not more than 5 States (including the State of Oklahoma) to participate in the program.

(2) APPLICATION.—Not later than 270 days after the date of enactment of this section, the Secretary shall promulgate regulations that establish requirements relating to information required to be contained in any application of a State to participate in the program, including, at a minimum—

(A) the projects or classes of projects for which the State anticipates exercising the authority; and

(B) the Secretary may not assign responsibility for any conformity determination to the State without ensuring that the State has the capability to carry out the authority that may be granted under the program.

(3) INTERVENTION.—The Secretary shall have the right to intervene in any action described in paragraph (1).

(E) EFFECT OF ASSUMPTION OF RESPONSIBILITY.—A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (i).

(F) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any responsibility under any Federal law.

(G) AUDITS.—(1) IN GENERAL.—To ensure compliance by a State with any agreement under this subsection (c)(1) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall conduct—

(A) a semiannual audit of each of the first 2 years of State participation; and

(B) annual audits during each subsequent year of State participation.

(H) REPORT TO CONGRESS.—The Secretary shall submit to Congress an annual report that describes the administration of the program.

(2) REPORT TO CONGRESS.—The Secretary shall submit to Congress an annual report that describes the administration of the program.

(3) JURISDICTION.—

(A) IN GENERAL.—Except as provided in paragraph (2), the program shall terminate on the date that is 6 years after the date of enactment of this section.

(B) TERMINATION.—The Secretary may terminate the participation of any State in the program if—

(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

(B) the Secretary provides to the State—

(i) notification of the determination of non-compliance; and

(ii) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and

(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by the Secretary.

(b) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 23, United States Code (as amended by section 1512(b)), is amended by inserting after the item relating to section 327 the following:

"328. Surface transportation project delivery pilot program.

SEC. 1514. PARKS, RECREATION AREAS, WILDLIFE AND HISTORIC SITES.

(a) PROGRAMS AND PROJECTS WITH DE MINIMIS IMPACT.—

(TITLES 23 AND 25)
(A) in the first sentence, by striking “It is hereby” and inserting the following: “(a) DECLARATION OF POLICY.—It is hereby declared that—

(ii) the transportation program or project will have no adverse effect on the historic site; or

(iii) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

(i) the transportation program or project will have no adverse effect on the historic site; or

(ii) there will be no historic properties affected by the transportation program or project.

(2) REQUIREMENTS.—

(A) IN GENERAL.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) or (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

(B) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be provided under section 1513, not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations necessary to implement the amendments made by chapter 1 and this chapter.

CHAPTER 3—MISCELLANEOUS

SECTION 1521. CRITICAL REAL PROPERTY ACQUISITION.

Section 168 of title 23, United States Code, is amended by adding at the end the following:

“(4) CRITICAL REAL PROPERTY ACQUISITION.—

“(I) IN GENERAL.—Subject to paragraph (2), funds apportioned to a State under this title may be used to pay the costs of acquiring any real property that is determined to be critical under paragraph (2) for a project proposed for funding under this title.

“(2) REIMBURSEMENT.—The Federal share of the costs referred to in paragraph (1) shall be eligible for reimbursement out of funds apportioned to a State under this title if, before the date of acquisition—

“(A) the Secretary determines that the property is offered for sale on the open market;

“(B) that in acquiring the property, the State will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.); and

“(C) the State determines that immediate acquisition of the property is critical because—

“(i) based on an appraisal of the property, the value of the property is increasing significantly;

“(ii) there is an imminent threat of development or redevelopment of the property; and

“(iii) the property is necessary for the implementation of the goals stated in the proposal for the project.

“(2) FEDERAL PROPERTY; APPLICABLE LAW.—An acquisition of real property under this section shall be considered to be an exempt project under section 176 of the Clean Air Act (42 U.S.C. 7506).

“(3) ENVIRONMENTAL REVIEW.—

“(A) IN GENERAL.—A project proposed to be conducted under this title shall not be conducted on property acquired under paragraph (1) unless all required environmental reviews for the project have been completed.

“(B) EFFECT ON CONSIDERATION OF PROJECT ALTERNATIVES.—The number of critical acquisitions of real property associated with a project shall not affect the consideration of project alternatives during the environmental review process.

“(5) PROCEEDS FROM THE SALE OR LEASE OF REAL PROPERTY.—Section 156(c) shall not apply to the sale, use, or lease of any real property acquired under paragraph (1).”.

SECTION 1522. PLANNING CAPACITY BUILDING INITIATIVE.

Section 151 of title 23, United States Code, is amended by adding at the end the following:

“(m) PLANNING CAPACITY BUILDING INITIATIVE.—

“(1) IN GENERAL.—The Secretary shall carry out a planning capacity building initiative to support enhancements in transportation planning to—

“(A) strengthen the processes and products of metropolitan and statewide transportation planning under this title; and

“(B) enhance tribal capacity to conduct joint transportation planning under chapter 2.

“(2) IMPLEMENTATION.—The Secretary shall give priority to planning practices and processes that support—

“(A) the appropriate committees of Congress;

“(B) the Secretary of the Interior; and

“(C) the Advisory Council on Historic Preservation; and

“(D) make the report and update available to the public.

SECTION 1513. REGULATIONS.

As provided in section 1513, not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations necessary to implement the amendments made by chapter 1 and this chapter.
“(A) the transportation elements of homeland security planning, including—

(i) training and best practices relating to emergency evacuations;

(ii) developing materials to assist areas in coordinating emergency management and transportation officials; and

(iii) developing training on how planning organizations can address security issues;

(B) performance-based planning, including—

(i) data and data analysis technologies to be shared with States, metropolitan planning organizations, local governments, and nonfederal organizations that—

(I) participate in transportation planning;

(II) develop and use data and analysis to engage in metropolitan, tribal, or statewide transportation planning;

(III) involve the public in the development of transportation plans, projects, and alternative scenarios; and

(IV) develop strategies to avoid, minimize, and mitigate the impacts of transportation facilities and projects; and

(ii) improvement of the quality of congestion management systems, including the development of—

(I) a measure of congestion;

(II) a measure of transportation system reliability; and

(III) a measure of induced demand;

(C) safety planning, including—

(i) development of State strategic safety plans consistent with section 148;

(ii) incorporation of work zone safety into planning and decisionmaking processes;

(iii) training in the development of data systems relating to highway safety;

(D) operations planning, including—

(i) developing training of the integration of transportation system operations and management into the transportation planning process; and

(ii) training and best practices relating to regional concepts of operations;

(E) freight planning, including—

(i) modeling of freight at a regional and statewide level; and

(ii) techniques for engaging the freight community with the planning process;

(F) air quality planning, including—

(i) assisting new and existing nonattainment and maintenance areas in developing the technical capacity to perform air quality conformity analyses;

(ii) providing training on areas such as modeling and data collection to support air quality planning and analysis;

(iii) developing concepts and techniques to assist areas in meeting air quality performance timeframes; and

(iv) developing materials to explain air quality issues to decisionmakers and the public; and

(G) integration of environment and planning;

(3) USE OF FUNDS.—The Secretary shall use amounts made available under paragraph (4) to make grants to, or enter into contracts, cooperative agreements, and other transactions with, a Federal agency, State agency, local agency, federally recognized Indian tribal government or tribal consortium, authority, association, nonprofit or for-profit corporation, or institution of higher education for research, program development, information collection and dissemination, and technical assistance.

(4) SKY-ASIDE.—

(A) IN GENERAL.—On October 1 of each fiscal year, of the funds made available under subsection (a), the Secretary shall set aside $3,754,515 to carry out this subsection.

(B) ASSIGNMENT OF FUNDS.—The Federal share of the cost of an activity carried out using funds made available under subparagraph (A) shall be 100 percent.

(5) ELIGIBILITY.—Funds made available under subparagraph (A) shall remain available until expended.”.

SEC. 1522. INTERMODAL PASSENGER FACILITIES. 

(a) IN GENERAL.—Chapter 55 of title 49, United States Code, is amended by adding at the end of—

“SUBCHAPTER III—INTERMODAL PASSENGER FACILITIES

§5571. Policy and purposes

(a) DEVELOPMENT AND ENHANCEMENT OF INTERMODAL PASSENGER FACILITIES.—It is in the economic interest of the United States to include, if possible, the efficient surface transportation modes by ensuring their connection with and access to intermodal passenger terminals, thereby streamlining the transfer of passengers among public and private transportation options and increasing passenger transportation operating efficiencies. 

(b) GENERAL PURPOSES.—The purposes of this subchapter are to accelerate intermodal integration among North America’s passenger transportation modes through—

(1) ensuring intercity public transportation access to intermodal passenger facilities; 

(2) encouraging the development of an integrated system of public transportation information; and

(3) providing intercity bus intermodal passenger facility grants.

§5572. Definitions

In this subchapter—

(1) ‘capital grant’ means a project for—

(A) acquiring, constructing, improving, or renovating an intermodal facility that is related physically and functionally to intercity bus service and enhances coordination between intercity bus service and transportation, including aviation, commuter rail, intercity rail, public transportation, seaports, and the National Highway System, such as physical infrastructure associated with private bus operations at existing and new intermodal facilities, including special lanes, curb cuts, ticket kiosks and counters, baggage and package express storage, employee parking, office space, security, and signage; and

(B) establishing or enhancing coordination between intercity bus service and transportation, including aviation, commuter rail, intercity rail, public transportation, and the National Highway System through an integrated system of public transportation information; 

(2) ‘city’ means a city or county, including one or more of the following: intercity rail, commuter rail, bus-rail, rail-transit, or ferry services.

(3) ‘commuter rail service’ means service designed primarily to provide daily work trips within the local commuting area.

(4) ‘intercity passenger facility’ means passenger terminal that does, or can be modified to, accommodate several modes of transportation and related facilities, including some or all of the following: intercity rail, intercity bus, commuter rail, intracity rail transit and bus transportation, airport limousine service and airline ticket offices, rent-a-car facilities, taxis, private parking, and other transportation services.

(5) ‘local governmental authority’ includes—

(A) a political subdivision of a State;

(B) an authority organized at least one State or political subdivision of a State;

(C) an Indian tribe; and

(D) a public authority, board, or commission established under the laws of the State.

(6) ‘owner or operator of a public transportation facility’ means an owner or operator of an intercity bus, commuter-rail, commuter-bus, rail-transit, bus-transit, or ferry services.

(7) ‘recipient’ means a State or local governmental authority or a nonprofit organization that receives a grant to carry out this section directly from the Federal government.

(8) ‘Secretary’ means the Secretary of Transportation.

(9) ‘State’ means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(10) ‘urban area’ means an area that includes a municipality or other built-up place that the Secretary, after considering local patterns and trends of urban growth, decides is appropriate for a local public transportation system to serve individuals living in the locality.

(11) ‘Year’ means fiscal year.

§5573. Assurance of access to intermodal passenger facilities

Intercity buses and other modes of transportation shall, to the maximum extent practicable, have access to publicly funded intermodal passenger facilities, including those passenger facilities seeking funding under section 5574.

§5574. Intercity bus intermodal passenger facility grants

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants under this section to recipients in financing a capital project only if the Secretary finds that the proposed project is justified and has adequate financial commitment.

(b) COMPEITIVE GRANT SELECTION.—The Secretary shall conduct a national solicitation for applications for grants under this section. Grantees shall be selected on a competitive basis.

(c) SHARE OF NET PROJECT COSTS.—A grant shall not exceed 50 percent of the net project cost, as determined by the Secretary.

(d) REGULATIONS.—The Secretary may promulgate such regulations as are necessary to carry out this section.

§5575. Funding

(a) IN GENERAL.—

(1) There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subchapter $9,386,289 for each of fiscal years 2005 through 2009.

(2) The funding made available under paragraph (1) shall be available for obligation in the same manner as if such funds were appropriated under chapter 1 of title 23 and shall be subject to any obligation limitation imposed on funds for Federal-aid highways and highway safety construction programs.

(3) PERIOD OF AVAILABILITY.—Amounts made available under subsection (a) shall remain available until September 30,

(4) CONFORMING AMENDMENT.—The chapter analysis for chapter 55, title 49, United States Code, is amended by adding at the end the following:

“SUBCHAPTER III—INTERMODAL PASSENGER FACILITIES

Sec.

§5571. Policy and purposes.

§5572. Definitions.

§5573. Assurance of access to intermodal facilities.

§5574. Intercity bus intermodal facility grants.

§5575. Funding.”

SEC. 1524. 14TH AMENDMENT HIGHWAY AND 3RD INFANTRY DIVISION HIGHWAY.

Not later than December 31, 2005, any funds made available to commission studies and reports regarding construction of a route linking Augusta, Georgia, Macon, Georgia, Columbus, Georgia, Montgomery, Alabama, and Natchez, Mississippi and a route linking Savannah, Georgia, Augusta, Georgia, and Knoxville, Tennessee, shall be provided to the Secretary to—

(1) carry out a study and submit to the appropriate committees of Congress a report that describes, to the extent practicable, the steps necessary to construct a route for the 14th Amendment Highway, from Augusta, Georgia, to
SEC. 1601. ENVIRONMENTAL RESTORATION AND POLLUTION ABATEMENT; CONTROL OF INVASIVE PLANT SPECIES AND ESTABLISHMENT OF NATIVE SPECIES.

(a) MODIFICATION TO NHS/STP FOR ENVIRONMENTAL RESTORATION, POLLUTION ABATEMENT, AND INVASIVE SPECIES.—

(1) MODIFICATIONS TO NATIONAL HIGHWAY SYSTEM.—Section 103(b)(6) of title 23, United States Code, is amended by adding at the end the following:

“(R) Control of invasive plant species and establishment of native species in accordance with section 165.”

(2) MODIFICATIONS TO SURFACE TRANSPORTATION PROGRAM.—Section 133(b) of title 23, is amended by striking paragraph (14) and inserting the following:

“(14) Environmental restoration and pollution abatement in accordance with section 165.”

(b) ELIGIBLE ACTIVITIES.—Subchapter I of chapter 4 of title 23, United States Code, is amended by adding at the end the following:

“§165. Eligibility for environmental restoration and pollution abatement

“(a) IN GENERAL.—Subject to subsection (b), environmental restoration and pollution abatement projects, or the design and mitigation of the impacts of any transportation project funded under this title (including retrofitting and construction of storm water treatment systems to meet Federal and State requirements under sections 401 and 402 of the Clean Water Act (33 U.S.C. 1341, 1342)) may be carried out to address water pollution or environmental degradation caused wholly or partially by a transportation facility.

“(b) MAXIMUM EXPENDITURE.—In a case in which a transportation facility is undergoing re-construction, rehabilitation, resurfacing, or restoration, the expenditure of funds under this section for environmental restoration or pollution abatement described in subsection (a) shall not exceed 30 percent of the total cost of the re-construction, rehabilitation, resurfacing, or restoration of the facility.

§166. Control of invasive plant species and establishment of native species.

“(a) DEFINITIONS.—In this section:

“(1) INVASIVE PLANT SPECIES.—The term ‘invasive plant species’ means a nonindigenous species introduced by means of which causes or is likely to cause economic or environmental harm or harm to human health.

“(2) NATIVE PLANT SPECIES.—The term ‘native plant species’ means, with respect to a particular ecosystem, a species that, other than as result of an introduction, historically occurred or currently occurs in that ecosystem.

“(3) CONFORMING AMENDMENT.—Section 133(b) of title 23, United States Code, is amended by adding at the end the following:

“(N) Control of invasive plant species and establishment of native species in accordance with section 165.”

(b) TECHNICAL AND OTHER CORRECTIONS.—In a case in which a transportation facility is undergoing re-construction, rehabilitation, resurfacing, or restoration, the expenditure of funds under this section for environmental restoration or pollution abatement described in subsection (a) shall not exceed 30 percent of the total cost of the re-construction, rehabilitation, resurfacing, or restoration of the facility.
(1) in subsection (d)—
(A) by striking paragraph (2) and inserting the following:
(2) PERMISSIBLE USES.—Permissible uses of funds appropriated to a State for a fiscal year to carry out this section include the following:
(A) maintenance and restoration of recreational trails;
(B) development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails;
(C) purchase and lease of recreational trail construction and maintenance equipment;
(D) construction of new recreational trails, except that, in the case of new recreational trails on public Federal land, construction of the trails shall be—
(i) permissible under other law;
(ii) necessary and recommended by a State-wide comprehensive outdoor recreation plan that—
(I) required under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–4 et seq.); and
(II) in effect;
(iii) approved by the administering agency of the State designated under subsection (c)(1)(A); and
(iv) approved by each Federal agency having jurisdiction over the affected land, under such terms and conditions as the head of the Federal agency determines to be appropriate, except that the approval shall be contingent on compliance by the Federal agency with all applicable laws, including—
(I) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
(II) the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.); and
(E) land use and environmental assessments and fee simple title to property for recreational trails or recreational trail corridors;
(F) assessment of trail conditions for accessibility and maintenance;
(G) use of trail crews, youth conservation or service corps, or other appropriate means to carry out activities under this section.

(2) development and dissemination of publications and operation of educational programs to promote safety and environmental protection, as those objectives relate to the use of recreational trails, including non-lane enforcement, trail safety and trail use monitoring patrol programs, and providing trail-related training, but in an amount not to exceed 5 percent of the apportionment made to the State for the fiscal year; and

(i) payment of costs to the State incurred in administering the program, but in an amount not to exceed 7 percent of the apportionment made to the State for the fiscal year to carry out this section.;

(ii) in subparagraph (D), by striking “(2)(F)” and inserting “(2)(I)”;

(iii) by adding at the end the following:
(E) USE OF YOUTH CONSERVATION OR SERVICE CORPS FUNDS.—A State shall make available not less than 10 percent of the apportionments of the State to provide grants to, or enter into cooperative agreements or contracts with, qualified youth conservation or service corps to perform recreational trails program activities.;

(2) in subsection (f)—
(A) in paragraph (1)—
(i) by inserting “and the Federal share of the administrative costs of a State” after “project”;

(ii) by striking “not exceed 80 percent” and inserting “be determined in accordance with section 120”;

(B) in paragraph (2)—
(i) by the Secretary of the Safe—(A), by striking “80 percent of” and inserting “the amount determined in accordance with section 120 for”;

(ii) in subparagraph (B), by inserting “sponsoring the project” after “Federal agency”;

(iii) by striking paragraph (5);

(D) by redesignating paragraph (4) as paragraph (5);

(E) by inserting after paragraph (3) the following:
(4) USE OF RECREATIONAL TRAILS PROGRAM FUNDS FOR MATCH OTHER FEDERAL PROGRAM FUNDS.—Notwithstanding any other provision of law, funds made available under this section may be used to pay the non-Federal matching share for other Federal program funds that are—
(A) expended in accordance with the requirements of the Federal program relating to activities funded and permitted by the Federal agency with all applicable laws, including—
(I) payment of costs to the State incurred in accordance with section 120; and

(ii) in paragraph (1), by inserting after subparagraph (B) the following:
(2) PLANNING AND ENVIRONMENTAL ASSESSMENT REQUIREMENTS.—A project funded under this section—
(A) is intended to enhance recreational opportunity;

(B) is not considered to be a highway project; and

(C) is not subject to—
(i) section 112, 116, 114, 135, 128, 217, or 301 of this title; or

(ii) section 303 of title 49.;

(2) REQUIREMENTS.—

(1) IN GENERAL.—A project funded under this section—
(A) is intended to enhance recreational opportunity;

(B) is not considered to be a highway project; and

(C) is not subject to—
(i) section 112, 116, 114, 135, 128, 217, or 301 of this title; or

(ii) section 303 of title 49.;

SEC. 1604. EXEMPTION OF INTERSTATE SYSTEM.

Subsection 103(c) of title 23, United States Code, is amended by adding at the end the following:
(5) EXEMPTION OF INTERSTATE SYSTEM.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Interstate System shall not be considered to be a historic site under section 303 of title 49 if in the determination of whether the Interstate System or portions of the Interstate System are listed on, or eligible for listing on, the National Register of Historic Places,

(B) INDIVIDUAL ELEMENTS.—A portion of the Interstate System that possesses an independent feature of historic significance, such as a historic bridge or a highly significant engineering feature, that would qualify independently for listing on the National Register of Historic Places, shall be considered to be a historic site under section 303 of title 49 or section 128 of this title, as applicable.;

SEC. 1605. STANDARDS.

Section 109 of title 23, United States Code, is amended by striking subsection (p) and inserting the following:
(p) CONTEXT SENSITIVE DESIGN.—

(1) IN GENERAL.—The Secretary shall encourage States to design projects funded under this title to be—

(A) allow for the preservation of environmental, scenic, or historic values;

(B) ensure the safe use of the facility; and

(C) provide for consideration of the context of the locality;

(D) encourage access for other modes of transportation; and

(E) comply with subsection (a).

(2) APPROVAL BY SECRETARY.—Notwithstanding subsections (b) and (c), the Secretary may approve a project described in paragraph (1) for the National Highway System if the project is designed to achieve the criteria specified in that paragraph.;

SEC. 1606. USE OF HIGH OCCUPANCY VEHICLE LANES.

Section 102 of title 23, United States Code, is amended by striking subsection (a) and inserting the following:
(a) HIGH OCCUPANCY VEHICLE LANE PASSENGER REQUIREMENTS.—

(1) DEFINITIONS.—In this subsection—

(A) RESPONSIBLE AGENCY.—The term ‘responsible agency’ means—

(i) a State transportation department;

(ii) a public authority, or a public or private entity designated by a State, to collect a toll from motor vehicles at an eligible toll facility.

(2) REQUIREMENTS.—

(A) IN GENERAL.—Subject to subparagraph (B), for each State, 1 or more responsible agencies shall establish the occupancy requirements of vehicles operating on high occupancy vehicle lanes;

(B) MINIMUM NUMBER OF OCCUPANTS.—Except as provided in paragraph (3), an occupancy requirement established under subparagraph (A) shall—

(i) require at least 2 occupants per vehicle for a vehicle operating on a high occupancy vehicle lane; and

(ii) in the case of a high occupancy vehicle lane that traverses an adjacent State, be established in consultation with the adjacent State.

(3) EXCEPTIONS TO HIGH OCCUPANCY REQUIREMENTS.—

(A) MOTORCycles.—For the purpose of this subsection, a motorcycle—

(i) shall not be considered to be a single occupant vehicle; and

(ii) shall be allowed to use a high occupancy vehicle lane unless a responsible agency or the Secretary determines that use of a high occupancy vehicle lane by a motorcycle would create a safety hazard; and

(B) LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—

(1) DEFINITION OF LOW EMISSION AND ENERGY-EFFICIENT VEHICLE.—In this subparagraph, the term ‘low emission and energy-efficient vehicle’ means a vehicle that—

(i) meets Tier II emission levels established in regulations promulgated by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)) for that make and model year; and

(ii) is certified by the Administrator of the Environmental Protection Agency, in consultation with the manufacturer, to have achieved not less than a 25-percent increase in city fuel economy or not less than a 25-percent increase in combined city-highway fuel economy relative to a comparable vehicle that is an internal combustion gasoline fueled vehicle (other than a vehicle that has propulsion energy from onboard hybrid sources); or

(bb) is a dedicated alternative fueled vehicle under section 301 of the Energy Policy Act of 1992 (42 U.S.C. 7521(i)).

(ii) COMPARABLE VEHICLE DETERMINATION.—Not later than 180 days after the date of enactment of this Act, the Administrator shall promulgate regulations to establish procedures for determining whether a vehicle meets the requirements of this paragraph.

(ii) OPERATIONAL REQUIREMENTS.—The term ‘seriously degraded’, with respect to a high occupancy vehicle lane, means, in the case of a high occupancy vehicle lane, the minimum average operating speed, performance threshold, and associated time period of the high occupancy vehicle lane, calculated and determined jointly by applicable responsible agencies and based on conditions unique to the roadway, are unsatisfactory.

(2) REQUIREMENTS.—

(A) IN GENERAL.—Subject to subparagraph (B), for each State, 1 or more responsible agencies shall establish the occupancy requirements of vehicles operating on high occupancy vehicle lanes;

(B) MINIMUM NUMBER OF OCCUPANTS.—Except as provided in paragraph (3), an occupancy requirement established under subparagraph (A) shall—

(i) require at least 2 occupants per vehicle for a vehicle operating on a high occupancy vehicle lane; and

(ii) in the case of a high occupancy vehicle lane that traverses an adjacent State, be established in consultation with the adjacent State.

(C) EXCEPTIONS TO HIGH OCCUPANCY REQUIREMENTS.—

(A) MOTORCycles.—For the purpose of this subsection, a motorcycle—

(i) shall not be considered to be a single occupant vehicle; and

(ii) shall be allowed to use a high occupancy vehicle lane unless a responsible agency or the Secretary determines that use of a high occupancy vehicle lane by a motorcycle would create a safety hazard; and

(B) LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—

(1) DEFINITION OF LOW EMISSION AND ENERGY-EFFICIENT VEHICLE.—In this subparagraph, the term ‘low emission and energy-efficient vehicle’ means a vehicle that—

(i) meets Tier II emission levels established in regulations promulgated by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)) for that make and model year; and

(ii) is certified by the Administrator of the Environmental Protection Agency, in consultation with the manufacturer, to have achieved not less than a 25-percent increase in city fuel economy or not less than a 25-percent increase in combined city-highway fuel economy relative to a comparable vehicle that is an internal combustion gasoline fueled vehicle (other than a vehicle that has propulsion energy from onboard hybrid sources); or

(bb) is a dedicated alternative fueled vehicle under section 301 of the Energy Policy Act of 1992 (42 U.S.C. 7521(i)).
Agency, in accordance with section 32908(b) of title 49, United States Code, shall establish guidelines and procedures for making the vehicle comparisons and performance calculations described in paragraph (aa).

“(iii) HOV lane performance.—

“(I) in general.—The responsible agency may permit the use of high occupancy vehicle lanes by vehicles that do not satisfy established occupancy requirements, as determined by the responsible agency, to use high occupancy vehicle lanes if the performance of the lanes is seriously degraded.

“(II) management.—In managing the use of high occupancy vehicle lanes by low emission and energy-efficient vehicles that do not meet applicable occupancy requirements as determined by the responsible agency, the responsible agency may increase the percentages described in clause (i)(I)(aa) as necessary to ensure that the performance of individual high occupancy vehicle lanes, and the entire high occupancy vehicle lane system, will not become seriously degraded.

“(III) continuous monitoring, evaluation, and reporting.—

“(a) in general.—A responsible agency shall continuously monitor, evaluate, and report on performance of those designated public transportation vehicles and those qualifying low emission and energy-efficient vehicles that do not meet applicable occupancy requirements, as determined by the responsible agency, to use high occupancy vehicle lanes if the responsible agency—

“(I) establishes a program that addresses how those low emission and energy-efficient vehicles are selected and certified;

“(II) establishes requirements for labeling qualifying low emission and energy-efficient vehicles; and

“(III) continuously monitors, evaluates, and reports on performance of those high occupancy vehicle lanes by vehicles that do not satisfy established occupancy requirements as necessary to ensure that the performance of those individual high occupancy vehicle lanes, and the entire high occupancy vehicle lane system, will not become seriously degraded.

“(B) toll setting for high occupancy vehicle lanes.—

“(I) in general.—A responsible agency may permit vehicles, in addition to the vehicles described in paragraphs (A)(i), and (B) of subsection (a) that do not satisfy established occupancy requirements, to use a high occupancy vehicle lane only if the responsible agency charges those vehicles a toll.

“(ii) applicable authority.—In imposing a toll under clause (i), a responsible agency shall—

“(I) be subject to section 129;

“(II) establish a toll program that addresses ways in which motorists may enroll and participate in the program;

“(III) develop, manage, and maintain a system that will automatically collect the tolls from covered vehicles;

“(IV) continuously monitor, evaluate, and report on performance of the system;

“(V) establish such policies and procedures as are necessary—

“(aa) to vary the toll charged in order to manage the demand for use of high occupancy vehicle lanes; and

“(bb) to enforce violations; and

“(VI) establish procedures to impose such restrictions on the use of high occupancy vehicle lanes by vehicles that do not satisfy established occupancy requirements as are necessary to ensure that the performance of individual high occupancy vehicle lanes, and the entire high occupancy vehicle lane system, will not become seriously degraded.

“(D) designated public transportation vehicle.—

“(I) definition of designated public transportation vehicle.—In this subparagraph, the term ‘designated public transportation vehicle’ means a vehicle that—

“(aa) is designated by a responsible agency as providing access to public facilities for improving bicycle and pedestrian safety;

“(bb) is operated under a contract with a public authority; and

“(cc) is eligible for the use of high occupancy vehicle lanes by vehicles that do not satisfy established occupancy requirements, as determined by the responsible agency.

“(II) in general.—A responsible agency may permit designated public transportation vehicles that do not satisfy established occupancy requirements to use high occupancy vehicle lanes if the responsible agency—

“(I) requires the clear and identifiable labeling of each designated public transportation vehicle operating under a contract with a public authority with the name of the public authority on all sides of the vehicle;

“(II) continuously monitors, evaluates, and reports on performance of those designated public transportation vehicles and those qualifying low emission and energy-efficient vehicles that do not meet applicable occupancy requirements, as determined by the responsible agency, to use high occupancy vehicle lanes if the performance of those individual high occupancy vehicle lanes, and the entire high occupancy vehicle lane system, will not become seriously degraded.

“(E) HOV lane management, operation, and monitoring.—

“(I) in general.—A responsible agency that permits any of the exceptions specified in this paragraph shall comply with clauses (i) and (ii).

“(II) performance monitoring, evaluation, and reporting.—A responsible agency described in clause (i) shall establish, manage, and support a performance monitoring, evaluation, and reporting program under which the responsible agency continuously monitors, assesses, and reports on the effects that any vehicle permitted to use a high occupancy vehicle lane under an exception under this paragraph may have on the operation of—

“(a) individual high occupancy vehicle lanes; and

“(b) the entire high occupancy vehicle lane system.

“(F) operation of HOV lane or system.—Any responsible agency that receives funds under title 23, United States Code, shall—

“(I) develop and maintain a system for managing the use of high occupancy vehicle lanes so as to provide uniform service throughout the State, so long as those idling reduction measures do not—

“(a) reduce the number of designated truck parking spaces at any given rest or recreation area; or

“(b) preclude the use of those spaces by trucks employing alternative idle reduction technologies; and

“(c) charge a fee, or permit the charging of a fee, for the use of those parking spaces actively providing power to a truck to reduce idling.

“(II) purpose.—The exclusive purpose of the facilities described in section 1216(b) (or similar technologies) shall be to enable operators of motor vehicles used for commercial purposes—

“(a) to reduce idling of a truck while parked in the rest or recreation area; and

“(b) to use installed or other equipment specifically designed to reduce idling of a truck, or provide alternative power for supporting driver comfort, while parked.”

“SEC. 1608. IDLING REDUCTION FACILITIES IN INTERSTATE RIGHTS-OF-WAY.”

Section 111 of title 23, United States Code, is amended by adding at the end the following:

“(d) Idling reduction facilities in interstate rights-of-way.—

“(I) in general.—Notwithstanding subsection (a), a State may—

“(A) permit electrics or other idling reduction facilities and equipment, for use by motor vehicles used for commercial purposes, to be placed in rest and recreation areas, and in safety rest areas, constructed or located on rights-of-way of the Interstate System in the State, so long as those idling reduction measures do not—

“(a) reduce the existing number of designated truck parking spaces at any given rest or recreation area; or

“(b) preclude the use of those spaces by trucks employing alternative idle reduction technologies; and

“(B) charge a fee, or permit the charging of a fee, for the use of those parking spaces actively providing power to a truck to reduce idling.

“(II) purpose.—The exclusive purpose of the facilities described in section 1216(b) (or similar technologies) shall be to enable operators of motor vehicles used for commercial purposes—

“(a) to reduce idling of a truck while parked in the rest or recreation area; and

“(b) to use installed or other equipment specifically designed to reduce idling of a truck, or provide alternative power for supporting driver comfort, while parked.”

“SEC. 1609. TOLL PROGRAMS.”

(a) Interstate system reconstruction and rehabilitation pilot program.—

“Section 1216(b) of the Transportation Equity Act for the 21st Century (23 U.S.C. 129 note; 112 Stat. 212)—

“(I) is amended—

“(A) by striking ‘The Secretary’ and inserting ‘Notwithstanding section 301, the Secretary’; and

“(B) by striking paragraph (2) and inserting the following:

“(2) limitations.—The Secretary may permit the collection of tolls under this subsection on 1 facility in the State of Virginia.”;
Section 129 of title 23, United States Code, and moved to (E) as subparagraphs (C) and (D), respectively; and (D) in paragraph (4)—

(i) by striking subparagraph (A) and inserting the following:—

(A) the State’s analysis showing that financing the reconstruction or rehabilitation of a facility with the collection of tolls under this pilot program is the most efficient, economical, or expedient way to advance the project; and

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

(B) the facility needs reconstruction or rehabilitation; or (C) the facility has a reasonable expectation that the tolls vary in price according to time of day or level of traffic, as appropriate to manage congestion or improve air quality.

(2) VARIABLE PRICE REQUIREMENT. — The Secretary shall require, for each high occupancy vehicle facility that charges tolls under this subsection, that the tolls vary in price according to time of day or level of traffic, as appropriate to manage congestion or improve air quality.

(3) HOV VARIABLE PRICING REQUIREMENT. — In addition to the exceptions to the high occupancy vehicle passenger requirements established under section 102(a)(2), a State may permit motor vehicles with fewer than 2 occupants to operate in high occupancy vehicle lanes as part of a variable toll pricing program established under this subsection.

(4) AGREEMENT. —

(i) IN GENERAL. — Before the Secretary may permit a facility to charge tolls under this subsection, the Secretary and the applicable State, public authority, or private entity designated by a State shall enter into an agreement for each facility stating the conditions described in subparagraphs (A) and (B).

(ii) TERMINATION. — An agreement under clause (i) shall terminate with respect to a facility upon the date at which the facility ceases to exist.

(iii) DEBT. —

(I) IN GENERAL. — If there is any debt outstanding on a facility at the time at which the decision is made to discontinue the program and to distribute the revenue to the State, the facility may continue to charge tolls in accordance with the terms of the agreement until such time as the debt is retired.

(ii) NOTICE. — On retirement of the debt of a tolled facility, the applicable State, public authority, or private entity designated by a State shall provide notice to the public of that retirement.

(5) FUNDING. —

(A) A description of the congestion or air quality problems sought to be addressed under the program;

(B) a description of—

(i) the goals sought to be achieved under the program; and

(ii) the performance measures that would be used to gauge the success made toward reaching those goals;

(C) such other information as the Secretary may require.

(6) INTEROPERABILITY. —

(A) RULE. —

(i) IN GENERAL. — Not later than 180 days after the date of enactment of this paragraph the Secretary shall promulgate a final rule specifying requirements, standards, or performance specifications for automated toll collection systems implemented under this section.

(ii) DEVELOPMENT. — In developing that rule, which shall be designed to maximize the interoperability of electronic collection systems, the Secretary shall, to the maximum extent practicable—

(I) seek to accelerate progress toward the national goal of achieving a nationwide interoperable electronic toll collection system;

(II) take into account the use of noncash electronic technology currently deployed within an appropriate geographical area of travel and the noncash electronic technology likely to be in use within the next 5 years; and

(III) seek to minimize additional costs and maximize convenience to users of toll facility and to the toll facility owner or operator.

(B) FUTURE MODIFICATIONS. — As the state of technology progresses, the Secretary shall modify the rule promulgated under subparagraph (A), as appropriate.

(C) REPORTING. —

(A) IN GENERAL. — The Secretary, in cooperation with State and local agencies and other programs participating in and with opportunity for public comment, shall—

(i) develop and publish performance goals for each FAST lane project;

(ii) establish a program for regular monitoring and reporting on the achievement of performance goals, including—

(I) impacts on travel, traffic, and air quality;

(II) distribution of benefits and burdens; and

(III) use of alternative transportation modes; and

(iii) use of revenues to meet transportation or impact mitigation needs.

(B) REPORTS TO CONGRESS. — The Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

(1) not later than 1 year after the date of enactment of this subsection, and annually thereafter, a report that describes in detail the uses of funds under this section in accordance with paragraph (6)(D); and

(ii) not later than 3 years after the date of enactment of this subsection, and every 3 years thereafter, a report that describes any success of the program under this subsection in meeting congestion reduction and other performance goals established for FAST lane programs.

(D) FUNDING. —

(A) AUTHORIZATION OF APPROPRIATIONS. — There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out pre-implementation studies and post-implementation evaluations of projects planned or implemented under this subsection $10,324,918 for each of fiscal years 2005 through 2009.

(B) AVAILABILITY. — Funds allocated by the Secretary to a State under this subsection shall remain available for obligation for a period of 3 years after the last day of the fiscal year for which the funds were authorized.

(C) CONTRACT AUTHORITY. — Funds authorized to be appropriated under this paragraph shall be available for obligation in the same manner as if the funds were appropriated under this chapter, except that the Federal share of the cost of any project carried out under this subsection and the availability of funds authorized by this paragraph shall be determined in accordance with the provisions of section 102(a)(16).

(D) PROGRAM PROMOTION. — Notwithstanding any other provision of this section, the Secretary shall use an amount not to exceed 2 percent of the funds made available under subparagraph (A)—

(i) to make grants to promote the purposes of the program under this subsection;

(ii) to provide technical support to State and local governments or other public or private entities involved in implementing or considering FAST lane programs; and

(iii) to conduct research on variable pricing that will support State or local efforts to initiate those pricing requirements.

(E) LIMITATION ON APPORTIONMENTS AND ALLOCATIONS. — Revenues collected from tolls established under this subsection shall not be
taken into account in determining the apportionments and allocations that any State or transportation district within a State shall be entitled to receive under or in accordance with this chapter.

“(9) COMPLIANCE.—The Secretary shall ensure that any project or activity carried out under this section complies with requirements under section 149 of this title and section 307 of title 49.

“(10) VOLUNTARY USE.—Nothing in this subsection requires any highway user to use a FAST lane.

“(11) ENVIRONMENTAL REQUIREMENTS.—Nothing in this subsection affects any environmental requirement applicable to the construction or operation of any toll facility. In general, any toll facility under this title or any other provision of law.

“(c) CONFORMING AMENDMENTS.—


“(2) CONTINUATION OF PROGRAM.—Notwithstanding the amendment made by paragraph (1), the Secretary shall monitor and allow any value pricing program established under a cooperative agreement in effect on the day before the date of enactment of this Act to continue.

SEC. 1610. FEDERAL REFERENCE METHOD.

(a) IN GENERAL.—Section 6102 of the Transportation Equity Act for the 21st Century (42 U.S.C. 10701) is amended by striking subsection (e) and inserting the following:

“(e) FIELD STUDY.—Not later than 2 years after the date of enactment of this Act, the Administrator shall:

“(1) conduct a field study of the ability of the PM2.5 Federal Reference Method to differentiate those particles that are larger than 2.5 micrometers in diameter;

“(2) develop a Federal reference method to measure directly particles that are larger than 2.5 micrometers in diameter without reliance on subtracting from coarse particle measurements those particles that are equal to or smaller than 2.5 micrometers in diameter;

“(3) develop a method of measuring the composition of coarse particles; and

“(4) submit a report on the study and responsibilities of the Administrator under paragraphs (1) through (3) to—

“(A) the Committee on Commerce of the House of Representatives; and

“(B) the Committee on Environment and Public Works of the Senate.”

SEC. 1611. ADDITION OF PARTICULAR MATTER AREAS TO CMAQ.

(a) IN GENERAL.—Section 104(b)(2) of title 23, United States Code, is amended—

“(1) in subparagraph (B)—

“(A) in the matter preceding clause (i), by striking “ozone or carbon monoxide” and inserting “ozone, carbon monoxide, or fine particulate matter (PM2.5)”;

“(B) by striking clause (i) and inserting the following:

“(i) 1.0, if at the time of apportionment, the area is a nonattainment or maintenance area; or

“(C) in clause (vi), by striking “or” after the semicolon; and

“(D) in clause (vii)—

“(i) striking the area as described in section 149(b) for ozone, and inserting “area for ozone” (as described in section 149(b) or for PM-2.5); and

“(ii) by striking the period at the end and inserting a semicolon;

“(b) by adding at the end the following:

“(A) area that is not a nonattainment or maintenance area as described in section 149(b) for ozone or carbon monoxide, but is an area designated nonattainment under the PM-2.5 standard; or

“(B) is eligible under the surface transportation program under section 133.

“(c) RESPONSIBILITY OF STATES.—Section 149 of title 23, United States Code, is amended by adding at the end the following:

“(d) COST-EFFECTIVE EMISSION REDUCTION STRATEGIES.—

“(1) DEFINITIONS.—In this subsection:

“(A) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Environmental Protection Agency.

“(B) CMAQ RESOURCES.—The term ‘CMAQ resources’ means resources available to a State to carry out the congestion mitigation and air quality improvement program under this section.

“(C) DIESEL RETROFIT TECHNOLOGY.—The term ‘diesel retrofit technology’ means a replace-

ment, repowering, rebuilding, after treatment, or other technology, as determined by the Administrator.

“(2) EMISSION REDUCTION STRATEGIES.—Each State shall develop, implement, and periodically revise emission reduction strategies comprised of any methods determined to be appropriate by the Administrator that are consistent with section 209 of the Clean Air Act (42 U.S.C. 7542) for engines and vehicles that are used in construction projects that are—

“(A) located in nonattainment areas for ozone, PM10, or PM2.5 (as defined under the Clean Air Act (42 U.S.C. 7401 et seq.)); and

“(B) funded, in whole or in part, under this title.

“(3) STATE CONSIDERATIONS.—In developing emission reduction strategies, each State—

“(A) may include any means to reduce emissions that are determined to be appropriate by the State; but

“(B) shall—

“(i) consider guidance issued by the Administrator under paragraph (5);

“(ii) limit technologies to those identified by the Administrator under paragraph (5);

“(iii) authorize the use of contract procedures and technical assistance regarding the implementa-

tion of emission reduction strategies; and

“(iv) give special consideration to small businesses that participate in projects funded under this title;

“(v) place priority on the use of—

“(A) diesel retrofit technologies and activities; and

“(B) cost-effective strategies;

“(VI) financial incentives using CMAQ re-

sources and State resources; and

“(VII) strategies that maximize health benefits; and

“(vi) not include any activities prohibited by paragraph (4).

“(4) STATE LIMITATIONS.—Emission reduction strategies may not—

“(A) authorize or recommend the use of any equipment or vehicle use during specified per-

iods of a year;

“(B) authorize or recommend the use of contract procedures that would require retrofit ac-

tions, unless funds are made available by the State that are consistent with section 209 of the Clean Air Act (42 U.S.C. 7542) for engines and vehicles that are used in construction projects that are—

“(A) located in nonattainment areas for ozone, PM10, or PM2.5 (as defined under the Clean Air Act (42 U.S.C. 7401 et seq.)); and

“(B) are carried out by converting, repowering, rebuilding, after treatment, or other technology, as determined by the Administrator.

“(C) authorize the use of contract procedures that would discriminate between bidders on the basis of a bidder’s existing equipment or existing vehicle emission technology.

“(5) EMISSION REDUCTION STRATEGY GUID-

ANCE.—The Administrator, in consultation with the States that are consistent with section 209 of the Clean Air Act (42 U.S.C. 7542) for engines and vehicles that are used in construction projects that are—

“(A) located in nonattainment areas for ozone, PM10, or PM2.5 (as defined under the Clean Air Act (42 U.S.C. 7401 et seq.)); and

“(B) are carried out by converting, repowering, rebuilding, after treatment, or other technology, as determined by the Administrator.

“(6) COST-EFFECTIVE EMISSION REDUCTION STRATEGIES.—

“(A) Diesel emission reduction technologies comprised of those methods determined to be appropriate by the Administrator that are consistent with section 209 of the Clean Air Act (42 U.S.C. 7542) for engines and vehicles that are used in construction projects that are—

“(A) located in nonattainment areas for ozone, PM10, or PM2.5 (as defined under the Clean Air Act (42 U.S.C. 7401 et seq.)); and

“(B) are carried out by converting, repowering, rebuilding, after treatment, or other technology, as determined by the Administrator.
verification by the Administrator or the California Air Resources board that is submitted not later than 18 months of the date of enactment of this Act; “(C) available information regarding the emission reduction effectiveness and cost effectiveness of technologies identified in this paragraph, taking into consideration health effects; “(D) financial incentives that use CMAQ resources and State resources; “(iii) procedures to facilitate access by contractors to financial incentives; “(iv) contract incentives, allowances, and procedures; “(c) methods of voluntary emission reductions; and “(d) any means that may be employed to reduce emissions from construction activities; and “(6) PRIORITY.—States and metropolitan planning organizations shall give priority in distributing funds received for congestion management and air quality projects and programs to finance diesel retrofit and cost-effective emission reduction activities identified by States in the emission reduction strategies developed under this subsection. “(7) NO EFFECT ON AUTHORITY OR RESTRICTIONS.—Nothing in this subsection modifies any authority or restriction established under the Clean Air Act (42 U.S.C. 7401 et seq.).”.

(d) AVAILABILITY OF FUNDS FOR THE STATE OF MAINE.—In addition to other eligible uses, the State of Maine may use funds apportioned under section 104(b)(2) to support, through September 30, 2009, the operation of passenger rail service between Boston, Massachusetts, and Portland, Maine.

(e) RESPONSIBILITY OF THE STATE OF MONTANA.—In addition to other eligible uses, the State of Montana may use funds apportioned under section 104(b)(2) to support, through October 1, 2004, the establishment of intermodal transportation facilities that serve the State and bordering States.

SEC. 1613. IMPROVED INTERAGENCY CONSULTATION.

Section 149 of title 23, United States Code, is amended by adding at the end the following: “(g) INTERAGENCY CONSULTATION.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall establish a procedure for the exchange of information on significant projects, including a procedure for the exchange of information on significant projects identified by the Administrator under section 93.126 or 127 of title 40, Code of Federal Regulations (as in effect on October 1, 2004), or other measures taken by the Administrator under the Clean Air Act (42 U.S.C. 7401 et seq.), to ensure that the information exchanged is appropriate and timely for purposes of this section.”.

SEC. 1614. EVALUATION AND ASSESSMENT OF REGIONAL PROJECTS.

Section 149 of title 23, United States Code, is amended by adding at the end the following: “(h) EVALUATION AND ASSESSMENT OF REGIONAL PROJECTS.— “(1) IN GENERAL.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall evaluate and assess the effectiveness and projected benefits of the projects described in this section, including the projects described in subsections (a) and (b) of section 135 of title 23, United States Code, and the projects described in section 149 of title 23, United States Code, and shall, by not later than the date of enactment of this Act, prepare a report that describes the findings of the evaluation and includes recommendations for improving such programs. “(2) REGIONALLY SIGNIFICANT PROJECTS.— “(C) except that the Regional Planning Organization shall not be required to consider any project that is not a regionally significant project.

SEC. 1615. SYNCHRONIZED PLANNING AND CONFORMANCE TIMELINES, REQUIREMENTS, AND FUNDING.

SEC. 1616. DEVELOPMENT OF LONG-RANGE TRANSPORTATION PLANS. 

SEC. 1617. STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAMS.

SEC. 1618. DEVELOPMENT OF REGIONAL TRANSPORTATION PLANS.

SEC. 1619. REGIONAL TRANSPORTATION PLANS.

SEC. 1620. MONITORING AND REPORTING REQUIREMENTS.

SEC. 1621. INCLUSION OF PROFESSIONAL STANDARDS.

SEC. 1622. CONFORMITY DETERMINATION.

SEC. 1623. REGIONAL PLANNING ORGANIZATIONS.

SEC. 1624. REGULATION OF VARIOUS ACTIVITIES.

SEC. 1625. SPECIAL PROVISIONS.

SEC. 1626. COORDINATION OF FEDERAL STUDIES AND REPORTS.

SEC. 1627. INVESTIGATIONS AND REPORTS.

SEC. 1628. SUPPORT FOR REGIONALLY SIGNIFICANT PROJECTS.

SEC. 1629. DEFINITIONS.

SEC. 1630. AUTHORITY.

SEC. 1631. INTERNAL CONTROL.

SEC. 1632. COOPERATION WITH THE NATIONAL ACADEMY OF SCIENCES.

SEC. 1633. DETAILED BUDGETARY IMPLEMENTATION.

SEC. 1634. CONFORMITY DETERMINATION.

SEC. 1635. SUPPORT FOR REGIONALLY SIGNIFICANT PROJECTS.

SEC. 1636. DEFINITIONS.

SEC. 1637. AUTHORITY.

SEC. 1638. INTERNAL CONTROL.

SEC. 1639. COOPERATION WITH THE NATIONAL ACADEMY OF SCIENCES.

SEC. 1640. DETAILED BUDGETARY IMPLEMENTATION.

SEC. 1641. CONFORMITY DETERMINATION.

SEC. 1642. SUPPORT FOR REGIONALLY SIGNIFICANT PROJECTS.

SEC. 1643. DEFINITIONS.

SEC. 1644. AUTHORITY.

SEC. 1645. INTERNAL CONTROL.

SEC. 1646. COOPERATION WITH THE NATIONAL ACADEMY OF SCIENCES.

SEC. 1647. DETAILED BUDGETARY IMPLEMENTATION.

SEC. 1648. CONFORMITY DETERMINATION.

SEC. 1649. SUPPORT FOR REGIONALLY SIGNIFICANT PROJECTS.

SEC. 1650. DEFINITIONS.

SEC. 1651. AUTHORITY.

SEC. 1652. INTERNAL CONTROL.

SEC. 1653. COOPERATION WITH THE NATIONAL ACADEMY OF SCIENCES.

SEC. 1654. DETAILED BUDGETARY IMPLEMENTATION.

SEC. 1655. CONFORMITY DETERMINATION.

SEC. 1656. SUPPORT FOR REGIONALLY SIGNIFICANT PROJECTS.

SEC. 1657. DEFINITIONS.

SEC. 1658. AUTHORITY.

SEC. 1659. INTERNAL CONTROL.

SEC. 1660. COOPERATION WITH THE NATIONAL ACADEMY OF SCIENCES.

SEC. 1661. DETAILED BUDGETARY IMPLEMENTATION.

SEC. 1662. CONFORMITY DETERMINATION.
SEC. 1615. TRANSPORTATION PROJECTS.

(A) IN GENERAL.—Until such time as a motor vehicle emission budget from an implementation plan submitted for national ambient air quality standards is determined to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004), or the submitted implementation plan is approved, conformity of such a plan, program, or project shall be demonstrated, in accordance with clauses (i) and (ii) and as selected through the consultation process required under paragraph (4)(D)(ii), with—

(i) a motor vehicle emission budget that has been found adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004), or that has been approved, from an implementation plan for the most recent prior applicable national ambient air quality standard addressing the same pollutant; or

(ii) other such tests as the Administrator shall determine to ensure that—

(I) the transportation plan or program—

(aa) is consistent with the most recent estimates of mobile source emissions;

(bb) provides for the expeditious implementation of transportation control measures in the applicable implementation plan; and

(cc) with respect to an ozone or carbon monoxide nonattainment area, contributes to annual emissions reductions consistent with sections 182(b)(1) and 187(a)(7); and

(ii) the transportation project—

(aa) comes from a conforming transportation plan and program described in this subparagraph; and

(bb) in a carbon monoxide nonattainment area, eliminates or reduces the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.

(B) DETERMINATION FOR A TRANSPORTATION PROJECT IN A CARBON MONOXIDE NONATTAINMENT AREA.—A determination under subparagraph (A)(ii)(bb) may be made as part of either the conformity test for the transportation program or for the individual transportation project taken as a whole during the environmental review phase of transportation project development.

SEC. 1616. REDUCED BARRIERS TO AIR QUALITY IMPROVEMENTS.

Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) is amended by striking paragraph (3) and inserting the following:

(3) METHODS OF CONFORMITY DETERMINATION BEFORE BUDGET IS AVAILABLE.

(A) IN GENERAL.—Until such time as a motor vehicle emission budget from an implementation plan submitted for national ambient air quality standards is determined to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004), or the submitted implementation plan is approved, conformity of such a plan, program, or project shall be demonstrated, in accordance with clauses (i) and (ii) and as selected through the consultation process required under paragraph (4)(D)(ii), with—

(i) a motor vehicle emission budget that has been found adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004), or that has been approved, from an implementation plan for the most recent prior applicable national ambient air quality standard addressing the same pollutant; or

(ii) other such tests as the Administrator shall determine to ensure that—

(I) the transportation plan or program—

(aa) is consistent with the most recent estimates of mobile source emissions;

(bb) provides for the expeditious implementation of transportation control measures in the applicable implementation plan; and

(cc) with respect to an ozone or carbon monoxide nonattainment area, contributes to annual emissions reductions consistent with sections 182(b)(1) and 187(a)(7); and

(ii) the transportation project—

(aa) comes from a conforming transportation plan and program described in this subparagraph; and

(bb) in a carbon monoxide nonattainment area, eliminates or reduces the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.

(B) DETERMINATION FOR A TRANSPORTATION PROJECT IN A CARBON MONOXIDE NONATTAINMENT AREA.—A determination under subparagraph (A)(ii)(bb) may be made as part of either the conformity test for the transportation program or for the individual transportation project taken as a whole during the environmental review phase of transportation project development.

SEC. 1617. REDUCED BARRIERS TO AIR QUALITY IMPROVEMENTS.

Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) is amended by—

(1) in accordance with a schedule that is consistent with the schedule provided for control measures in the implementation plan; or

(iii) if the implementation plan date for implementation of the control measure to be replaced has passed, as soon as practicable after the implementation plan date but not later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

(iii) the substitute and additional control measures are accompanied with evidence of adequate performance authority under State or local law to implement, monitor, and enforce the control measures;

(iv) the substitute and additional control measures were developed through a collaborative process that included—

(I) participation by representatives of all affected jurisdictions (including local air pollution control agencies, the State air pollution control agency, and State and local transportation agencies);

(ii) consultation with the Administrator; and

(iii) reasonable public notice and opportunity for comment; and

(c) (v) with respect to an ozone or carbon monoxide nonattainment area, if the substitute or additional control measures were developed through a collaborative process that included—

(I) the transportation plan or program;

(aa) is consistent with the most recent estimates of mobile source emissions;

(bb) provides for the expeditious implementation of transportation control measures in the applicable implementation plan; and

(cc) with respect to an ozone or carbon monoxide nonattainment area, contributes to annual emissions reductions consistent with sections 182(b)(1) and 187(a)(7); and

(ii) the transportation project—

(aa) comes from a conforming transportation plan and program described in this subparagraph; and

(bb) in a carbon monoxide nonattainment area, eliminates or reduces the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.

(B) DETERMINATION FOR A TRANSPORTATION PROJECT IN A CARBON MONOXIDE NONATTAINMENT AREA.—A determination under subparagraph (A)(ii)(bb) may be made as part of either the conformity test for the transportation program or for the individual transportation project taken as a whole during the environmental review phase of transportation project development.

SEC. 1618. AIR QUALITY MONITORING DATA INFLUENCED BY EXCEPTIONAL EVENTS.

(A) IN GENERAL.—Section 319 of the Clean Air Act (42 U.S.C. 7602) is amended—

(i) by striking the section heading and all that follows through “after notice and opportunity for public hearing” and inserting the following:

“SEC. 319. AIR QUALITY MONITORING.

(A) IN GENERAL.—After notice and opportunity for public hearing”; and

(ii) by adding at the end the following:

(1) AIR QUALITY MONITORING DATA INFLUENCED BY EXCEPTIONAL EVENTS.—

(I) DEFINITION OF EXCEPTIONAL EVENT.—In this section:

(A) IN GENERAL.—The term ‘exceptional event’ means an event that—

(i) affects air quality;

(ii) is not reasonably controllable or preventable;

(iii) is—

(I) a natural event; or

(ii) an event caused by human activity that is unlikely to recur at the same location; and

(iv) is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) to be an exceptional event.

(B) EXCLUSIONS.—The term ‘exceptional event’ does not include—

(i) stagnation of air masses or meteorological inversions;

(ii) a meteorological event involving high temperatures or lack of precipitation; or

(iii) air pollution relating to source noncompliance.

(2) REGULATIONS.

(A) PROPOSED REGULATIONS.—Not later than March 1, 2006, after consultation with Federal land managers and State air pollution control agencies, the Administrator shall publish in the Federal Register proposed regulations governing the review and handling of air quality monitoring data influenced by exceptional events.

(B) FINAL REGULATIONS.—Not later than 1 year after the date on which the Administrator publishes proposed regulations under subparagraph (A), and after providing an opportunity for interested persons to make oral presentations of views, data, and arguments regarding the proposed regulations, the Administrator shall promulgate final regulations governing the review and handling of air quality monitoring data influenced by an exceptional event that are consistent with public comments.

(C) PRINCIPLES AND REQUIREMENTS.—

(i) the principle that protection of public health is the highest priority;

(ii) the principle that timely information should be provided to the public in any case in which the air quality is unhealthy;

(iii) the principle that all ambient air quality data should be included in a timely manner, an appropriate Federal air quality database that is accessible to the public;

(iv) the principle that each State must take necessary measures to safeguard public health resulting from the susceptibility of the air pollution to air quality monitoring data influenced by exceptional events;

(v) the principle that air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses.

(2) REQUIREMENTS.—Regulations promulgated under this section shall, at a minimum, provide that—

(i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies;

(ii) a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specified air pollution concentration at a particular air quality monitoring location;

(iii) there is a public process for determining whether an event is exceptional; and

(iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Environmental Protection Agency with respect to exceedances of national ambient air quality standards.

(3) INTERIM PROVISION.—Until the effective date of a regulation promulgated under paragraph (2), the following guidance issued by the Administrator shall continue to apply:

(A) Guidance on the identification and use of air quality monitoring data affected by exceptional events (July 1986).

(B) Areas affected by PM-10 natural events, May 30, 1996.

(C) Appendices I, K, and N to part 30 of title 40, Code of Federal Regulations.

SEC. 1619. CONFORMING AMENDMENTS.

Section 176(c)(4) of the Clean Air Act (42 U.S.C. 7506(c)(4)) is amended—
(1) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (F), respectively; (2) by striking "(4)(A) No later than one year after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate" and inserting the following: 

"(4) CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY.

(A) IN GENERAL.—The Administrator shall promulgate, and periodically update, the following:

(1) DESIGNATION.—The Administrator shall promulgate, and periodically update, a "suit" and inserting the following:

(2) TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS.—The Administrator, with the concurrence of the Secretary of Transportation, shall promulgate, and periodically update, the following:

(3) CIVIL ACTION TO COMPEL PROMULGATION.—A civil action; and

(4) by striking subparagraph (E) (as redesignated by paragraph (1)) and inserting the following:

"(E) INCLUSION OF CRITERIA AND PROCEDURES IN SIP.—Not later than 2 years after the date of enactment of this Act, the State or local government shall include in the SIP plan criteria and procedures for consultation in accordance with the Administrator's criteria and procedures for consultation required by subparagraph (D)(i).

SEC. 1620. HIGHWAY STORMWATER DISCHARGE MITIGATION PROGRAM.

(a) HIGHWAY STORMWATER MITIGATION PROJECTS.—Section 133(d) of title 23, United States Code (as amended by section 1601(a)(2)(B)), is amended by adding at the end the following:

"(2) ELIGIBLE MITIGATION PROJECT.—Of the amount appropriated to a State under section 164(h)(2) for a fiscal year, 2 percent shall be available only for projects and activities carried out under section 167.

(b) HIGHWAY STORMWATER DISCHARGE MITIGATION PROGRAM.—Subchapter 1 of chapter 1 of title 23, United States Code (as amended by section 1601(a)(2)(B)), is amended by adding at the end the following:

"§167. Highway stormwater discharge mitigation program.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) ELIGIBLE MITIGATION PROJECT.—The term "eligible mitigation project" means a practice or technique that—

(A) improves stormwater discharge water quality;

(B) attains preconstruction hydrology;

(C) promotes infiltration of stormwater into groundwater;

(D) reduces groundwater;

(E) minimizes stream bank erosion;

(F) promotes natural filters;

(G) otherwise mitigates water quality impacts.

(3) FEDERAL- AID HIGHWAY AND ASSOCIATED FACILITY.—The term "Federal-aid highway and associated facility" means—

(A) a Federal-aid highway; or

(B) a facility or land owned by a State (or political subdivision of a State) that is directly associated with a Federal-aid highway.

(4) HIGHWAY STORMWATER DISCHARGE.—The term "highway stormwater discharge" means stormwater discharge from a Federal-aid highway, or a Federal-aid highway and associated facility, that was constructed before the date of enactment of this section.

(5) HIGHWAY STORMWATER DISCHARGE MITIGATION.—The term "highway stormwater discharge mitigation" means—

(A) the reduction of water quality impacts of stormwater discharges from Federal-aid highways or Federal-aid highways and associated facilities; or

(B) the enhancement of groundwater recharge from stormwater discharges from Federal-aid highways or Federal-aid highways and associated facilities.

(6) PROGRAM.—The term "program" means the highway stormwater discharge mitigation program established under subsection (b).

(b) ESTABLISHMENT.—The Secretary shall establish a highway stormwater discharge mitigation program—

(1) to improve the quality of stormwater discharge from Federal-aid highways or Federal-aid highways and associated facilities; and

(2) to enhance groundwater recharge.

(7) PRIORITY OF PROJECTS.—For projects funded from the allocation under section 133(d)(6), the Secretary shall give priority to projects sponsored by a State or local government that assist the State or local government in complying with the Federal Water Pollution Control Act (42 U.S.C. 1321 et seq.).

(c) GUIDANCE.—(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Administrator, shall issue guidance to assist States in carrying out this section.

(2) REQUIREMENTS FOR GUIDANCE.—The guidance issued under paragraph (1) shall include information concerning innovative technologies and nonstructural best management practices to mitigate highway stormwater discharges.

(d) CONFORMING AMENDMENT.—The analysis for the Federal-aid highway and associated facility program established under section 167 shall be included in the plan submitted to Congress by the Federal-aid highway and associated facility program established under section 167.

SEC. 1621. FEDERAL PROCUREMENT OF RECYCLED COOLANT.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the President of the United States shall conduct a review of Federal procurement policy of off-site recycled coolant.

(b) ELEMENTS.—In conducting the review under subsection (a), the President shall consider recycled coolant produced from processes that—

(1) are energy efficient;

(2) generate no hazardous waste (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903));

(3) produce no emissions of air pollutants;

(4) present lesser health and safety risks to employees at a plant or facility; and

(5) recover at least 97 percent of the glycols from used antifreeze feedstock.

SEC. 1622. CLEAN SCHOOL BUS PROGRAM.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) ELIGIBILITY FOR 50 PERCENT GRANTS.—The term "eligibility for 50 percent grants" means a particulate filter or other emissions control equipment that is certified by the Administrator or the California Air Resources Board as an effective emission reduction technology when installed on an existing school bus.

(3) REFINISHED.—The term "refurbished" means the Secretary of Energy.

(4) ULTRA-LOW SULFUR DIESEL FUEL.—The term "ultra-low sulfur diesel fuel" means diesel fuel that contains sulfur at not more than 15 parts per million.

(b) PROGRAM FOR RETROFIT OR REPLACEMENT OF CERTAIN EXISTING SCHOOL BUSES WITH CLEAN SCHOOL BUSES.—

(1) ESTABLISHMENT.—(A) IN GENERAL.—The Administrator, in consultation with the Secretary and other appropriate Federal departments and agencies, shall establish a program for awarding grants on a competitive basis to eligible recipients for the replacement, retrofit (including repowering, aftertreatment, and remanufactured engines) of, or purchase of alternative fuels for, certain existing school buses.

(B) BALANCING.—In awarding grants under this section, the Administrator shall, to the maximum extent practicable, achieve an appropriate balance between awarding grants—

(i) to replace school buses;

(ii) to install retrofit technologies; and

(iii) to purchase and use alternative fuel.

(2) PRIORITY OF GRANT APPLICATIONS.—(A) REPLACEMENT.—In the case of grant applications to replace school buses, the Administrator shall give priority to applicants that propose to replace school buses manufactured before model year 1977.

(B) RETROFITTING.—In the case of grant applications to retrofit school buses, the Administrator shall give priority to applicants that propose to retrofit school buses manufactured in or after model year 1991.

(3) USE OF SCHOOL BUS FLEET.—

(A) IN GENERAL.—All school buses acquired or retrofitted with funds provided under this section shall be operated as part of the school bus fleet for which the grant was made for not less than 5 years.

(B) MAINTENANCE, OPERATION, AND FUELING.—Notwithstanding this section, school buses and retrofit technology shall be maintained, operated, and fueled according to manufacturer recommendations or State requirements.

(4) RETROFIT GRANTS.—The Administrator may award grants for up to 100 percent of the retrofit technologies and installation costs.

(5) REPLACEMENT GRANTS.—

(A) ELIGIBILITY FOR REPLACEMENT GRANTS.—The Administrator may award grants for replacement of school buses in the amount of up to 1/2

hicle weight of greater than 14,000 pounds that—

(A) is powered by a heavy duty engine; and

(B) is operated solely on an alternative fuel or ultra-low sulfur diesel fuel.

(2) Allocating Funds.—In awarding grants for replacement of school buses—

(i) 1 or more local or State governmental entities responsible for—

(I) providing school bus service to 1 or more public school systems; or

(II) the purchase of school buses; or

(iii) the purchase of school buses; or

(ii) 1 or more contracting entities that provide school bus service to 1 or more public school systems; or

(iii) a nonprofit school transportation association.

(B) SPECIAL REQUIREMENTS.—In the case of eligible recipients identified under clauses (ii) and (iii), the Administrator shall establish timely and appropriate requirements for notice and may establish timely and appropriate requirements for approval by the public school systems that would be served by buses purchased or retrofit using grant funds made available under this section.

(5) RETROFIT TECHNOLOGY.—The term "retrofit technology" means a particular filter or other emissions control equipment that is certified by the Administrator or the California Air Resources Board as an effective emission reduction technology when installed on an existing school bus.

(6) FUNDING.—The funds available under this section are limited to the amount made available under this section.
of the acquisition costs (including fueling infrastructure) for—

(i) clean school buses with engines manufactured in model year 2005 or 2006 that emit not more than—

(1) 1.8 grams per brake horse-power-hour of non-methane hydrocarbons and oxides of nitrogen; and

(2) 0.1 grams per brake horse-power-hour of particulate matter; or

(ii) clean school buses with engines manufactured in model year 2007, 2008, or 2009 that satisfy requirements established by the Administrator for emissions of oxides of nitrogen and particulate matter to be applicable for school buses manufactured in model year 2010.

(2) 0.2 grams per brake horse-power-hour of particulate matter; or

(ii) clean school buses with engines manufactured in model year 2007 or thereafter that satisfy requirements established by the Administrator for emissions of oxides of nitrogen and particulate matter from school buses manufactured in that model year.

(3) CLEAN SCHOOL BUSES—DIESEL FUEL.—

(A) IN GENERAL.—In the case of a grant recipient receiving a grant for the acquisition of ultra-low sulfur diesel fuel school buses with engines manufactured in model year 2005 or 2006, the grant recipient shall provide, to the satisfaction of the Administrator—

(i) documentation that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the purposes of the grant; and

(ii) a commitment by the applicant to use that fuel in carrying out the purposes of the grant.

(B) ESTABLISHMENT.—There is established within the Department of Transportation a program known as the “Clean School Buses Program.”

(c) PROJECTS.—

(1) IN GENERAL.—In carrying out the program, the Secretary shall establish not more than 10 pilot projects that are—

(A) dispersed geographically throughout the United States; and

(B) designed to conserve energy resources by encouraging the use of bicycles in place of motor vehicles.

(2) REQUIREMENTS.—A pilot project described in paragraph (1) shall—

(A) use education and marketing to convert motor vehicle trips to bicycle trips;

(B) document project results and energy savings (in estimated units of energy conserved);

(C) facilitate partnerships among interested parties in at least 2 of the fields of—

(i) transportation;

(ii) law enforcement;

(iii) public health;

(iv) environment; and

(v) energy;

(D) maximize bicycle facility investments;

(E) demonstrate methods that may be used in other regions of the United States; and

(F) facilitate the continuation of ongoing programs that are sustained by local resources.

(3) COST SHARING.—At least 20 percent of the cost of each pilot project described in paragraph (1) shall be provided from State or local sources.

(d) ENERGY AND BICYCLING RESEARCH STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall enter into a contract with the National Academy of Sciences for, and the National Academy of Sciences shall conduct and submit to Congress a report on, a study on the feasibility of converting motor vehicle trips to bicycle trips.

(2) COMPONENTS.—The study shall—

(A) document the results or progress of the pilot projects under subsection (b); and

(B) determine the types and duration of motor vehicle trips that people in the United States may feasibly make by bicycle, taking into consideration factors such as—

(i) weather;

(ii) land use and traffic patterns;

(iii) the carrying capacity of bicycles; and

(iv) bicycle infrastructure;

(C) determine any energy savings that would result from the conversion of motor vehicle trips to bicycle trips;

(D) include a cost-benefit analysis of bicycle infrastructure investments; and

(E) include a description of any factors that would encourage more motor vehicle trips to be replaced with bicycle trips.

Subtitle G—Operations

SECTION 1701. TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.

(a) SURFACE TRANSPORTATION PROGRAM ELIGIBILITY.—Section 133(b) of title 23, United States Code (as amended by section 1601(a)(2)), is amended by adding at the end the following:

(16) Regional transportation operations collaboration and coordination activities that are associated with regional improvements, such as traffic incident management, technology deployment, emergency management and response, traveler information, and regional congestion relief.

(b) RUSH HOUR CONGESTION RELIEF.—

(A) IN GENERAL.—Subject to subparagraph (B), a State may spend the funds apportioned under this section to reduce traffic delays caused by motor vehicle accidents and breakdowns on highways during peak driving times.

(B) USE OF FUNDS.—A State, metropolitan planning organization, or local government may use the funds under subparagraph (A)—

(i) to develop a region-wide coordinated plan to mitigate traffic delays caused by motor vehicle accidents and breakdowns;

(ii) to purchase or lease telecommunications equipment for first responders;

(iii) to purchase or lease towing and recovery services;

(iv) to pay contractors for towing and recovery services; and

(v) to rent vehicle storage areas adjacent to roadways;

(vi) to fund service patrols, equipment, and operations;

(vii) to purchase incident detection equipment; and

(viii) to carry out training.

(c) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM ELIGIBILITY.—Section 149(b)(5) of title 23, United States Code, is amended by inserting “improve transportation systems management and operations,” after “intersections,”.

(d) TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.—

(1) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1620(b)), is amended by adding at the end the following:

“168. Transportation systems management and operations

“(a) IN GENERAL.—The Secretary shall carry out a transportation systems management and operations program to—

(1) ensure efficient and effective management and operation of transportation systems through collaboration, coordination, and real-time information sharing at a regional and Statewide level among—

(A) managers and operators of major modes of transportation,

(B) public safety officials; and

(C) the general public; and

(2) manage and operate transportation systems in a coordinated manner to preserve and maximize the performance of transportation facilities for travelers and carriers.

(b) AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—In carrying out the program under subsection (a), the Secretary may carry out activities to—

(A) encourage managers and operators of major modes of transportation, public safety officials, and transportation planners in urbanized areas that are responsible for conducting the day-to-day management, operations, public safety, and planning of transportation facilities and services to collaborate on and coordinate, at the regional and Statewide level and, as appropriate, use the funds under subparagraphs (A) and (B) to preserve and maintain the capacity and maximize the performance of transportation systems management and operations; and
(B) encourage States to—
(i) establish a system of basic real-time monitoring for the surface transportation system; and
(ii) provide the means to share the data gathered under clause (i) among—
(I) highway, transit, and public safety agencies;
(II) jurisdictions (including States, counties, and metropolitan planning organizations); and
(III) private-sector entities; and
(iv) the general public.

(2) ACTIVITIES.—Activities to be carried out under paragraph (1) include—
(A) developing a regional concept of operations that defines a regional strategy shared with all transportation and public safety participants with a stake in the manner in which the transportation systems of the region should be managed, operated, and measured;
(B) the sharing of information among operators, service providers, public safety officials, and the general public; and
(C) guiding, in a regionally-coordinated manner and in a manner consistent with the integration of the metropolitan and statewide transportation planning processes and regional intelligent transportation system architecture, the implementation of regional transportation system management and operations initiatives, including—
(i) emergency evacuation and response;
(ii) traffic incident management;
(iii) technology deployment; and
(iv) traveler information systems delivery.

(C) COOPERATION.—In carrying out the program under subsection (a), the Secretary may assist and cooperate with other Federal agencies, State and local governments, metropolitan planning organizations, private industry, and other interested parties to improve regional collaboration and real-time information sharing between managers and operators of major modes of transportation, public safety officials, emergency managers, the general public to increase the security, safety, and reliability of Federal-aid highways.

(D) GUIDANCE; REGULATIONS.—
(1) IN GENERAL.—In carrying out the program under subsection (a), the Secretary may issue guidance or promulgate regulations for the procurement of transportation system management and operations facilities, equipment, and services, including—
(A) equipment procured in preparation for natural disasters, disasters caused by human activity, and emergencies;
(B) system hardware;
(C) system software; and
(D) software integration services.

(2) CONSIDERATIONS.—In developing the guidance or regulations under paragraph (1), the Secretary may consider innovative procurement methods that support the timely and streamlined execution of transportation system management and operations programs and projects.

(3) FINANCIAL ASSISTANCE.—The Secretary may authorize the use of funds made available under section 104(b)(3) to provide assistance for regional transportation system management and coordination activities that are associated with regional improvements, such as—
(A) system planning;
(B) technology deployment;
(C) emergency management and response; and
(D) congestion relief.

(2) CONFORMING AMENDMENT.—The analysis for subchapter 1 of chapter 1 of title 23, United States Code (as amended by section 1628(c)), is amended by adding at the end—

168. Transportation systems management and operations.

SEC. 1702. REAL-TIME SYSTEM MANAGEMENT INFORMATION PROGRAM.

(a) IN GENERAL.—Subchapter 1 of chapter 1 of title 23, United States Code (as amended by section 1701(c)(1)), is amended by adding at the end the following:

§169. Real-time system management information program

(a) IN GENERAL.—The Secretary shall carry out a real-time system management information program to—

(1) provide a nationwide system of basic real-time information for managing and operating the surface transportation systems of the United States;
(2) identify long-range real-time highway and transit monitoring needs; and
(B) develop plans and strategies for meeting those needs;
(3) provide the capability and means to share the basic real-time information with State and local governments, the traveling public; and
(4) provide the nationwide capability to monitor, in real-time, the traffic and travel conditions of major highways in the United States, and to share that information with State and local governments and the traveling public, to—
(A) improve the security of the surface transportation system;
(B) address congestion problems;
(C) support improved response to weather events; and
(D) facilitate the distribution of national and regional traveler information.

(b) DATA EXCHANGE FORMATS.—Not later than 1 year after the date of enactment of this section, the Secretary shall establish data exchange formats to ensure that the data provided by highway and transit monitoring systems (including statewide incident reporting systems) can readily be exchanged between jurisdictions to facilitate the nationwide availability of information on traffic and travel conditions.

(c) STATEWIDE INCIDENT REPORTING SYSTEM.—Not later than 2 years after the date of enactment of this section, or not later than 5 years after the date of enactment of this section, if the Secretary determines that adequate real-time communications capability will not be available within 2 years after the date of enactment of this section, each State shall establish a statewide incident reporting system to facilitate the real-time electronic reporting of highway and transit incidents to a central location for use in—

(1) monitoring an incident;
(2) providing accurate traveler information on the incident; and
(3) responding to the incident as appropriate.

(d) REGIONAL ITS ARCHITECTURE.—
(1) IN GENERAL.—In developing or updating regional intelligent transportation system architectures under section 104(b)(3)(D) of title 23, Code of Federal Regulations (or any successor regulation), States and local governments shall address—

(A) the real-time highway and transit information needs of the State or local government, including coverage, monitoring systems, data fusion and archiving, and methods of exchanging or sharing information; and
(B) the systems needed to meet those needs.

(2) DATA EXCHANGE FORMATS.—In developing or updating regional intelligent transportation system architectures, States and local governments are encouraged to incorporate the data exchange formats developed by the Secretary under subsection (b) to ensure that the data provided by highway and transit monitoring systems can readily be—

(A) exchanged between jurisdictions; and
(B) shared with the traveling public.

(e) ELIGIBLE FUNDING.—Subject to project approval by the Secretary, a State may—
(1) use funds available to the State under section 104(b)(3) to carry out activities relating to the planning of real-time monitoring elements; and
(2) use funds appropriated to the State under paragraphs (1) and (3) of section 104(b)(3) to carry out activities relating to the planning and deployment of real-time monitoring elements.

(b) CONFORMING AMENDMENT.—The analysis for subchapter 1 of chapter 1 of title 23, United States Code (as amended by section 1701(c)(2)), is amended adding at the end the following:

169. Real-time system management information program.

SEC. 1703. CONTRACTING FOR ENGINEERING AND DESIGN SERVICES.

Section 112(b)(2) of title 23, United States Code, is amended by striking subparagraph (A), by striking “title 40” and all that follows through the period and inserting “title 48,”

(2) by striking subparagraph (B);
(3) by redesigning subparagraphs (C) through (F) as subparagraphs (B) through (E), respectively; and
(5) by redesigning subparagraph (G).

SEC. 1704. DESIGNATION OF TRANSPORTATION MANAGEMENT AREAS.

(a) FUNDING.—Section 134(d)(3)(C)(ii) of title 23, United States Code, is amended by striking subclause (II) and inserting the following:

(II) FUNDING.—In addition to funds made available to the metropolitan planning organization for the Lake Tahoe region under this title and section 53 of title 49, 1 percent of all funds distributed under section 202 shall be used to carry out the transportation planning process for the Lake Tahoe region under this subpara-

(b) SPECIAL DESIGNATION.—For the purpose of any applicable program under title 23, United States Code, the cities of Nevada, respectively, and the city of Reno shall be considered to be part of the Lake Tahoe urbanized area.

Subtitle K—Federal-Aid Stewardship

SEC. 1801. FUTURE INTERSTATE SYSTEM ROUTES.

Section 103(b)(4)(B) of title 23, United States Code, is amended—

(1) in clause (ii), by striking “12” and insert-

(2) in clause (iii), by striking “in the agree-

(3) of the Secretary and the State or States”;

(4) by inserting at the end the following:

(iii) EXISTING AGREEMENTS.—An agreement described in clause (ii) that is entered into before the date of enactment of this subparagraph shall be deemed to include the 20-year term limitation described in the date of enactment of this subparagraph.

SEC. 1802. STEWARDSHIP AND OVERSIGHT.

(a) IN GENERAL.—Section 106 of title 23, United States Code, is amended—

(1) by striking subsection (e) and inserting the following:

(e) VALUE ENGINEERING ANALYSIS.—

(1) DEFINITION OF VALUE ENGINEERING ANALYSIS.—

(2) IN GENERAL.—In this subsection, the term ‘‘value engineering analysis’’ means a systematic process of review and analysis of a project, during the concept and design phases, by a multi-disciplined team of persons not involved in the project that is conducted to make recommendations such as those described in subparagraph (B) for—

(A) improving the value and quality of the project; and

(ii) reducing the time to complete the project.

(B) INCLUSIONS.—The recommendations referred to in subparagraph (A) include, with respect to a project—

(C) completely redesigning the project using different technologies, materials, or methods so as to accomplish the original purpose of the project.

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(2) ANALYSIS.—The State shall provide a value engineering analysis or other cost-reduction analysis for—

(A) each project on the Federal-Aid System with an estimated total cost of $25,000,000 or more; and

(B) a bridge project with an estimated total cost of $20,000,000 or more; and

(C) any other project the Secretary determines to be appropriate.

(3) MAJOR PROJECTS.—The Secretary may require more than one analysis described in paragraph (2) for a major project described in subsection (h).

(4) REQUIREMENTS.—Analyses described in paragraph (2) for a major project shall—

(A) include bridge substructure requirements based on construction material; and

(B) be evaluated—

(i) on emergency and economic bases, taking into consideration acceptable designs for bridges; and

(ii) by analyzing an analysis of life-cycle costs and duration of project construction; and

by striking subsections (g) and (h) and inserting the following:

(g) OVERSIGHT PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish an oversight program to monitor the effective and efficient use of funds made available under this title.

(2) MINIMUM REQUIREMENTS.—At a minimum, the program shall monitor and respond to all areas relating to financial integrity and project delivery.

(2) FINANCIAL INTEGRITY.—

(A) FINANCIAL MANAGEMENT SYSTEMS.—

(i) The Secretary shall perform annual reviews of the financial management systems of State transportation departments that affect projects approved under subsection (a).

(ii) REVIEW AREAS.—In carrying out clause (i), the Secretary shall use risk assessment procedures to identify areas to be reviewed.

(B) PROJECT COSTS.—The Secretary shall—

(i) develop minimum standards for estimating project costs; and

(ii) periodically evaluate practices of the States for—

(I) estimating project costs;

(II) awarding contracts; and

(III) reducing project costs.

(C) RESPONSIBILITY OF THE STATES.—

(i) IN GENERAL.—Each State shall be responsible for ensuring that subrecipients of Federal funds within the State under this section have—

(I) adequate controls to properly manage the Federal funds; and

(II) adequate project delivery systems for project approval under this section.

(ii) REVIEW BY SECRETARY.—The Secretary shall periodically review monitoring by the States of those subrecipients.

(3) PROJECT DELIVERY.—The Secretary shall—

(A) perform annual reviews of the project delivery system of each State, including analysis of the factors that are involved in the life cycle of a project; and

(B) employ risk assessment procedures to identify areas to be reviewed.

(D) REGULATORY PROCESS.—Nothing in this section discharges or otherwise affects any oversight responsibility of the Secretary.

(E) SPECIFIC OVERSIGHT RESPONSIBILITIES.—Nothing in this section discharges or otherwise affects any oversight responsibility of the Secretary.

(F) (i) The Secretary shall—

(A) specifically provided for under this title or other Federal law; or

(B) for the design and construction of all Appalachian development highways under section 104 of chapter 53 of title 23, United States Code (section 110 of this title) and section 170 of this title.

(iii) MAJOR PROJECTS.—

(I) IN GENERAL.—Notwithstanding any other provision of this section, a recipient of Federal financial assistance for a project under this title shall—

(ii) require that the State transportation department or local transportation agency receive concurrence from the Secretary before carrying out any action under a design-build contract; and

(iii) preclude the design-build contractor from proceeding with final design or construction of any permanent improvement prior to completion of the process under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(Sec. 1806. PROGRAM EFFICIENCIES—FINANCE.

(a) ADVANCE CONSTRUCTION.—Section 105 of title 23, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by redesignating subsections (a)(2), (a)(2)(A), and (a)(2)(B) as subsections (c)(1), and (c)(2), respectively, and indenting appropriate.

(b) CONFORMING AMENDMENTS.—

(1) Section 114(a) of title 23, United States Code, is amended—

(A) in the first sentence by striking “highways or portions of highways located on a Federal-aid system” and inserting “Federal-aid highway or a portion of a Federal-aid highway”; and

(B) by striking the second sentence and inserting “The Secretary shall have the right to conduct such inspections and take such corrective action as the Secretary determines to be appropriate.”.

(2) Section 117 of title 23, United States Code, is amended—

(A) by striking section (d); and

(B) by redesignating subsections (e) through (h) as subsections (d) through (g), respectively.

SEC. 1805. SET-ASIDES FOR INTERSTATE DISCRETIONARY PROJECTS.

Section 118(c)(1) of title 23, United States Code, is amended—

(1) by redesignating paragraph (D) as subparagraph (E); and

(2) by striking paragraph (C) and inserting the following:

(C) QUALIFIED PROJECTS.—A qualified project referred to in subparagraph (A) is a project under this chapter (including intermodal projects) for which the Secretary has approved the use of design-build contracting under criteria specified in regulations promulgated by the Secretary.

(D) REGULATORY PROCESS.—Not later than 90 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act for 21st Century (23 U.S.C. 112 note; 112 Stat. 230) that—

(i) do not preclude State transportation departments or local transportation agencies from—

(I) issuing requests for proposals; and

(II) proceeding with awards of design-build contracts; or

(ii) suspending or canceling any design-build contracts for a project under this title with an estimated total cost of $1,000,000,000 or more, and recipients for such other projects as may be identified by the Secretary, shall submit to the Secretary for each project—

(A) a project management plan; and

(B) an annual financial plan.

(2) PROVISIONS OF LAW.—A project management plan shall document—

(A) the procedures and processes that are in effect to provide timely information to the project management team in the delivery of the project.

(B) the role of the agency leadership and management team in the delivery of the project.

(C) the procedures and processes that are in effect to provide timely information to the project management team in the delivery of the project.

(D) the role of the agency leadership and management team in the delivery of the project.

(3) REQUIREMENTS.—The Secretary shall periodically review monitoring by the Secretary of projects approved under this title.

(E) FINANCIAL PLAN.—A financial plan shall—

(A) be based on detailed estimates of the cost to complete the project; and

(B) provide for the annual submission of updates to the Secretary that are based on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project.

(F) OTHER PROJECTS.—A recipient of Federal financial assistance for a project under this title that receives $100,000,000 or more in Federal assistance for the project, and that is not covered by subsection (h), shall prepare, and make available to the Secretary at the request of the Secretary, an annual financial plan for the project.

(G) CONFORMING AMENDMENTS.—

(i) OTHER PROJECTS.—

(A) in the first sentence by striking “highways or portions of highways located on a Federal-aid system” and inserting “Federal-aid highway or a portion of a Federal-aid highway”;

(B) by striking the second sentence and inserting “The Secretary shall have the right to conduct such inspections and take such corrective action as the Secretary determines to be appropriate.”.

(ii) PROJECT COSTS.—

(A) include bridge substructure requirements based on construction material; and

(B) be evaluated—

(i) on emergency and economic bases, taking into consideration acceptable designs for bridges; and

(ii) by analyzing an analysis of life-cycle costs and duration of project construction; and

(iii) by striking subsections (g) and (h) and inserting the following:

(g) OVERSIGHT PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish an oversight program to monitor the effective and efficient use of funds made available under this title.

(2) MINIMUM REQUIREMENTS.—At a minimum, the program shall monitor and respond to all areas relating to financial integrity and project delivery.

(2) FINANCIAL INTEGRITY.—

(A) FINANCIAL MANAGEMENT SYSTEMS.—

(i) The Secretary shall perform annual reviews of the financial management systems of State transportation departments that affect projects approved under subsection (a).

(ii) REVIEW AREAS.—In carrying out clause (i), the Secretary shall use risk assessment procedures to identify areas to be reviewed.

(B) PROJECT COSTS.—The Secretary shall—

(i) develop minimum standards for estimating project costs; and

(ii) periodically evaluate practices of the States for—

(I) estimating project costs;

(II) awarding contracts; and

(III) reducing project costs.

(C) RESPONSIBILITY OF THE STATES.—

(i) IN GENERAL.—Each State shall be responsible for ensuring that subrecipients of Federal funds within the State under this section have—

(I) adequate controls to properly manage the Federal funds; and

(II) adequate project delivery systems for project approval under this section.

(ii) REVIEW BY SECRETARY.—The Secretary shall periodically review monitoring by the States of those subrecipients.

(3) PROJECT DELIVERY.—The Secretary shall—

(A) perform annual reviews of the project delivery system of each State, including analysis of the factors that are involved in the life cycle of a project; and

(B) employ risk assessment procedures to identify areas to be reviewed.

(D) REGULATORY PROCESS.—Nothing in this section discharges or otherwise affects any oversight responsibility of the Secretary.

(E) SPECIFIC OVERSIGHT RESPONSIBILITIES.—Nothing in this section discharges or otherwise affects any oversight responsibility of the Secretary.

(F) (i) The Secretary shall—

(A) specifically provided for under this title or other Federal law; or

(B) for the design and construction of all Appalachian development highways under section 104 of title 23, United States Code (section 110 of this title) and section 170 of this title.

(iii) MAJOR PROJECTS.—

(I) IN GENERAL.—Notwithstanding any other provision of this section, a recipient of Federal financial assistance for a project under this title shall—

(ii) require that the State transportation department or local transportation agency receive concurrence from the Secretary before carrying out any action under a design-build contract; and

(iii) preclude the design-build contractor from proceeding with final design or construction of any permanent improvement prior to completion of the process under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(Sec. 1806. FEDERAL LANDS HIGHWAYS PROGRAM.

(a) FEDERAL SHARE PAYABLE.—

(1) IN GENERAL.—Section 126(k) of title 23, United States Code, is amended—

(A) by striking “Federal-aid highway”; and

(B) by striking “section 104” and inserting “this title or chapter 53 of title 49”.

(2) TECHNICAL REFERENCES.—Section 120(l) of title 23, United States Code, is amended by striking section 104 and inserting “this title or chapter 53 of title 49”.

(b) PAYMENTS TO FEDERAL AGENCIES FOR FEDERAL- AID PROJECTS.—Section 132 of title 23, United States Code, is amended by striking section 105 and inserting the following:

(1) by striking the first 2 sentences and inserting the following:
“(a) IN GENERAL.—In a case in which a proposed Federal-aid project is to be undertaken by a Federal agency in accordance with an agreement between a State and the Federal agency, the Secretary shall—

(1) direct the Secretary to transfer the funds for the Federal share of the project directly to the Federal agency; or

(2) of each such deposit, with, or payment to, the Federal agency as is required to meet the obligation of the State under the agreement for the work undertaken or to be undertaken by the Federal agency.

(b) REIMBURSEMENT.—On execution of a project agreement with a State described in subsection (a), the Secretary may reimburse the State, using any available funds, for the estimated Federal share under this title of the obligation of the State deposited or paid under subsection (a).

(c) ALLOCATIONS.—Section 202 of title 23, United States Code, is amended—

(1) in subsection (a), by striking “(a) On October 1st, and all that follows through “Such allocation” and inserting the following:


“(b) Allocation for Public Lands Highways.—

“(1) Public Lands Highways.—


“(B) Planning.—The application under paragraph (1) shall be submitted to the Secretary by the appropriate Federal land management agency or the State for the area to be affected by the project.

“(ii) Eligibility.—An Indian tribe (or consortium) requesting participation in the demonstration project under this subparagraph shall have demonstrated financial stability and financial management capability in accordance with the formula for distribution of funds under the Indian reservation road program.

“(v) Use of Funds.—In addition to Indian funds made available under this subparagraph, all funds appropriated for Indian tribes for Indian reservation roads shall be used for transportation improvement projects approved by the Secretary.

“(b) Federal Lands Highway Program Demonstration Project.—

“(i) In General.—The Secretary shall establish a demonstration project under which all funds made available under this subparagraph shall be used for transportation improvement projects approved by the Secretary.

“(ii) Exclusion of Agency Participation.—In accordance with paragraph (b), all funds made available under this subparagraph shall be used for transportation improvement projects approved by the Indian tribe (or consortium) that is participating in the demonstration project.

“(III) Criteria for Determining Financial Stability and Financial Management Capabilities.—In addition to any other funds made available for Indian tribes for Indian reservation roads, all funds appropriated for Indian tribes for Indian reservation roads shall be used for transportation improvement projects approved by the Secretary.

“(b) Eligibility.—An Indian tribe (or consortium) requesting participation in the demonstration project under this subparagraph shall have demonstrated financial stability and financial management capability in accordance with the formula for distribution of funds under the Indian reservation road program.

“(II) Applicant Pool.—The applicant pool described in this subparagraph shall consist of each Indian tribe (or consortium) that—

“(aa) has successfully completed the planning phase described in subparagraph (iv); and

“(bb) eligibility.—An Indian tribe (or consortium) requesting participation in the demonstration project under this subparagraph shall have demonstrated financial stability and financial management capability in accordance with the formula for distribution of funds under the Indian reservation road program.

“(IV) Planning Phase.—

“(aa) In General.—An Indian tribe (or consortium) requesting participation in the demonstration project under this subparagraph shall complete a planning phase that shall include legal and budgetary research and internal tribal government and organization preparation.

“(bb) Preparation.—An Indian tribe (or consortium) requesting participation in the demonstration project under this subparagraph shall have demonstrated financial stability and financial management capability in accordance with the formula for distribution of funds under the Indian reservation road program.

“(III) Criteria for Determining Financial Stability and Financial Management Capabilities.—In addition to any other funds made available for Indian tribes for Indian reservation roads, all funds appropriated for Indian tribes for Indian reservation roads shall be used for transportation improvement projects approved by the Secretary.

“(1) In General.—The Indian tribe (or consortium) that is participating in the demonstration project under this subparagraph shall have demonstrated financial stability and financial management capability in accordance with the formula for distribution of funds under the Indian reservation road program.

“(ii) Exclusion of Agency Participation.—In accordance with paragraph (b), all funds made available under this subparagraph shall be used for transportation improvement projects approved by the Indian tribe (or consortium) that is participating in the demonstration project.

“(III) Selection of Participating Tribes.—

“(aa) In General.—In addition to Indian tribes or tribal organizations that, as of the date of enactment of this subparagraph, are considered eligible to participate in any bridge reservation road function program, for each fiscal year, the Secretary may select up to 15 Indian tribes from the applicant pool described in subparagraph (ii) to participate in the demonstration project carried out under clause (i).

“(bb) Definition of Qualifying National Park.—In this paragraph, the term “qualifying national park” means a National Park that is used more than 1,000,000 recreational visitor days per year, based on an average of the 3 most recent years of available data from the National Park Service.

“(B) Priority.—Notwithstanding any other provision of law, with respect to funds authorized for park roads and parkways, the Secretary shall give highest priority to the distribution of funds to projects for highways that—

“(i) are located in, or provide access to, a qualifying National Park; and

“(ii) are located in, or provide access to, a qualifying National Park and were in existence before 1940.

“(C) Priority Conflicts.—If there is a conflict between projects described in subparagraph (b), the Secretary shall give highest priority to projects that—

“(i) are in, or that provide access to, parks that are adjacent to a National Park of a foreign country; or

“(ii) are in more than 1 State.

“(D) Recovery and Crediting of Funds.—Any amount credited to the Highway Trust Fund under this subparagraph shall be added to and available for highway purposes for fiscal year 2005 and all subsequent fiscal years.

“(II) Applicant Pool.—The applicant pool described in this subparagraph shall consist of each Indian tribe (or consortium) that—

“(aa) has successfully completed the planning phase described in subparagraph (iv); and

“(bb) has requested participation in the demonstration project under this subparagraph.

“(II) Applicant Pool.—The applicant pool described in this subparagraph shall consist of each Indian tribe (or consortium) that—

“(aa) has successfully completed the planning phase described in subparagraph (iv); and

“(bb) has requested participation in the demonstration project under this subparagraph.

“(III) Criteria for Determining Financial Stability and Financial Management Capabilities.—In addition to any other funds made available for Indian tribes for Indian reservation roads, all funds appropriated for Indian tribes for Indian reservation roads shall be used for transportation improvement projects approved by the Secretary.

“(B) Federal Lands Highway Program Demonstration Project.—

“(i) In General.—The Secretary shall establish a demonstration project under which all funds made available under this subparagraph shall be used for transportation improvement projects approved by the Secretary.

“(ii) Exclusion of Agency Participation.—In accordance with paragraph (b), all funds made available under this subparagraph shall be used for transportation improvement projects approved by the Indian tribe (or consortium) that is participating in the demonstration project.

“(III) Selection of Participating Tribes.—

“(aa) In General.—In addition to Indian tribes or tribal organizations that, as of the date of enactment of this subparagraph, are considered eligible to participate in any bridge reservation road function program, for each fiscal year, the Secretary may select up to 15 Indian tribes from the applicant pool described in subparagraph (ii) to participate in the demonstration project carried out under clause (i).
“(i) In general.—Subject to clause (ii), on request by an Indian tribe or the Secretary of the Interior, the Secretary may make funds available under this subsection for preliminary engineering for Indian reservation road bridge projects.

“(ii) Construction and construction engineering.—The Secretary may make funds available under this subsection for construction and construction engineering after approval of applicable plans, specifications, and estimates in accordance with this title; and

“(b) adoption at the end the following:

“(f) Administration of Indian reservation roads program.—

(1) CONTRACT AUTHORITY.—Notwithstanding any other provision of law, an Indian tribe or tribal organization may approve plans, specifications, and estimates for construction of the Transportation Equity Act for the 21st Century (Public Law 106–178) or the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (Public Law 108–30) under a contract or agreement under the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450b et seq.) if the Indian tribe or tribal organization—

(A) provides a copy of the certification under section 202(c)(5) of title 23, United States Code, is amended, by inserting the following:

“(A) Indian labor may be used, in accordance with such rules and regulations as may be promulgated by the Secretary of the Interior, to carry out any construction or other activity described in paragraph (1); and

(B) funds made available to carry out this section shall not be used to defray preconstruction costs (including planning, design, and engineering).

“(4) Federal employment.—No maximum on Federal employment shall be applicable to construction or improvement of Indian reservation roads.

“(5) availability of funds.—Funds available under this section for each class of Federal lands highway shall be available for any kind of transportation project eligible for assistance under paragraphs (1), (2), (3), or (4) of section 201, or any project that provides access to, the areas served by the particular class of Federal lands highway.

“(6) reserve funds for the Bureau of Indian Affairs that are associated with the Indian reservation road program to finance the Indian technical centers authorized under section 504(b), and in paragraph (3) in subsection (k)(1) in subparagraph (B) in section 204(c) of title 23, United States Code, is amended by striking the second and third sentences and inserting the following: “Notwithstanding any other provision of this title, the Secretary of the Interior, of the funds allocated for Indian reservation roads from the Highway Trust Fund, not more than 25 percent may be expended for the purpose of maintenance, excluding road sealing, and shall not be subject to any limitation. The Bureau of Indian Affairs shall continue to retain primary responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations. The Secretary shall ensure that funds made available under this subsection for maintenance of Indian reservation roads for each fiscal year shall not be in lieu of any obligation of funds by the Bureau of Indian Affairs to provide maintenance programs on Indian reservations.”

“(f) Safety.—

(1) Allocations.—Section 204(c) of title 23, United States Code, is amended by adding at the end of the following:

“(G) 17 percent to the United States Fish and Wildlife Service.

“(h) Recreational areas.—

(1) In general.—Funds made available for recreation roads under this subsection shall be used by the Secretary to acquire or develop lands and water rights for the establishment of new State and Federal recreation areas and the acquisition of new lands for the expansion or improvement of existing recreation areas. Such areas shall be subject to the management provisions of the Federal Land Management Policy Act of 1976 (43 U.S.C. 1701 et seq.) and shall be provided with the services of State, regional, or other appropriate decision agencies.

“(1) In general.—Notwithstanding any other provision of this title, funds made available for recreational purposes under this title shall be used by the Secretary and the Secretary of the appropriate Federal land management agency to carry out any construction or other activities described in paragraph (1), (2), (3), or (4) of subsection (b) that are located in or adjacent to Federal land under the jurisdiction of the appropriate Federal land management agency only to pay the costs of carrying out—

(A) transportation safety improvement activities.

(B) activities to eliminate high-accident locations.

(C) projects to implement protective measures at existing, at-grade railway-highway crossings.

(D) collection of safety information.

(E) transportation planning projects or activities.

(2) Parties.—

(A) In general.—The provisions of paragraphs (1)(B) through (1)(E) shall apply to the Secretary and the appropriate Federal land management agency only to carry out any construction or other activities described in paragraphs (1), (2), (3), or (4) of subsection (b) that are located in or adjacent to Federal land under the jurisdiction of the appropriate Federal land management agency only to pay the costs of carrying out—

(i) the Department of Agriculture; or

(ii) the Department of the Interior;
“(C) transportation planning and administrative activities associated with those maintenance and improvements; and

(D) the non-Federal share of the cost of any project approved under this title or chapter 53 of title 49 that provides access to or within Federal land described in subparagraph (B).

(2) CONTRACTS.—In carrying out paragraph (1), the Secretary shall ensure that the Secretary of the appropriate Federal land management agency may enter into contracts or agreements with—

(A) a State;

(B) a political subdivision of a State; or

(C) an Indian tribe.

(3) NEW ROADS.—No funds made available under this subpart may be used to pay the cost of the design or construction of new recreation roads.

(4) COMPLIANCE WITH OTHER ENVIRONMENTAL LAWS.—A maintenance or improvement project that is funded under this subsection, and that is consistent with or has been identified in a land use plan for an area under the jurisdiction of a Federal agency, shall not require any additional environmental reviews or assessments under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if—

(A) the Federal agency that promulgated the land use plan analyzed the specific proposal for the maintenance or improvement project under that Act and (B) as of the date on which the funds are to be expended, there are—

(i) no significant changes to the proposal bearing on environmental concerns; and

(ii) no significant new information.

(5) EXCEPTION.—The cost sharing requirements under the Federal Water Project Reclamation Act (46 U.S.C. 4601-12 et seq.) shall not apply to funds made available to the Bureau of Reclamation under this subsection.

(b) COMPELLED ACQUISITION AMENDMENTS.

(1) Sections 120(e) and 125(e) of title 23, United States Code, are amended by striking “public lands highways,” each place it appears and inserting “public lands highways, recreation roads,”.

(2) Sections 120(e), 125(e), 201, 202(a), and 203 of title 23, United States Code, are amended by striking “forest development roads” each place it appears and inserting “National Forest System roads”;

(3) Section 202(e) of title 23, United States Code, is amended by striking “Refuge System” and inserting “Refuge System and the various national fish hatcheries”;

(4) Sections 204 of title 23, United States Code, is amended by striking “Refuge System” and inserting “National Forest System roads”;

(5) Section 205 of title 23, United States Code, is amended—

(A) in subsection (a)(1), by striking “public lands highways,” and inserting “public lands highways, recreation roads, forest highways,”; and

(B) in subsection (i), by striking “public lands highways” each place it appears and inserting “public lands highways, recreation roads, and forest highways”.

(6) Section 205 of title 23, United States Code, is amended by striking the section heading and all that follows through subsection (a) and inserting the following:

**§ 205. National Forest System roads and trails**

(1) by striking the section heading and all that follows through subsection (a) and inserting the following:

**§ 205. National Forest System roads and trails**

(1) IN GENERAL.—Section 144 of title 23, United States Code, is amended—

(i) $46,931,446 to the State of Nevada for construction of a replacement of the federally-owned bridge over the Hoover Dam in the Lake Mead National Recreation Area;

(ii) $46,931,446 to the State of Missouri for construction of a structure over the Mississippi River to connect the city of St. Louis, Missouri, to the State of Illinois; and

(iii) not less than 15 percent of the amount made available under subparagraph (B) for the fiscal year for the seismic retrofit of bridges for multimodal, suspension bridges that—

(A) were open to traffic prior to 1940; and

(B) are located in high-seismic zones.

(2) OFF-SYSTEM BRIDGES.—I N GENERAL.—(A) Section 205 of title 23, United States Code, is amended by striking—

(B) In paragraph (4), by striking the period at the end and inserting “;”.

(C) by striking “Such reports” and all that follows through “to Congress.”; and

(D) by adding at the end the following:

(5) biennially submit such reports as are required under this subsection to the appropriate committees of Congress simultaneously with the report required by section 502(g);”.

(iii) in the first sentence of paragraph (n), by striking “all standards” and inserting “all general engineering standards”;

(7) in subsection (e)—

(A) in paragraph (1)—

(i) by striking “including this section” and inserting “section”; and

(ii) by inserting “200 percent of” after “shall not exceed”;

(B) in paragraph (4)—

(i) in the second sentence, by inserting “200 percent of” after “not to exceed”;

(ii) in the last sentence, by striking “title” and inserting “section”; and

(C) by redesignating subsections (h) through (q) as subsections (g) through (p), respectively; and

(9) by adding at the end the following:

(q) CONTINUATION OF ANNUAL MATERIALS REQUIREMENTS FOR NEW BRIDGE CONSTRUCTION AND BRIDGE REHABILITATION.—Not later than 1 year after the date of enactment of this subsection, and annually thereafter, the Secretary shall publish in the Federal Register a report describing construction materials used in new Federal-aid bridge construction and bridge rehabilitation projects.

(r) GENERAL SHARE.—(1) IN GENERAL.—Except as provided under paragraph (2), the Federal share of the cost of a project payable from funds made available to carry out this section shall equal the share applicable under section 120(b), as adjusted under section 120(d).
“(2) INTERSTATE SYSTEM.—The Federal share of the cost of a project on the Interstate System payable from funds made available to carry out this section shall be the share applicable under section 105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 106 Stat. 2032).

“(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—

“(1) STUDIES.—All studies funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required under section 120(b)(2).

“(2) CONSTRUCTION.—All construction funded under this program shall be consistent with section 120(b)(2).”

SEC. 1805. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM.

“(a) APPOINTMENT.—

“(1) IN GENERAL.—The Secretary shall apportion funds available under section 1101(b) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for fiscal years 2005 through 2009 among States based on the latest available estimate of the cost to construct highways and access roads for the Appalachian development highway system program prepared by the Appalachian Regional Commission pursuant to section 14501 of title 40.

“(2) IN GENERAL.—Funds described in paragraph (1) shall be available to construct highways and access roads under chapter 145 of title 40.

“(b) APPLICABILITY OF TITLE.—Funds made available under section 1101(b) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for the Appalachian development highway system shall be available for obligation in the same manner as if the funds were apportioned under this chapter, except that—

“(1) the Federal share of the cost of any project under this section shall be determined in accordance with subsection IV of title 49; and

“(2) the funds shall remain available until expended.”

(b) CONFORMING AMENDMENTS.—

“(1) USE OF TOLL CREDITS.—Section 120(b)(1) of title 23, United States Code, is amended by inserting ‘‘and the Appalachian development highway system program under subtitle IV of section 49’’ after ‘‘other than the emergency relief program established under section 125’’.

“(2) ANALYSIS.—The analysis of chapter 1 of title 23, United States Code (as amended by section 170(b)), is amended by adding at the end the following:

“170. Appalachian development highway system.”

SEC. 1809. MULTISTATE CORRIDOR PROGRAM.

“(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by 1808(a)), is amended by adding at the end the following:

“§ 171. Multistate corridor program

“(a) DEFINITIONS.—The term ‘multistate corridor’ means a corridor that is—

“(1) a corridor that intersects a state line;

“(2) a corridor with a high degree of connectivity across state boundaries; and

“(3) a corridor that is to be treated as a single entity for planning, engineering, construction, and enforcement purposes.

“(b) ESTABLISHMENT AND PURPOSE.—The Secretary shall allocate among states, in accordance with the formula described in paragraph (3), the funds apportioned under this chapter to carry out projects on multistate corridors.

“(c) ELIGIBLE ACTIVITIES.—The Secretary shall provide grants—

“(1) to states to fund the planning, engineering, and construction of corridors.

“(2) to states to fund the planning, engineering, and construction of high priority corridors identified by section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 106 Stat. 2032).

“(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—

“(1) STUDIES.—All studies funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required under section 120(b)(2).

“(2) CONSTRUCTION.—All construction funded under this program shall be consistent with section 120(b)(2).”

SEC. 1810. BORDER PLANNING, OPERATIONS, TECHNOLOGY, AND CAPACITY PROGRAM.

“(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1809(a)), is amended by adding at the end the following:

“§ 172. Border planning, operations, technology, and capacity program

“(a) DEFINITIONS.—In this section—


“(2) PROGRAM.—The term ‘program’ means the border planning, operations, technology, and capacity program established under subsection (b).

“(c) ELIGIBLE ACTIVITIES.—The Secretary shall make allocations under this program for—

“(1) border state highway and multimodal planning, engineering, and construction; and

“(2) coordinated planning, development, and construction of high priority corridors identified by section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 106 Stat. 2032).

“(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—

“(1) STUDIES.—All studies funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required under section 120(b)(2).

“(2) CONSTRUCTION.—All construction funded under this program shall be consistent with section 120(b)(2).”

“(b) ELIGIBLE ACTIVITIES.—A border State may obligate funds apportioned to the border State under this section for—

“(1) highway or multimodal planning or environmental studies;

“(2) (cross-border port of entry and safety inspections of vehicles or inspection facilities at border crossings; or

“(iii) to increase highway capacity at or near international borders;

“(4) OTHER PROVISIONS REGARDING ELIGIBILITY.—

“(1) IN GENERAL.—Each project funded under this section shall be carried out in accordance with the continuing, cooperative, and comprehensive planning processes required by sections 134 and 135.

“(b) ESTABLISHMENT.—Border States shall give priority to projects that emphasize—

“(1) multi-modal planning;

“(2) improvements in infrastructure; and

“(3) operational improvements that—

“(A) increase safety, security, freight capacity, or highway access to rail, marine, and air services; and

“(B) enhance the environment.

“(c) MANDATORY PROGRAM.—For each fiscal year, the Secretary shall allocate among border States, in accordance with the formula described in paragraph (2), funds to be used in accordance with subsection (d).

“(2) FORMULA.—Subject to paragraph (3), the amount allocated to a border State under this paragraph shall be determined by the Secretary, as follows:

“(A) 25 percent in the ratio that—

“(i) the average annual weight of all cargo entering the border State by commercial vehicle across the international border with Canada or Mexico, as the case may be, bears to

“(ii) the average annual weight of all cargo entering all border States by commercial vehicle across the international borders with Canada and Mexico.

“(B) 25 percent in the ratio that—

“(i) the average annual weight of all cargo entering the border State by commercial vehicle across the international border with Canada and Mexico.

“(C) 25 percent in the ratio that—

“(i) the average annual weight of all cargo entering all border States by commercial vehicle across the international borders with Canada and Mexico.

“(D) 25 percent in the ratio that—
(i) the number of passenger vehicles annually entering the border State across the international border with Canada or Mexico, as the case may be; bears to

(ii) the number of all passenger vehicles annually entering all border States across the international borders with Canada and Mexico.

(2) DATA SOURCE.—The data used by the Secretary in making allocations under this subsection shall be based on the Bureau of Transportation Statistics Border Surface Freight Dataset (or other similar database).

(3) BASIS OF CALCULATION.—An formula calculated to be made using the average values for the most recent 5-year period for which data are available.

(4) MINIMUM ALLOCATION.—Notwithstanding paragraph (3), for each fiscal year, each border State shall receive at least 1/5 of 1 percent of the funds made available for allocation under this paragraph for the fiscal year.

(a) FEDERAL SHARE.—Except as provided in section 120, the Federal share of the cost of a project carried out under the program shall be 80 percent.

(b) OBLIGATION.—Funds made available under section 1101(11) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 to carry out the program shall be obligated to the General Services Administration in the same manner and amount as the funds provided for projects under subparagraph (A).

(c) DIRECT TRANSFER OF AUTHORIZED FUNDS.—

(A) IN GENERAL.—In addition to allocations to States and metropolitan planning organizations under subsection (c), the Secretary may transfer funds made available to carry out this section to the General Services Administration for construction of transportation infrastructure projects at or near the border in border States, if—

(i) the Secretary determines that the transfer is necessary to effectively carry out the purposes of this program; and

(ii) the General Services Administration agrees to accept the transfer of, and to administer, those funds.

(b) NO AUGMENTATION OF APPROPRIATIONS.—

Funds transferred by the Secretary under subparagraph (A)—

(i) shall not be considered to be an augmentation of the appropriations made available to the General Services Administration; and

(ii) shall be administered in accordance with the procedures of the General Services Administration, but

(iii) available for obligation in the same manner as if the funds were apportioned under this chapter.

(2) INFORMATION EXCHANGE.—No individual project the scope of work of which is limited to information exchange shall receive an allocation under the point of entry rules in each amount that exceeds $500,000 for any fiscal year.

(3) PROJECTS IN CANADA OR MEXICO.—

A project in Canada or Mexico, proposed by a border State, that is designed and predominantly facilitate cross-border vehicle and commercial cargo movements at an international gateway or port of entry into the border region of the State, may be conducted with funds authorized by section 1101(15) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 to carry out the program if, before obligation of those funds, the Secretary that any facility constructed under this subsection will be
designed to be managed and used over the future 50 years, and

(A) constructed in accordance with standards equivalent to applicable standards in the United States; and

(B) properly maintained and used over the useful life of the facility for the purpose for which the Secretary allocated funds for the project.

(k) TRANSFER OF FUNDS TO THE GENERAL SERVICES ADMINISTRATION.—

(1) STATE FUNDS.—At the request of a border State, funds made available under the program may be transferred to the General Services Administration for the purpose of funding 1 or more specific projects if—

(A) the Secretary determines, after consultation with the State transportation department of the border State, that the General Services Administration should carry out the project; and

(B) the General Services Administration agrees to accept the transfer of, and to administer, those funds.

(l) FEDERAL SHARE.—

(A) IN GENERAL.—A border State that makes a request under paragraph (1) shall provide directly to the General Services Administration, for each project covered by the request, the non-Federal share of the cost of each project described in subsection (f).

(B) NO AUGMENTATION OF APPROPRIATIONS.—Funds provided by a border State under subparagraph (A)—

(i) shall not be considered to be an augmentation of the appropriations made available to the General Services Administration; and

(ii) shall be—

(A) obligated in accordance with the procedures of the General Services Administration; but

(B) subject to the availability of appropriations to transfer funds made available under the program to the General Services Administration for the purpose of funding 1 or more specific projects if—

(A) the Secretary determines, after consultation with the State transportation department of the border State, that the General Services Administration should carry out the project; and

(B) the General Services Administration agrees to accept the transfer of, and to administer, those funds.

(ii) is carried out in the most historically appropriate manner; and

(iii) preserves the existing structural of the historic covered bridge; and

(B) the project provides for the replacement of wooden components with wooden components, unless the use of wood is impracticable for safety reasons.

(4) FEDERAL SHARE.—Except as provided in section 120, the Federal share of the cost of a project carried out under a grant with under this subsection shall be 80 percent.

(d) FUNDING.—There is authorized to be appropriated $13,140,895 for each of fiscal years 2005 through 2009, to remain available until expended.

SEC. 1812. NATIONAL HISTORIC COVERED BRIDGE PRESERVATION

(a) DEFINITION OF HISTORIC COVERED BRIDGE.—In this section, the term `historic covered bridge' means a covered bridge that is listed eligible for listing on the National Register of Historic Places.

(b) HISTORIC COVERED BRIDGE PRESERVATION.—Subject to the availability of appropriations, the Secretary shall—

(i) collect and disseminate information on historic covered bridges;

(ii) conduct educational programs relating to the history and construction techniques of historic covered bridges;

(iii) conduct research on, and study techniques for, protecting historic covered bridges from rot, fire, natural disasters, or weight-related damage.

(c) GRANTS.—

(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall make a grant to a State that submits an application to the Secretary that demonstrates a need for assistance in carrying out 1 or more historic covered bridge projects described in paragraph (2).

(2) ELIGIBLE PROJECTS.—A grant under paragraph (1) may be made for a project—

(A) to rehabilitate or repair a historic covered bridge; or

(B) to preserve a historic covered bridge, including through—

(i) installation of a fire protection system, including a fireproofing or fire detection system and sprinklers;

(ii) installation of a system to prevent vandalism and arson; or

(iii) relocation of a bridge to a preservation site.

(3) AUTHENTICITY REQUIREMENTS.—A grant under paragraph (1) may be made for a project only if—

(A) to the maximum extent practicable, the project—

(i) is carried out in the most historically appropriate manner; and

(ii) preserves the existing structural of the historic covered bridge; and

(B) the project provides for the replacement of wooden components with wooden components, unless the use of wood is impracticable for safety reasons.

(4) FEDERAL SHARE.—Except as provided in section 120, the Federal share of the cost of a project carried out under a grant with under this subsection shall be 80 percent.

(5) FUNDING.—There is authorized to be appropriated $13,140,895 for each of fiscal years 2005 through 2009, to remain available until expended.
(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter I of title 23, United States Code (as amended by section 1811(b)), is amended by adding at the end the following:

"§ 174. National historic covered bridge preservation

SEC. 1813. TRANSPORTATION AND COMMUNITY AND SYSTEM PRESERVATION PRO-

(a) IN GENERAL.—Subchapter I of chapter I of title 23, United States Code (as amended by section 1812(a)), is amended by adding at the end the following:

"§ 175. Transportation and community and system preservation program

"(a) ESTABLISHMENT.—The Secretary shall es-

(b) GOALS.—The goals of the program are to

"(c) ALLOCATION OF FUNDS FOR IMPLEMENTA-

"(2) ALLOCATION OF FUNDS.

"(b) ELIGIBLE PROJECTS.—Section 133(b) of title 23, United States Code (as amended by section 1701(a)), is amended by adding at the end the following:

"(b) ELIGIBLE PROJECTS.—Funds under this section shall be available for obligation for projects that serve the National Highway System, including

"(c) C ONFORMING AMENDMENT.

"(b) ELIGIBLE PROJECTS.—Funds under this subsection shall be available for obligation for projects that serve the National Highway System, including

"(c) ALLOCATION OF FUNDS FOR IMPLEMENTA-

"(2) ALLOCATION OF FUNDS.

"(b) ELIGIBLE PROJECTS.—Funds under this section shall be available for obligation for projects that serve the National Highway System, including

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"(c) ALLOCATION OF FUNDS FOR IMPLEMENTA-

"(2) ALLOCATION OF FUNDS.

"(b) ELIGIBLE PROJECTS.—Funds under this section shall be available for obligation for projects that serve the National Highway System, including

"(c) ALLOCATION OF FUNDS FOR IMPLEMENTA-

"(2) ALLOCATION OF FUNDS.

"(b) ELIGIBLE PROJECTS.—Funds under this section shall be available for obligation for projects that serve the National Highway System, including
parking capacity to support car parking, van pooling, ride sharing, commuting, and high occupancy vehicle travel.

(2) OVERNIGHT PARKING.—A State may permit a facility described in subparagraph (B) to be used for the overnight parking of commercial vehicles if the use does not foreclose or unduly limit the primary function of the facility described in subparagraph (B).

(3) ALLOCATION OF FUNDS.—

(A) IN GENERAL.—The Secretary shall allocate funds made available to carry out this subsection to States in proportion to the costs of providing and maintaining facilities that—

(i) are of the same type and purpose; and

(ii) are similarly located.

(B) CRITERIA.—In allocating funds under this subsection, the Secretary shall give priority to a State's cost of providing and maintaining facilities that—

(i) demonstrates demand for corridor and fringe parking on the corridor to be addressed; and

(ii) is located adjacent to, serves, or is within a one-mile radius of, an Interstate highway.

(4) FUNDING.

There is authorized to be appropriated for the program $9,386,289 for each of fiscal years 2005 and 2006.

SEC. 1816. TRIBAL-STATE ROAD MAINTENANCE AGREEMENTS.

Section 204 of title 23, United States Code (as amended by section 1086(f)(4)), is amended by adding at the end the following:

"(n) TRIBAL-STATE ROAD MAINTENANCE AGREEMENTS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, regulation, policy, or guideline, an Indian tribe and a State may enter into a road maintenance agreement under which an Indian tribe assumes the responsibilities of the State for—

(i) Indian reservation roads; and

(ii) roads providing access to Indian reservation roads.

(B) TRIBAL-STATE AGREEMENTS.—Agreements entered into under paragraph (1)—

(i) shall be negotiated between the State and the Indian tribe; and

(ii) shall not require the approval of the Secretary.

(C) ANNUAL REPORT.—Effective beginning with fiscal year 2005, the Secretary shall prepare and submit to Congress an annual report that identifies—

(i) the Indian tribes and States that have entered into agreements under paragraph (1); and

(ii) the number of miles of roads for which Indian tribes have assumed maintenance responsibilities; and

(D) FEDERAL SHARE.—The Federal share of the costs of the project carried out under this subsection shall be not less than 75 percent.

SEC. 1817. NATIVE FOREST SYSTEM ROADS.

Section 205 of title 23, United States Code, is amended by adding at the end the following:

"(g) PASSAGES FOR AQUATIC SPECIES.—Of the amounts made available for National Forest System roads, $14,079,433 for each fiscal year shall be made available for projects that promote awareness of the availability of corridor and fringe parking facilities; and

(b) FEDERAL SHARE.—The Federal share of the costs of a project carried out under this subsection shall be not less than 75 percent.

(2) FEDERAL SHARE.—The Federal share of the costs of a project carried out under this subsection shall be not less than 75 percent.

(3) APPLICABLE PROVISIONS.—Except as provided in paragraph (3), none of the funds made available for the program shall be available for obligation or expenditure with respect to any fiscal year until the Governor or chief executive officer of the territory enters into a new agreement with the Secretary (which new agreement shall be entered into not later than 1 year after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005), providing that the government of the territory shall—

(A) implement the program in accordance with applicable provisions of chapter 1 and subsection (d); and

(B) design and construct a system of arterial and collector highways, including necessary inter-island connectors, in accordance with standards that are—

(i) appropriate for each territory; and

(ii) approved by the Secretary.

(C) AFRICAN—Provide the maintenance of facilities constructed or operated by the Secretary to be in a condition to adequately serve the needs of present and future traffic; and

(D) TECHNICAL ASSISTANCE.—The new agreement required by paragraph (1) shall—

(i) specify the kind of technical assistance to be provided under the program;

(ii) include appropriate provisions regarding information sharing among the territories; and

(iii) delineate the oversight role and responsibilities of the territories and the Secretary.
“(3) REVIEW AND REVISION OF AGREEMENT.—The new agreement entered into under paragraph (1) shall be reevaluated and, as necessary, revised, at least every 2 years.

“(4) PLANNING.—In planning with respect to an agreement between the Secretary and the Governor or chief executive officer of a territory that is in effect as of the date of enactment of the Surface Transportation Board, Flexible, and Efficient Transportation Equity Act of 2005—

“(A) the agreement shall continue in force until replaced by a new agreement in accordance with paragraph (1); and

“(B) amounts made available for the program under the agreement shall be available for obligation or expenditure so long as the agreement, or a new agreement under paragraph (1), is in effect.

“(f) PERMISSIBLE USES OF FUNDS.—

“(1) IN GENERAL.— Funds made available for the program may be used only for the following projects and activities carried out in a territory:—

“(A) Eligible surface transportation program projects described in section 133(b).

“(B) Cost-effective, preventive maintenance consistent with section 116.

“(C) Ferry boats, terminal facilities, and approaches in accordance with subsections (b) and (c) of section 129.

“(D) Engineering and economic surveys and investigations for the planning, and financing, of highways.

“(E) Studies of the economy, safety, and convenience of highway use.

“(F) The regulation and equitable taxation of highway use.

“(G) Such research and development as are necessary in connection with the planning, design, and maintenance of the highway system.

“(h) USE OF FUNDS FOR ROUTINE MAINTENANCE.—None of the funds made available for the program shall be obligated or expended for routine maintenance.

“(i) LOCATION PROJECTS.—Territorial highway projects (other than those described in paragraphs (1), (2), and (4) of section 133(b)) may not be undertaken on roads functionally classified as local.

“(b) CONFORMING AMENDMENTS.—

“(1) ELIGIBLE PROJECTS.—Section 103(b)(6) of title 23, United States Code, is amended by striking subparagraph (P) and inserting the following:

“(P) Projects eligible for assistance under the territorial highway program, under subsection (c).

“(2) FUNDING.—Section 104(b)(1)(A) of title 23, United States Code, is amended by striking “to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands” and inserting “for the territorial highway program authorized under section 215”.

“(3) ANALYSIS.—The analysis for chapter 2 of title 23, United States Code, is amended by striking the item relating to section 215 and inserting the following:

“215. Territorial highway program.”.

SEC. 1819. HIGH-SPEED MAGNETIC LEVITATION SYSTEM DEPLOYMENT PROGRAM.

(a) IN GENERAL.—Section 322 of title 23, United States Code, is amended to read as follows:

“§322. High-speed magnetic levitation system deployment program

“(a) DEFINITIONS.—In this section:

“(1) ELIGIBLE PROJECT COSTS.—

“(A) IN GENERAL.—The term ‘eligible project costs’ means the capital cost of the fixed guideway infrastructure of a MAGLEV project, including land, piers, guideways, propulsion equipment and other components attached to guideways, stations, vehicles, power distribution facilities (including substations), control and communications facilities, access roads, and storage, repair, and maintenance facilities.

“(B) IN GENERAL.—The term ‘eligible project costs’ includes the costs of preconstruction planning activities.

“(2) FULL PROJECT COSTS.—The term ‘full project costs’ means the total capital costs of a MAGLEV project, including eligible project costs and the costs of stations, vehicles, and equipment.

“(3) MAGLEV.—

“(A) IN GENERAL.—The term ‘MAGLEV’ means transportation systems in revenue service employing magnetic levitation that would be capable of safe use by the public at a speed in excess of 240 miles per hour.

“(B) INCLUSION.—In accordance with the term ‘MAGLEV’ includes power, control, and communication facilities required for the safe operation of the vehicles within a system described in subparagraph (A).

“(4) SECRETARY.—The term ‘Secretary’ means the Secretary of Transportation.

“(5) SPECIAL PURPOSE ENTITY.—The term ‘special purpose entity’ means a nonprofit entity that—

“(A) is not a State-designated authority; but

“(B) is eligible, as determined by the Governor of the State in which the entity is located, to participate in the program under this section.

“(6) TEA–21 CRITERIA.—The term ‘TEA–21 criteria’ means—

“(A) the criteria set forth in subsection (d) of this section (as in effect on the date before the date of enactment of the Safe, Affordable, Flexible, and Efficient Transportation Equity Act of 2005), including applicable regulations; and

“(B) with respect to subsection (e)(2), the criteria set forth in subsection (d)(8) of this section (as so in effect).

“(7) PHASE I—PRECONSTRUCTION PLANNING.—

“(1) IN GENERAL.—A State, State-designated authority, or special purpose entity may apply to the Secretary for grants to conduct preconstruction planning for proposed MAGLEV projects, or extensions to MAGLEV systems that may be studied, or deployed under this or any other program.

“(2) APPLICATIONS.—An application for a grant under this subsection shall include a description of the proposed MAGLEV project, including, at a minimum—

“(A) a description of the purpose and need for the proposed MAGLEV project;

“(B) a description of the travel market to be served;

“(C) a description of the technology selected for the MAGLEV project;

“(D) forecasts of ridership and revenues;

“(E) a description of preliminary engineering that is sufficient to support a reasonable estimate of the capital cost of constructing, operating, and maintaining the project;

“(F) a realistic schedule for construction and equipment for the project;

“(G) an environmental assessment;

“(H) a preliminary identification of the 1 or more organizations that will construct and operate the project; and

“(I) a cost-benefit analysis and tentative financial plan for construction and operation of the project.

“(2) DEADLINE FOR APPLICATIONS.—The Secretary shall establish an annual deadline for receipt of applications under this subsection.

“(3) SELECTION.—The Secretary, except as otherwise provided in this section, shall select for Federal support for preconstruction planning and any project that the Secretary determines meets the criteria.

“(4) PHASE II—ENVIRONMENTAL IMPACT STUDIES.—

“(1) IN GENERAL.—A State, State-designated authority, or multistate-designated authority that has conducted (under this section or any other provision of law) 1 or more studies that address each of the requirements of subsection (b)(2) may apply for Federal funding to assist in—

“(A) preparing an environmental impact statement or similar analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

“(B) funding projects carried out under subsection (d), not more than ½ of the full capital cost of such a project shall be made available from funds appropriated for this program.

“(2) FUNDING.—

“(A) CONTRACT AUTHORITY; AUTHORIZATION OF APPROPRIATIONS.—

“(B) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund...
projects. and 2009.
gram count) to carry out administration of this pro-
under subsection (b)(4).
project continues to fulfill the requirements of this section;
(b) to the maximum extent practicable, has met safety guidelines established by the Sec-
Secretary to protect the health and safety of the public;
(c) is based on designs that ensure the greatest
design, life cycle advantages for the project;
(d) costs domestic content of at least 70 percent;
and (E) is designed and developed through public-
private partnership entities and continues to meet
the TEA-21 criteria relating to public-private
partnerships.
(c) CONFORMING AMENDMENT.—The analysis
for chapter 4 of title 23, United States Code, is
amended by striking the item relating to section
322 and inserting the following:
“322—High-speed magnetic levitation system de-
velopment program.”.
SEC. 1820. DONOR REGONAL AUTHORITY.
Section 323 of title 23, United States Code, is
amended by adding at the end the following:
“323—Delta Regional Authority.
(a) IN GENERAL.—Subchapter I of chapter 1 of title
23, United States Code (as amended by sec-
1814(a)), is amended by adding at the end the following:
“325—Delta Regional Authority.
(a) IN GENERAL.—The Secretary shall carry out
a program to—
(i) support and encourage multistate transpor-
tation planning and corridor development;
(ii) provide for transportation project develop-
ment; and
(iii) facilitate transportation decisionmaking; and
(iv) support transportation construction.
(b) ELIGIBLE RECIPIENTS.—A State transpor-
tation department or metropolitan planning or-
ganization may receive and administer funds
provided under the program.
(c) ELIGIBLE ACTIVITIES.—The Secretary shall
make allocations under the program for multistate
highway planning, development, and construction
projects. and
(d) OTHER PROVISIONS REGARDING ELIGI-
BILITY.—All activities funded under this program
shall be consistent with the continuing, cooperative, and
comprehensive planning proces-
ses required by sections 133 and 135.
(e) SELECTION CRITERIA.—The Secretary shall
select projects to be carried out under the program based on
(i) whether the project is located—
(A) in an area that is part of the Delta Re-
gional Authority; and
(B) on the Federal-aid system;
(ii) endorsement of the project by the State
department of transportation; and
(iii) evidence of the ability to complete the
project.
(f) PROGRAM PRIORITIES.—In administering
the program, the Secretary shall—
(i) encourage State and local officials to work
together to develop plans for multimodal
and multijurisdictional transportation decision-
making; and
(ii) give priority to projects that emphasize
modal and multimodal transportation decision-
making.
(c) ANNUAL LISTING OF DISADVANTAGED BUSI-
NESS ENTERPRISES.—Each State shall annually sur-
vey and compile a list of the small business
concerns referred to in subsection (d) and the
location of such concerns in the State and notify
the Secretary, in writing, of the percentage of such con-
cerns which are controlled by women,
socially and economically disadvantaged individuals
and
(1) have annual receipts of less than
$150,000,000

(2) socially and economically
disadvantaged individuals.
(i) the term “socially and eco-
nomically disadvantaged individuals” has the meaning
given under the Small Business

(2) EXCLUSION.—The term “small business
concern” does not include any concern or group
of concerns controlled by the same socially and
economically disadvantaged individual or indi-
tuals which have been annual gross receipts of
over $150,000,000,000, as adjusted by the Secretary for
inflation.

(f) SOCIALY AND ECONOMICALLY DISADVAN-
TAGED INDIVIDUALS.—The term “socially and
economically disadvantaged individuals” has the meaning
given under the Small Business

(IV) $850,000,000 for fiscal year 2007; and
(III) $850,000,000 for fiscal year 2006;
(I) $25,000,000 for fiscal year 2005;
(ii) PHASE I 
(I) $16,000,000 for fiscal year 2006;
(ii) PHASE II.
(I) $6,000,000 for fiscal year 2005; and
(II) $2,000,000 for each of fiscal years 2006
through 2009.

(ii) PHASE II.—There are authorized to be
appropriated from the Highway Trust Fund (other than the Mass
Transit Account) to carry out Phase
II—environmental impact studies under subsection (c)—
(I) $29,000,000 for fiscal year 2005; and
(II) $25,000,000 for each of fiscal years 2006
through 2009.

(iii) PHASE III.—There are authorized to be
appropriated from the Highway Trust Fund (other than the Mass
Transit Account) to carry out Phase
III—deployment projects under subsection (d)—
(I) $50,000,000 for fiscal year 2005; 
(II) $65,000,000 for fiscal year 2006; 
(III) $85,000,000 for fiscal year 2007; 
and 
(IV) $94,000,000 for each of fiscal years 2008
and 2009.

(iv) PROGRAM ADMINISTRATION.—There are
authorized to be appropriated from the Highway
Trust Fund (other than the Mass Transit Ac-
count) to carry out administration of this pro-
gram—
(I) $13,000,000 for fiscal year 2005; 
(II) $16,000,000 for fiscal year 2006; 
(III) $8,000,000 for fiscal year 2007; and 
(IV) $5,000,000 for each of fiscal years 2008
and 2009.

(v) RESEARCH AND DEVELOPMENT.—There is
authorized to be appropriated from the Highway
Trust Fund (other than the Mass Transit Ac-
count) to carry out research and development activities to reduce MAGLEV deployment costs
$4,000,000 for each of fiscal years 2005 through 2009.

(f) AVAILABILITY OF FUNDS.—Funds made
available under subsection (e) shall remain
available until expended.

(g) OTHER FEDERAL FUNDS.—Funds made
available to a State to carry out the surface transportation program under section
133 and the congestion mitigation and air quality
improvement programs under section
149 may be used by any State to pay a portion of the full
project costs of an eligible project selected under
this section, without requirement for non-Fed-
eral funds.

(h) OTHER FEDERAL FUNDS.—A project
selected for funding under this section shall be elig-
ible for other forms of financial assistance pro-
vided by this title and title V of the Railroad
Reinvestment and Redevelopment Act of 1976 (45 U.S.C. 821 et seq.), including loans, loan
guarantees, and lines of credit.

(i) MANDATORY ADDITIONAL SELECTION.
—Subject to paragraph 2, in selecting projects for preconstruction planning,
deployment, and financial assistance, the Sec-

section. 2182. Bridge Construction, North Dakota.

Notwithstanding any other provision of law, and regardless of the source of Federal funds, the Federal share of the eligible costs of construction of a bridge between Bismarck, North Dakota, and Mandan, North Dakota, shall be 90 percent.

section. 2183. Community Enhancement Study.

(a) In general.—The Secretary shall conduct a study on—

(1) the role of well-designed transportation projects in—

(A) promoting economic development;

(B) protecting public health, safety, and the environment; and

(C) enhancing the architectural design and planning of communities; and

(2) the positive economic, cultural, aesthetic, scenic, architectural, and environmental benefits of those projects for communities.

(b) Contents.—The study shall address—

(1) the degree to which well-designed transportation projects—

(A) have positive economic, cultural, aesthetic, scenic, architectural, and environmental benefits for communities;

(B) protect and contribute to improvements in public health and safety; and

(C) use inclusive public participation processes to achieve quicker, more certain, and better results;

(2) the degree to which positive results are achieved by linking transportation, design, and the implementation of community visions for the future; and

(3) methods of facilitating the use of successful models or best practices in transportation investment or development to accomplish—

(A) enhancement of community identity;

(B) protection of public health and safety;

(C) provision of a variety of choices in housing, shopping, transportation, employment, and recreation;

(D) preservation and enhancement of existing infrastructure; and

(E) creation of a greater sense of community through public involvement.

(c) Administration.—

(1) in general.—To carry out this section, the Secretary shall make a grant to, or enter into a cooperative agreement or contract with, a national organization with expertise in the design of a wide range of transportation and infrastructure projects, including the design of building, public facilities, and surrounding communities.

(2) Federal share.—Notwithstanding section 2182(e)(2) of the Transportation Equity Act for the 21st Century (23 U.S.C. 123 note), the Federal share of the cost of the study under this section shall be 100 percent.

(d) Report.—Not later than September 20, 2006, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the study under this section.

(e) Authorization.—Of the amounts made available to carry out section 2182 of the Transportation Equity Act for the 21st Century (23 U.S.C. 123 note), 1 percent shall be available for each of fiscal years 2005 and 2006 to carry out this section.

Section 1214(d)(5)(A) of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note; 112 Stat. 260) is amended by striking "$1,000,000 for each of fiscal years 1998 through 2003" and inserting "$1,800,000 for each of fiscal years 2005 through 2009".

Section 101(b)(2) of the Interstate Surface Transportation Efficiency Act of 1991 (23 U.S.C. 149 note; 105 Stat. 1938) is amended in the first sentence by striking "The Secretary" and inserting "For fiscal years 2005 and each fiscal year thereafter, the Secretary".

Section 103(b) of the Interstate Surface Transportation Efficiency Act of 1991 (23 U.S.C. 149 note; 105 Stat. 1938) is amended in the first sentence by striking "$50 million" and inserting "$30 million".

Section 101(a)(1) of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note; 112 Stat. 260) is amended by striking "$30 million" and inserting "$200 million for each of fiscal years 1998 through 2003".

"(a) Federal share.—Amounts provided by the Delta Regional Authority to carry out a project under this section shall be applied to the non-Federal share required by section 123.

(b) Conforming amendment.—The analysis for chapter 1 of title 23, United States Code (as amended by section 181(b)), is amended by adding at the end the following:

"178. Delta Region transportation development program.

(a) Establishment.—The Secretary shall establish a program to develop international trade and multimodal transportation in the Delta Region (as defined in section 1105 of chapter I of title 23, United States Code).

(b) Eligible activities.—The Secretary shall make allocations under this program for any eligible activity.

(c) Selection criteria.—The Secretary shall select projects for corridors that conform with the National Environmental Policy Act and the regulations promulgated thereunder.

(d) Other provisions regarding eligibility.—Any funds used under this program shall be consistent with the continuing, cooperative, and comprehensive planning process required for any study carried out under this section.

(e) Eligibility of credit.—The credit shall be available to any eligible activity.

(f) Notice regarding participation of small business concerns.—The Secretary shall provide notice to small business concerns regarding the availability of Federal funds for any eligible activity.

(g) Federal share.—The Federal share required for any study carried out under this section shall be available for obligation in the same manner as if the funds were apportioned under chapter I of title 23, United States Code.

SEC. 1805. AUTHORIZATION OF CONTRACT AUTHORITY FOR STATES WITH INDIAN RESERVATIONS.

"(a) Authorization.—In this section—

"(1) the term "Federal share" means the Federal share provided under section 1206 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note).

"(2) the term "project" means the project described in section 1206 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note).

"(3) the term "State" means the State in which a project is located.

"(b) Application.—The term "project" means the project described in section 1206 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note), and the Federal share required for any project under section 1206 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note).

"(c) General policy.—Nothing in this section shall be construed to require the Secretary to provide a Federal share for any project under section 1206 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note) unless the purposes of the project described in such section are consistent with the purposes of the Federal-aid highway program.

"(d) Notice.—Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the implementation of section 1206 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note).

"(e) Authorization.—The funds authorized under section 1206 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note) are authorized to remain available for obligation in accordance with the terms and conditions of section 1206 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note).
SEC. 1834. COMPREHENSIVE COASTAL EVACUATION PLAN.

(a) IN GENERAL.—The Secretary of Transportation and the Secretary of Homeland Security (referred to in this section as the “Secretaries”) shall jointly develop a written comprehensive plan for evacuation of the coastal areas of the United States during any natural or man-made disaster that affects coastal populations.

(b) CONSULTATION.—In developing the comprehensive plan, the Secretaries shall consult with Federal, State, and local transportation and emergency management officials that have been involved with disaster related evacuations.

(c) CONTENTS.—The comprehensive plan shall—

(1) consider, on a region-by-region basis, the extent to which coastal areas may be affected by a disaster; and

(2) address, at a minimum—

(A) all practical modes of transportation available for evacuations;

(B) methods of communicating evacuation plans and preparing citizens in advance of evacuations;

(C) methods of coordinating communication with evacuees during plan execution;

(D) precise methods for mass evacuations caused by disasters such as hurricanes, flash flooding, and tsunamis; and

(E) recommended policies, strategies, programs, and activities that could improve disaster-related evacuations.

(d) REPORT AND UPDATES.—The Secretaries shall—

(1) not later than October 1, 2006, submit to Congress the written comprehensive plan; and

(2) periodically thereafter, but not less often than every 5 years, update, and submit to Congress any revision to, the plan.

SEC. 1835. PRIORITY PROJECTS.

Section 1602 of the Transportation Equity Act for the 21st Century (112 Stat. 306) is amended in item number 820 in the table contained in section 1602 of the Transportation Equity Act for the 21st Century (112 Stat. 287) by striking “Conduct” and all that follows through “Transportation needs study and make improvements to I-75 interchanges in the Grayling area”.

SEC. 1836. TRANSPORTATION NEEDS, GRAYLING, MICHIGAN.

Item number 820 in the table contained in section 1602 of the Transportation Equity Act for the 21st Century (112 Stat. 287) is amended by striking “Conduct” and all that follows through “Transportation needs study and make improvements to I-75 interchanges in the Grayling area”.

SEC. 1837. US-95 PROJECT, LAS VEGAS, NEVADA.

Unless an agreement is reached between the Federal Highway Administration, the State of Nevada, and the Sierra Club, the State of Nevada may continue to completion construction of the project entitled “US-95 Project in Las Vegas, Nevada”, as approved by the Federal Highway Administration on November 18, 1999, and selected in the record of decision dated January 28, 2000, on June 30, 2005.

Subtitle I—Technical Corrections

SEC. 1901. REPEAL OR UPDATE OF OBSOLETE TEXT.

(a) LETTING OF CONTRACTS.—Section 112 of title 23, United States Code, is amended—

(1) by striking subsection (f); and

(2) by redesignating subsection (g) as subsection (f).

(b) FRINGE AND CORRIDOR PARKING FACILITIES.—Section 137(a) of title 23, United States Code, is amended in the first sentence by striking “on the Federal-aid urban system” and inserting “on a Federal-aid highway”.

SEC. 1902. CLARIFICATION OF DATE.

Section 109(g) of title 23, United States Code, is amended in the first sentence by striking “The Secretary” and all that follows through “of 1970” and inserting “Not later than January 30, 1971, the Secretary shall issue”.

Title II—Transportation Research

Subtitle A—Funding

SEC. 2001. AUTHORIZATION OF APPROPRIATIONS.

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

(1) SURFACE TRANSPORTATION RESEARCH.—(A) IN GENERAL.—For carrying out sections 502, 503, 506, 507, 508, and 511 of title 23, United States Code—

(i) $198,650,704 for fiscal year 2005;

(ii) $201,805,220 for fiscal year 2006;

(iii) $204,621,107 for fiscal year 2007;

(iv) $206,408,363 for fiscal year 2008; and

(v) $209,314,525 for fiscal year 2009.

(B) SURFACE TRANSPORTATION-ENVIRONMENTAL COOPERATIVE RESEARCH PROGRAM.—For each of fiscal years 2005 through 2009, the Secretary shall set aside $18,772,579 of the funds authorized under subparagraph (A) to carry out the surface transportation-environmental cooperative research program under section 507 of title 23, United States Code.

(2) TRAINING AND EDUCATION.—For carrying out section 504 of title 23, United States Code—

(A) $26,281,610 for fiscal year 2005;

(B) $27,220,239 for fiscal year 2006;

(C) $28,158,868 for fiscal year 2007;

(D) $29,097,497 for fiscal year 2008; and

(E) $30,036,126 for fiscal year 2009.

(3) BUREAU OF TRANSPORTATION STATISTICS.—For the Bureau of Transportation Statistics to carry out section 111 of title 49, United States Code, $26,281,610 for each of fiscal years 2005 through 2009.

(4) ITS STANDARDS, RESEARCH, OPERATIONAL TESTS, AND DEVELOPMENT.—For carrying out sections 524, 525, 526, 527, 528, and 529 of title 23, United States Code—

(A) $115,431,358 for fiscal year 2005;

(B) $118,267,245 for fiscal year 2006;

(C) $121,083,132 for fiscal year 2007;

(D) $123,899,019 for fiscal year 2008; and

(E) $126,714,906 for fiscal year 2009.

(5) UNIVERSITY TRANSPORTATION CENTERS.—For carrying out section 109 of title 21, United States Code $4,238,302 for each of fiscal years 2005 through 2009.

(b) APPlicability of Title 23, United States Code.—Funds authorized to be appropriated by subsection (a) shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share of the cost of a project or activity carried out using the funds shall be the share applicable under section 120(b) of title 23, United States Code, as adjusted under subsection (d) of that section (unless otherwise specified or otherwise determined by the Secretary); and

(2) shall remain available until expended.

(c) ALLOCATIONS.—

(1) SURFACE TRANSPORTATION RESEARCH.—Of the amounts made available under subsection (a)(1).nick—

(A) $25,342,981 for each of fiscal years 2005 through 2009 shall be available to carry out advanced, high-risk, long-term research under section 502(d) of title 23, United States Code;

(B) $10,000,000 for each of fiscal years 2005 through 2009 shall be available to carry out the long-term pavement performance program under section 502(e) of that title; and

(C) $5,000,000 for each of fiscal years 2005 through 2009 shall be available to carry out the high-performance concrete bridge research and development program under section 502(i) of that title, of which $750,000 for each fiscal year shall be used by the Secretary to carry out...
(F) $2,815,887 of the amounts made available to carry out the highway safety improvement program under section 148 of title 23, United States Code, for the fiscal year;

(G) $5,000,000 for each of fiscal years 2005 through 2009 shall be made available to carry out research on asphalt used in highway pavements; and

(H) $3,475,000 for each of fiscal years 2005 through 2009 shall be made available to carry out research on aggregates used in highway pavements, including alternative materials used in highway drainage applications; and

(I) $3,000,000 for each of fiscal years 2005 through 2009 shall be made available for further development and deployment of technologies to prevent and mitigate alkali silica reactivity; and

(J) $1,500,000 for fiscal year 2005 shall be re- main available until expended for asphalt and asphalt-related reclamation research at the South Dakota School of Mines; and

(K) $2,500,000 for each of fiscal years 2005 through 2009 shall be made available to carry out section 502(k) of title 23, United States Code.

SEC. 2003. OBLIGATION CEILING.

Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Highway Trust Fund (other than the Mass Transit Account) by section 2001(a) shall not exceed:

(A) $406,491,420 for fiscal year 2005;

(B) $416,000,453 for fiscal year 2006;

(C) $422,570,857 for fiscal year 2007;

(D) $458,262,583 for fiscal year 2008; and

(E) $534,773,037 for fiscal year 2009.

SEC. 2005. NOTICE.

(a) NOTICE OF REPROGRAMMING.—If any funds authorized for carrying out this title or the amendments made by this title are subject to a reprogramming action that requires notice to be provided to the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate, notice of such action shall be concurrently provided to the Committee on Transportation and Infrastructure and the Committee on Science of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(b) NOTICE OF REORGANIZATION.—On or before the 15th day preceding the date of any reorganization of a program, project, or activity of the Department of Transportation for which funds are authorized by this title or the amendments made by this title, the Secretary shall provide notice of the reorganization to the Committee on Transportation and Infrastructure and the Committee on Science of the House of Representatives and the Committee on Environment and Public Works of the Senate.

Subtitle B—Research and Technology

SEC. 2010. RESEARCH AND TECHNOLOGY PROGRAM.

(a) In General.—Chapter 5 of title 23, United States Code, is amended to read as follows:

‘‘CHAPTER 5—RESEARCH AND TECHNOLOGY

‘‘SUBCHAPTER I—SURFACE TRANSPORTATION

‘‘Sec.

‘‘201. Definitions.

‘‘202. Surface transportation research.

‘‘203. Technology application program.

‘‘204. Training and education.

‘‘205. State planning and research.

‘‘206. International highway transportation outreach program.

‘‘207. Surface transportation-environmental cooperative research program.

‘‘208. Surface transportation research technology deployment and strategic partnerships program.

‘‘209. New strategic highway research program.


‘‘211. Multistate corridor operations and management program.

‘‘212. Transportation analysis simulation system.

‘‘SUBCHAPTER II—INTELLIGENT TRANSPORTATION SYSTEM RESEARCH AND TECHNICAL ASSISTANCE PROGRAM


‘‘502. Funding, goals and purposes.

‘‘503. Definitions.

‘‘504. General authorities and requirements.


‘‘507. Commercial vehicle intelligent transportation system infrastructure program.

‘‘508. Research and development.

‘‘509. Use of funds.

‘‘SUBCHAPTER I—SURFACE TRANSPORTATION

§501. Definitions

In this subchapter—

‘‘(A) the term ‘Federal laboratory’ includes—

‘‘(i) a Government-owned, Government-operated laboratory; and

‘‘(ii) a Government-owned, contractor-operated laboratory.

‘‘(B) the term ‘service’ includes highway and traffic safety systems, research, and development relating to—

‘‘(i) a vehicle, highway, driver, passenger, bicyclist, and pedestrian characteristics;

‘‘(ii) accident investigations;

‘‘(iii) integrated, interoperable emergency communications;

‘‘(iv) emergency medical care; and

‘‘(v) transportation of the injured.

§502. Surface transportation research

(a) In General.—

‘‘(1) RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—The Secretary may carry out research, development, and technology transfer activities with respect to—

‘‘(I) an integrated, interoperable intelligent transportation system; and

‘‘(II) an intelligent highway sensor system.

‘‘(2) TESTS AND DEVELOPMENT.—The Secretary may carry out tests and development, including new technologies, construction, transportation systems management, and operations development, design, maintenance, safety, security, financing, data collection and analysis, demand forecasting, multimodal assessment, and traffic conditions; and

‘‘(B) the effect of State laws on the activities described in paragraph (A).

‘‘(3) COOPERATION, GRANTS, AND CONTRACTS.—

‘‘(I) General.—The Secretary may carry out this section—

‘‘(i) independently;

‘‘(ii) in cooperation with—

‘‘(I) any other Federal agency or instrumentality; and

‘‘(II) any Federal laboratory; or

‘‘(iii) by making grants to, or entering into contracts, cooperative agreements, and other transactions with—

‘‘(I) the National Academy of Sciences;

‘‘(II) the American Association of State Highway and Transportation Officials;

‘‘(III) planning organizations;

‘‘(IV) a Federal laboratory;

‘‘(V) a State agency;

‘‘(VI) an authority, association, institution, or organization;

‘‘(VII) a for-profit or nonprofit corporation; and

‘‘(VIII) an international, national, or other entity.

‘‘(B) COMPETITION.—All parties entering into contracts, cooperative agreements or other transactions with the Secretary, or receiving grants, to perform research or provide technical assistance under this section shall be selected, to the maximum extent practicable and appropriate—

‘‘(i) on a competitive basis; and

‘‘(ii) on the basis of the results of peer review of proposals submitted to the Secretary.'
(4) **TECHNOLOGICAL INNOVATION.**—The programs and activities carried out under this section shall be consistent with the surface transportation research and technology development strategic plan developed under section 508(c).

(5) **FUNDS.**—

(A) **SPECIAL ACCOUNT.**—In addition to other funds made available to carry out this section, the Secretary may use such funds as may be deposited by any cooperating organization or person in a special account of the Treasury established for this purpose.

(B) **USE OF FUNDS.**—The Secretary shall use funds made available to carry out this section to develop, administer, communicate, and promote the use of products of research, development, and technology transfer programs under this section.

(c) **COLLABORATIVE RESEARCH AND DEVELOPMENT.**—

(1) **IN GENERAL.**—To encourage innovative solutions to surface transportation problems and stimulate the deployment of new technology, the Secretary may carry out, on a cost-shared basis, collaborative research and development with—

(A) non-Federal entities (including State and local governments, foreign governments, colleges and universities, corporations, institutions, partnerships, sole proprietors, and trade associations that are incorporated or established under the laws of any State); and

(B) Federal laboratories.

(2) **AGREEMENTS.**—In carrying out this subsection, the Secretary may enter into cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)) with—

(A) non-Federal entities (including State and local governments, foreign governments, colleges and universities, corporations, institutions, partnerships, sole proprietors, and trade associations that are incorporated or established under the laws of any State); and

(B) Federal laboratories.

(3) **FEDERAL SHARE.**—

(A) **IN GENERAL.**—The Federal share of the cost of activities carried out under a cooperative research and development agreement entered into under this subsection shall not exceed 50 percent, except that if there is a substantial public interest or benefit, the Secretary may approve a greater Federal share.

(B) **NON-FEDERAL SHARE.**—All costs directly incurred by the non-Federal partners, including personnel, travel, and hardware development costs, shall be credited toward the non-Federal share of the cost of the activities described in subparagraph (A).

(4) **USE OF TECHNOLOGY.**—The research, development, or use of a technology under a cooperative research and development agreement entered into under this subsection, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

(5) **WAIVER OF ADVERTISING REQUIREMENTS.**—Section 3709 of the Revised Statutes (41 U.S.C. 5) shall not apply to a contract or agreement entered into under this chapter.

(c) **CONTENTS OF RESEARCH PROGRAM.**—The Secretary shall include as priority areas of effort within the surface transportation research program—

(1) the development of new technologies and methods to improve the performance of segments, structures, design, and construction, with the objectives of—

(A) increasing to 50 years the expected life of bridges; and

(B) significantly increasing the durability of other structures;

(ii) increasing the life-cycle costs, including—

(i) construction costs;

(ii) maintenance costs;

(iii) operation costs; and

(iv) user costs.

(2) the development, and testing for effectiveness, of nondestructive evaluation technologies for concrete infrastructure using existing and new technologies;

(3) the investigation of—

(A) the application of current natural hazard mitigation techniques to manmade hazards; and

(B) the continuation of hazard mitigation research combining manmade and natural hazards;

(4) the improvement of safety—

(A) at intersections;

(B) with respect to accidents involving vehicles running off the road; and

(C) on rural roads;

(5) the reduction of zone incursions and improvement of zone safety;

(6) the improvement of geometric design of roads for the purpose of safety;

(7) the evaluation of data collected through the national bridge inventory conducted under section 144 using the national bridge inspection standards established under section 508(c), with the objectives of determining whether—

(A) the most useful types of data are being collected; and

(B) any improvement could be made in the types of data collected and the manner in which the data is collected, with respect to bridges in the United States;

(8) the improvement of the infrastructure investment needs report described in subsection (g) through—

(A) the study and implementation of new methods of collecting better quality data, particularly with respect to performance, congestion, and infrastructure conditions;

(B) monitoring of the surface transportation system in a system-wide manner, through the use of—

(i) intelligent transportation system technologies of traffic operations centers; and

(ii) other new data collection technologies as sources of better quality performance data;

(9) the determination of the critical metrics that should be used to determine the condition and performance of the surface transportation system; and

(10) the study and implementation of new methods of statistical analysis and computer models to improve the prediction of future infrastructure investment requirements;

(11) the development of methods to improve the determination of benefits from infrastructure improvements, including—

(A) more accurate calculations of benefit-to-cost ratios, benefits and impacts throughout local and regional transportation systems;

(B) improvements in calculating life-cycle costs; and

(C) valuation of assets;

(12) improvements in calculating performance measures to better predict outcomes of transportation projects, including simulations in the planning process to predict outcomes of planning decisions;

(13) the multimodal applications of Geographic Information Systems and remote sensing, including such areas of application as—

(A) planning;

(B) environmental decisionmaking and project delivery; and

(C) freight movement;

(14) the development and application of methods of providing revenues to the Highway Trust Fund with the objective of offsetting potential reductions in fuel tax receipts;

(15) the development of tests and methods to determine the benefits and costs to communities of major transportation investments and projects; and

(16) the conduct of extreme weather research, including research to—

(A) reduce contraction and expansion damage;

(B) reduce or repair road damage caused by freezing and thawing;

(C) improve deicing or snow removal techniques;

(D) develop better methods to reduce the risk of thermal collapse, including collapse from changes in underlying permafrost;

(E) improve concrete and asphalt installation in extreme weather conditions; and

(F) make other improvements to protect highway infrastructure or enhance highway safety and performance.

(15) the improvement of surface transportation planning;

(16) environmental research;

(17) transportation system management and operations; and

(18) any other surface transportation research topics that the Secretary determines, in accordance with the strategic planning process section 508(b), to be critical.

(d) **ADVANCED, HIGH-RISK RESEARCH.**—

(1) **IN GENERAL.**—The Secretary shall establish and carry out, in accordance with the surface transportation research and technology development strategic plan, programs to support research with potentially dramatic breakthroughs for improving the durability, efficiency, environmental impact, productivity, and safety (including bicycle and pedestrian safety) aspects of highway and intermodal transportation systems.

(2) **PARTNERSHIPS.**—In carrying out the program, the Secretary shall seek to develop partnerships with the public and private sectors.

(e) **REPORT.**—The Senate shall include in the strategic plan required under section 508(c) a description of each of the projects, and the amount of funds expended for each project, carried out under this subsection during the fiscal year.

(f) **LONG-TERM PAVEMENT PERFORMANCE PROGRAM.**—

(1) **AUTHORITY.**—The Secretary shall continue, through September 30, 2009, the long-term pavement performance program tests, monitoring, and data analysis.

(2) **GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.**—Under the program, the Secretary shall make grants and enter into cooperative agreements and contracts to improve concrete and asphalt pavements, increase the durability, efficiency, environmental impact, productivity, and safety (including bicycle and pedestrian safety) aspects of highway and intermodal transportation systems.

(A) monitor, material-test, and evaluate highway test sections in existence as of the date of the grant, agreement, or contract;

(B) analyze the data obtained in carrying out subparagraph (A); and

(C) prepare products to fulfill program objectives and meet future pavement technology needs.

(3) **CONCLUSION OF PROGRAM.**—

(A) **SUMMARY REPORT.**—The Secretary shall, in the report required under section 508(c) a report on the initial conclusions of the long-term pavement performance program that includes—

(i) analysis of any research objectives that remain to be achieved under the program;

(ii) an analysis of other associated long-term expenditures under the program that are in the public interest;

(iii) a detailed plan regarding the storage, maintenance, and user support of the database, information management system, and materials reference library of the program;

(iv) a schedule for continued implementation of the necessary data collection and analysis agreements and contracts under the program; and

(v) an estimate of the costs of carrying out each of the activities described in clauses (i) through (iv) for each fiscal year during which the program is carried out.

(B) **DEADLINE: USEFULNESS OF ADVANCES.**—The Secretary shall, to the maximum extent practicable—

(1) ensure that the long-term pavement performance program is concluded not later than September 30, 2009; and

(2) ensure that such allowances as are necessary to ensure the usefulness of the technological advances resulting from the program.

(g) **SEISMIC RESEARCH.**—The Secretary shall—

(1) in consultation and cooperation with Federal agencies participating in the National
Earthquake Hazards Reduction Program established by section 5 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704), coordinate the conduct of seismic research;

(2) the plans developed by the Director of the Federal Emergency Management Agency under section 5(b)(1) of that Act (42 U.S.C. 7704(b)(1)); and

(3) in cooperation with the Center for Civil Engineering at the University of Nevada, Reno, and the National Center for Earthquake Engineering Research at the University of Buffalo, carry out a seismic research program—

(A) to study the vulnerability of the Federal-aid highway system and other surface transportation systems to seismic activity;

(B) to develop and implement cost-effective methods to reduce the vulnerability; and

(C) to conduct seismic research and upgrade earthquake simulation facilities as necessary to carry out the program;

(g) INFRASTRUCTURE INVESTMENT NEEDS REPORT.—

(in) Not later than July 31, 2005, and July 31 of every second year thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes—

(A) estimates of the future highway and bridge needs of the United States; and

(B) a methodology of current highway and bridge needs.

(ii) COMPARISON WITH PRIOR REPORTS.—Each report under paragraph (i) shall provide the means, including all necessary information, to relate and compare the conditions and services measures used in the previous biennial reports.

(h) SECURITY RELATED RESEARCH AND TECHNOLOGY TRANSFER ACTIVITIES.—

(1) ESTABLISHMENT.—The Secretary, in consultation with interested stakeholders, shall develop and administer a national technology and innovation application initiatives and partnerships program.

(2) PURPOSE.—The purpose of the program shall be to significantly accelerate the adoption of technology and innovation by the transportation community.

(i) APPLICATION GOALS.—

(A) ESTABLISHMENT.—Not later than 180 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, the Secretary, in consultation with the Secretary of Homeland Security, with key stakeholder input (including State transportation departments) shall develop a 5-year strategic plan for research and technology transfer and deployment activities pertaining to the security aspects of highway infrastructure and operations.

(B) COMPONENTS OF PLAN.—The plan shall include—

(i) an identification of which agencies are responsible for the conduct of various research and technology transfer activities;

(ii) a description of the manner in which those activities will be coordinated; and

(iii) a description of the process to be used to ensure that the advances derived from relevant activities supported by the Federal Highway Administration are consistent with the operational guidelines, dependencies, and regulations of the Department of Homeland Security; and

(iv) a systematic evaluation of the research that should be conducted to address, at a minimum—

(I) vulnerabilities of, and measures that may be taken to address, any emergency response capabilities and evacuations;

(ii) recommended upgrades of traffic management during crises;

(iii) integrated, interoperable emergency communications among the public, the military, law enforcement, fire and emergency medical services, and transportation agencies;

(iv) protection of critical, security-related infrastructure; and

(v) structural reinforcement of key facilities.

(ii) SUBMISSION.—On completion of the plan under this subsection, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

(A) a copy of the plan developed under paragraph (1); and

(B) a copy of a memorandum of understanding specifying coordination strategies and assignment of responsibilities covered by the plan that is signed by the Secretary and the Secretary of Homeland Security.

(iii) HIGH-PERFORMANCE CONCRETE BRIDGE RESEARCH AND TECHNOLOGY TRANSFER PROGRAM.—In accordance with the objectives described in subsection (b), the Secretary shall carry out a program to demonstrate the application of high-performance concrete in the construction and rehabilitation of bridges.

(iv) BIOMEDICAL TRANSPORTATION RESEARCH.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) $12,000,000 for each of fiscal years 2005 through 2009 equally divided and available to conduct biomedical research of national importance at the National Biodiesel Board and at research centers identified in section 9011 of Public Law 107–171.

(v) HIGH-PERFORMING STEEL BRIDGE RESEARCH AND TECHNOLOGY TRANSFER PROGRAM.—In accordance with the objectives described in subsection (c)(1) and the requirements under sections 503(b)(4) and 504(b), the Secretary shall carry out a program to demonstrate the application of high-performance steel in the construction and rehabilitation of bridges.

(j) BIOBASED TRANSPORTATION SEARCH AND TECHNOLOGY TRANSFER PROGRAM.—

(8) ALLOCATION.—To the extent appropriate to carry out the goals established under paragraph (3), the Secretary may further allocate funds made available to carry out this section to States for use by those transportation, preservation, and rehabilitation of elements of surface transportation infrastructure.

(k) SECURITY RELATED RESEARCH AND TECHNOLOGY TRANSFER PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish and carry out a program for the application of innovative materials, design, and construction technologies in the construction, preservation, and rehabilitation of elements of surface transportation infrastructure.

(2) GOALS.—The goals of the program shall include—

(A) the development of new, cost-effective, and innovative materials; and

(B) the reduction of maintenance costs and life-cycle costs of elements of infrastructure, including the costs of new construction, replacement, and rehabilitation;

(C) the development of construction techniques to increase safety and reduce construction time and traffic congestion;

(D) the development of engineering design criteria for innovative products and materials for use in surface transportation infrastructure;

(E) the development of highway bridges and structures that will withstand natural disasters and disasters caused by human activity; and

(F) the development of new, nondestructive technologies and techniques for the evaluation of elements of transportation infrastructure.

(2) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—

(A) IN GENERAL.—Under the program, the Secretary shall make grants to, and enter into cooperative agreements and contracts with—

(i) States, other Federal agencies, universities, and colleges, private and nonprofit organizations, to pay the Federal share of the cost of research, development, and technology transfer concerning innovative material and methods; and

(ii) States, to pay the Federal share of the cost of repair, rehabilitation, replacement, and new construction of elements of surface transportation infrastructure that demonstrate the application of innovative materials and methods.

(B) APPLICATIONS.—

(i) IN GENERAL.—To receive a grant under this subsection, an applicant described in subparagraph (A) shall submit to the Secretary an application in such form and containing such information as the Secretary may require.

(ii) APPROVAL.—The Secretary shall select and approve an applicant based on whether the proposed project that is the subject of the application would meet the goals described in paragraph (2).

(iii) TECHNOLOGY AND INFORMATION TRANSFER.—The Secretary shall take such action as is necessary to—

(A) ensure that the information and technology resulting from research conducted under paragraph (3) is made available to State and local transportation departments and other interested parties, as specified by the Secretary; and

(B) encourage the use of the information and technology.

(iv) FEDERAL SHARE.—The Federal share of the cost of a project under this section shall be determined by the Secretary.
§504. Training and education

(a) National Highway Institute.—

(1) in general.—The Secretary shall—

(A) operate, in the Federal Highway Administration, a National Highway Institute (referred to in this subsection as the ‘‘Institute’’); and

(B) administer, through the Institute, the authority vested in the Secretary by this title or by any other Federal law to develop and conduct of education and training programs relating to highways.

(2) functions of the Institute.—In cooperation with State transportation departments, industries in the United States, and national or international entities, the Institute shall develop and administer education and training programs or instructions—

(A) Federal Highway Administration, State, and local transportation agency employees;

(B) regional, State, and metropolitan planning organizations;

(C) State and local police, public safety, and motor vehicle employees; and

(D) United States citizens and foreign nationals engaged or to be engaged in surface transportation work of interest to the United States.

(3) Courses.—

(A) in general.—The Institute shall—

(i) develop or update existing courses in asset management, including courses that include such components as—

(1) the determination of life-cycle costs;

(2) the valuation of assets;

(3) benefit-to-cost ratio calculations; and

(ii) objective decisionmaking processes for project selection; and

(ii) continually develop courses relating to the application of emerging technologies for—

(I) transportation infrastructure applications and asset management;

(II) intelligent transportation systems;

(III) operations (including security operations); and

(iv) the collection and archiving of data;

(v) expediting the planning and development of transportation projects; and

(vi) the intermodal movement of individuals and freight.

(B) additional courses.—In addition to the courses developed under subparagraph (A), the Institute may collaborate with State transportation departments, metropolitan planning organizations, and the American Association of State Highway and Transportation Officials, in designing courses relating to technology, methods, techniques, engineering, construction, safety, maintenance, environmental mitigation and compliance, regulations, management, inspection, and finance.

(C) revision of courses offered.—The Institute shall periodically—

(i) review the course inventory of the Institute; and

(ii) revise or cease to offer courses based on course content, applicability, and need.

(4) Eligibility; Federal share.—The funds apportioned to a State under section 104(b)(3) for the surface transportation program shall be available for expenditure by the State transportation department for the payment of not to exceed 75 percent of the cost of tuition and direct educational expenses (excluding salaries) in connection with the education and training of employees of State and local transportation agencies, with this subsection.

(5) Federal responsibility.—

(A) in general.—Except as provided in subparagraph (B), education and training of employees of Federal, State, and local transportation (including highway) agencies authorized under this subsection may be provided—

(i) by the Secretary, at no cost to the States and local governments, if the Secretary determines that provision at no cost is in the public interest; or

(ii) by the State, through grants, cooperative agreements, and contracts with public and private agencies, institutions, individuals, and the Institute;

(B) Payment of full cost by private persons.—Private agencies, international or foreign entities, and individuals shall pay the full cost of any education and training (including the cost of tuition and direct educational expenses) received by the agencies, entities, and individuals, unless the Secretary determines that payment of a lesser amount of the cost is of critical importance to the public interest.

(6) Training fellowships; cooperation.—The Institute may—

(A) engage in training activities authorized under this subsection, including the granting of training fellowships; and

(B) exercise the authority of the Institute independently or in cooperation with any—

(i) Federal, State, or local agency;

(ii) association, authority, institution, or organization;

(iii) for-profit or nonprofit corporation;

(iv) national or international entity;

(v) foreign country; or

(vi) person.

(7) Collection of fees.—

(A) in general.—In accordance with this subsection, the Institute may assess and collect fees to defray the costs of the Institute in developing or administering education and training programs under this subsection.

(B) Persons subject to fees.—Fees may be assessed and collected under this subsection only with respect to—

(i) persons and entities for whom education or training programs are developed or administered under this subsection; and

(ii) persons and entities to whom education or training is provided under this subsection.

(C) Amount of fees.—The fees assessed and collected under this subsection shall be established in a manner that ensures that the liability of any person or entity for a fee is reasonably based on the proportion of the costs referred to in subparagraph (A) that relate to the person or entity.

(D) Use.—All fees collected under this subsection shall be used, without further appropriation, to defray costs associated with the development or administration of education and training programs authorized under this subsection.

(8) Relation to fees.—The funds made available to carry out this subsection may be combined with or held separate from the fees collected under—

(A) paragraph (7);

(B) memoranda of understanding;

(C) regional compacts; and

(D) other similar agreements.

(9) local technical assistance program centers.

§505. State planning and research

(a) in general.—Two percent of the sums apportioned to a State for fiscal year 2005 and each fiscal year thereafter under sections 104 (other than subsections (f) and (h)) and 114 shall be available for expenditure by the State, in consultation with the Secretary, only for—

(1) the planning of—

(A) future highway programs and local public transportation systems; and

(B) the financing of those programs and systems, including metropolitan and statewide planning under sections 134 and 135;

(2) the development and implementation of management systems under section 303;

(3) the conduct of studies on—

(A) the economy, safety, and convenience of surface transportation systems; and

(B) the desirable regulation and equitable taxation of those systems;

(4) research, development, and technology transfer activities necessary in connection with the planning, design, construction, maintenance, and security of highway, public transportation, and intermodal transportation systems;

(5) the conduct of studies, research, and training relating to the engineering standards and construction materials for surface transportation systems described in paragraph (3) (including the evaluation and accreditation of inspection and testing and the regulation of and charging for the use of the standards and materials); and

(6) the conduct of activities relating to the planning of real-time monitoring elements.
(b) MINIMUM EXPENDITURES ON RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—

(1) IN GENERAL.—Subject to paragraph (2), not less than 25 percent of the funds subject to subsection (a) that are apportioned to a State for a fiscal year shall be expended by the State for research, development, and technology transfer activities under paragraphs (1), (2), or (4) of subsection (d) of section 120(b) for that fiscal year.

(2) EFFECT.—The Secretary may waive the application of paragraph (1) with respect to a State for a particular year if—

(A) the State certifies to the Secretary for the fiscal year that total expenditures by the State for transportation planning under sections 134 and 136(b)(1) of title 23 of the United States Code, and other Federal funds apportioned to the State for a fiscal year for highway transportation projects outside the United States for incorporation into the program established under this section and the new strategic highway research program established under section 509 of title 23, are not less than 25 percent of the funds described in paragraph (1); and

(B) the Secretary accepts the certification of the State.

(3) NONAPPLICATION OF ASSESSMENT.— Funds expended under paragraph (1) shall not be considered to be part of the extramural budget of the agency for the purpose of section 9 of the Small Business Act (15 U.S.C. 632).

(c) FEDERAL SHARE.—The Federal share of the cost of a project carried out using funds subject to subsection (a) that are apportioned to a State for a particular year shall be the share applicable under section 120(b)(6), as adjusted under subsection (d) of that section.

(d) ADMINISTRATION OF PROGRAMS.—Funds subject to section 120(b)(6) that are apportioned to a State for a particular year—

(1) combined and administered by the Secretary as a single fund; and

(2) available for obligation for the period described in section 118(b)(2).

(e) ELIGIBLE USE OF FUNDS.—A State, in coordination with the Secretary, may obligate funds made available to carry out this section for any purpose authorized under section 506(a).

§506. International highway transportation outreach program

(a) ESTABLISHMENT.—The Secretary may establish an international highway transportation outreach program—

(1) to inform the United States highway community about the research, development, and demonstration activities that—

(A) relate to highway transportation projects and services;

(B) relate to highway, public transportation, and intermodal transportation systems;

(C) are for the benefit of foreign countries; and

(D) are for the benefit of transport services; and

(2) to improve understanding of the factors that contribute to the demand for transportation services; and

(3) to improve understanding of the factors that contribute to the demand for transportation services;

(b) CONTENTS.—The program carried out under this section may include research—

(1) to evaluate the economic, social, and environmental performance of transportation systems to facilitate analysis of potential alternatives;

(2) to meet additional priorities as determined by the Secretary in the strategic planning process under section 506; and

(3) to define the proposals for the Federal Highway Administration that cannot be readily obtained from private sector firms in the United States for incorporation into the proposals for other undertakings—

(c) PROGRAM ADMINISTRATION.—The Secretary shall—

(1) administer the program established under this section; and

(2) ensure, to the maximum extent practicable, that—

(A) the best projects and researchers are selected to conduct research in the priority areas described in subsection (b); and

(B) the research, development, and demonstration activities that—

(1) on the basis of merit of each submitted proposal; and

(2) through the use of open solicitations and selection by a panel of appropriate experts; and

(3) with the ability and expertise to manage a large multiyear budget is used; and

(4) the stakeholders are involved in the governance of the program, at the executive, overall program, and technical levels, through the use of expert panels and committees; and

(5) there is a designated program research, technology, and technology transfer activities described in subsections (b) and (c) as the Secretary determines to be appropriate.

§508. Surface transportation research technology deployment and strategic planning

(a) PLANNING.—

(1) ESTABLISHMENT.—The Secretary shall—

(A) establish, in accordance with section 506 of title 5, a strategic planning process that—

(i) enhances effective implementation of this section through the establishment in accordance with paragraph (2) of the Surface Transportation Research Technology Advisory Committee; and

(ii) focuses on surface transportation research and development activities; and

(B) coordinate Federal surface transportation research, technology development, and deployment activities;

(2) CONTENTS.—The program established under this section may include research—

(A) to develop new models for evaluating transportation control measures and transportation system designs that are appropriate for use by State and local governments (including metropolitan and nonmetropolitan organizations) in designing implementation plans to meet Federal, State, and local environmental requirements;

(B) to identify the factors that contribute to the demand for transportation services; and

(C) to meet additional priorities as determined by the Secretary in the strategic planning process under section 506; and

§507. Surface transportation-environmental cooperative research program

(a) IN GENERAL.—The Secretary shall establish and carry out a surface transportation-environmental cooperative research program.

(b) CONTENTS.—The program carried out under this section may include research—

(1) to study the effects of transportation on the environment; and

(2) to improve understanding of the factors that contribute to the demand for transportation services.

(c) PROGRAM ADMINISTRATION.—The Secretary shall—

(1) administer the program established under this section; and

(2) ensure, to the maximum extent practicable, that—

(A) the best projects and researchers are selected to conduct research in the priority areas described in subsection (b); and

(B) the research, development, and demonstration activities that—

(1) on the basis of merit of each submitted proposal; and

(2) through the use of open solicitations and selection by a panel of appropriate experts; and

(3) with the ability and expertise to manage a large multiyear budget is used; and

(4) the stakeholders are involved in the governance of the program, at the executive, overall program, and technical levels, through the use of expert panels and committees; and

(5) there is a designated program research, technology, and technology transfer activities described in subsections (b) and (c) as the Secretary determines to be appropriate.

§505. Transportation Research Technology Advisory Committee

(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, the Secretary shall establish a committee to be known as the ‘Surface Transportation Research Technology Advisory Committee’ (referred to in this section as the ‘Committee’).

(b) MEMBERSHIP.—The Committee shall be composed of 22 members appointed by the Secretary—

(1) each of which shall have expertise in a particular area relating to Federal surface transportation programs, including—

(A) safety;

(B) operations;

(C) infrastructure (including pavements and structures);

(D) planning and environment;

(E) policy; and

(F) asset management; and

(ii) of which—

(1) 3 members shall be individuals representing the Federal Government;

(2) 3 members shall be exceptionally qualified to serve on the Committee, as determined by the Secretary, based on education, training, and experience; and

(3) shall not be officers or employees of the United States;

(3) 3 members—

(A) shall represent the transportation industry (including the pavement industry); and

(4) 3 members shall represent State transportation departments from 3 different geographical regions of the United States.
(c) Meetings.—The advisory subcommittees shall meet on a regular basis, but not less than twice each year.

(D) Duties.—The Committee shall provide to the Secretary, on a continuous basis, advice and guidance relating to—

(i) the determination of surface transportation research priorities;
(ii) the improvement of the research planning and implementation process;
(iii) the design and selection of research projects;
(iv) the review of research results;
(v) the planning and implementation of technology activities; and
(vi) the formulation of the surface transportation research and technology deployment and deployment strategy planned under subsection (c).

(E) Authorization of Appropriations.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this paragraph $187,726 for each fiscal year.

(b) Implementation.—The Secretary shall—

(1) provide for the integrated planning, coordination, and consultation among the operating administrations of the Department of Transportation, all other Federal agencies with responsibilities for surface transportation research and technology development, State and local governments, institutions of higher education, industry, and other private and public sector participants to be engaged in surface transportation-related research and development activities; and

(2) ensure that the surface transportation research and technology development programs of the Department do not duplicate other Federal, State, or private sector research and development programs.

(c) Surface Transportation Research and Technology Deployment Strategic Plan.—

(1) In General.—After receiving, and based on, evaluations of surface transportation research and development input from stakeholders representing the transportation community and the Surface Transportation Research Advisory Committee, the Secretary shall, not later than 1 year after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, complete, and shall periodically update thereafter, a strategic plan for each of the core surface transportation research areas, including—

(A) safety;
(B) operations;
(C) infrastructure (including pavements and structures);
(D) planning and environment;
(E) policy; and
(F) asset management.

(2) Components.—The strategic plan shall specify—

(A) surface transportation research objectives and priorities;
(B) specific surface transportation research projects to be conducted;
(C) recommended technology transfer activities to promote the deployment of advances resulting from the surface transportation research conducted; and
(D) short- and long-term technology development and deployment activities.

(3) Review and Submission of Findings.—The Secretary shall enter into a contract with the National Academy of Sciences to carry out such activities and consultation as the Secretary determines to be appropriate.

(4) Authorization of Appropriations.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this paragraph $187,726 for each fiscal year.

(5) Program Administration.—

(A) National Research Council Special Report No. 264, entitled Strategic Highway Research Program—

(i) In General.—The National Research Council shall establish and carry out, through fiscal year 2009, a new strategic highway research program.

(ii) Basis; Priorities.—With respect to the program established under subsection (a)—

(I) the program shall be based on—

(A) National Research Council Special Report No. 264, entitled Strategic Highway Research Program; and

(B) the results of the detailed planning work subsequently carried out to scope the research areas through the National Cooperative Highway Research Program Project 25-85.

(II) to offer recommendations relevant to research priorities, project selection, and deployment strategies; and

(B) the Secretary shall ensure that the Research and Technology Coordinating Committee, in a timely manner, informs the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the findings and evaluation under subparagraph (A).

(iii) Responses of Secretary.—Not later than 60 days after the date of completion of the strategic plan under this subsection, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives written responses to each of the recommendations of the Research and Technology Coordinating Committee.

(iv) Consistency with Government Performance and Results Act of 1993.—The plans and reports developed under this section shall be consistent with and incorporated as part of the plans developed under section 306 of title 5 and sections 1115 and 1116 of title 31.

§509. New strategic highway research program

(a) In General.—The National Research Council shall establish and carry out, through fiscal year 2009, a new strategic highway research program.

(b) Basis; Priorities.—With respect to the program established under subsection (a)—

(1) the program shall be based on—

(A) National Research Council Special Report No. 264, entitled Strategic Highway Research Program; and

(B) the results of the detailed planning work subsequently carried out to scope the research areas through the National Cooperative Highway Research Program Project 25-85.

(2) Scope and research priorities of the program shall—

(A) be refined through stakeholder input in the form of workshops, symposia, and panels; and

(B) include an examination of—

(i) the roles of highway infrastructure, drivers, and vehicles in fatalities on public roads;

(ii) high-risk areas and activities associated with the greatest numbers of highway fatalities;

(iii) the roles of government agencies and non-governmental organizations in reducing highway fatalities (including recommendations for strengthening highway safety partnerships);

(iv) measures that may save the greatest number of lives in the short- and long-term;

(v) recommendations for methods of strengthening highway safety partnerships;

(B) the way in which impediments to, and methods of, implementing those results; and

(c) Consideration.—In developing the report, the Transportation Research Board shall consult with a wide variety of stakeholders, including—

(A) the American Association of State Highway Officials;

(B) the Federal Highway Administration; and

(C) the Surface Transportation Research Technology Advisory Committee.

(d) Authorization of Appropriations.—

(i) In General.—Not later than January 1, 2007, the Secretary shall enter into a contract with the Transportation Research Board of the National Academy of Sciences on which the Transportation Research Board shall complete a report on the strategies and administrative structure to be used for implementation of the results of new strategic highway research program.

(ii) Components.—The report under paragraph (i) shall include, with respect to the new strategic highway research program—

(A) an identification of the most promising results of research under the program (including the persons most likely to use the results); and

(B) a discussion of policies for removing barriers for, impediments to, and methods of, implementing those results;

(iii) an estimate of costs that would be incurred in expediting implementation of those results; and

(iv) recommendations for the way in which implementation of the results of the program under this section should be conducted, coordinated, and supported in future years, including a discussion of the administrative structure and organization best suited to carry out those responsibilities.

(e) Consultation.—In developing the report, the Transportation Research Board shall consult with a wide variety of stakeholders, including—

(A) the American Association of State Highway Officials;

(B) the Federal Highway Administration; and

(C) the Surface Transportation Research Technology Advisory Committee.

(f) Submission.—Not later than February 1, 2009, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives the report under this subsection.

§510. University transportation centers

(a) Centers.—

(i) In General.—During fiscal year 2005, the Secretary shall provide grants to 40 nonprofit institutions of higher learning (or consortia of institutions of higher learning) to establish centers to address transportation, related research, development, and technology matters, especially the education and training of greater numbers of individuals to enter into the professional field of high transportation research.

(ii) Distribution of Centers.—Not more than 1 university transportation center (or lead university in a consortium of institutions of higher learning) selected through a competitive process, may be located in any State.
“(3) IDENTIFICATION OF CENTERS.—The university transportation centers established under this section shall—
(A) comply with applicable requirements under section (c); and
(B) be located at the institutions of higher learning specified in paragraph (4).

(4) IDENTIFICATION OF GROUPS.—For the purpose of making grants under this subsection, the following grants are identified:
(A) GROUP A.—Group A shall consist of the 10 regional centers selected under subsection (b).
(B) GROUP B.—Group B shall consist of the following:
(1) the Research and Special Programs Administration;
(ii) the Federal Highway Administration; and
(iii) the Federal Transit Administration.

(C) GROUP C.—Group C shall consist of the following:
(1) the interstate system administration;
(ii) the Federal Highway Administration;
(iii) the Federal Transit Administration.

(D) GROUP D.—Group D shall consist of the following:
(1) a representative from each group;
(ii) a description of the undergraduate and graduate programs in—
(iii) civil engineering;
(iv) transportation engineering;
(v) transportation systems management and operations; or
(iv) any other field significantly related to surface transportation systems, as determined by the Secretary; and
(vi) a list of Personnel, including the roles and responsibilities of those personnel within the center; and
(vii) a detailed budget, including the amount of contributions by the institution or consortium to receive a grant under this section, an applicant shall—
(i) describe the purpose of the program to be conducted by the center;
(ii) a description of the nature and scope of research to be conducted by the center;
(iii) a detailed budget, including the amount of contributions by the institution or consortium to receive a grant under this section, an applicant shall—
(i) describe the nature and scope of research to be conducted by the center;
(ii) a detailed budget, including the amount of contributions by the institution or consortium to receive a grant under this section, an applicant shall—
(i) describe the nature and scope of research to be conducted by the center;
(ii) a detailed budget, including the amount of contributions by the institution or consortium to receive a grant under this section, an applicant shall—
(i) describe the nature and scope of research to be conducted by the center;
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(i) describe the nature and scope of research to be conducted by the center;
(ii) a detailed budget, including the amount of contributions by the institution or consortium to receive a grant under this section, an applicant shall—
(i) describe the nature and scope of research to be conducted by the center;
(ii) a detailed budget, including the amount of contributions by the institution or consortium to receive a grant under this section, an applicant shall—
(i) describe the nature and scope of research to be conducted by the center;
(iii) the current schedule for each research project; and
(iv) the results of each research project through the date of submission of the report, with particular emphasis on results for the fiscal year covered by the report; and
(E) overall technology transfer and implementation efforts of the center.

PROGRAM COORDINATION.—The Secretary shall—
(1) coordinate the research, education, training, and technology transfer activities carried out by recipients of grants under this section; and
(2) establish and operate a clearinghouse for, and disseminate, the results of those activities.

NUMBER AND AMOUNT OF GRANTS.—The Secretary shall make the following grants under this subsection:

(A) GROUP A.—For each of fiscal years 2005 through 2009, the Secretary shall make a grant in the amount of $93,629 to each of the institutions in group A (as described in subsection (a)(4)(A)).

(B) GROUP B.—The Secretary shall make a grant to each of the institutions in group B (as described in subsection (a)(4)(B)) in the amount of—

(i) $375,452 for fiscal year 2005; and
(ii) $363,177 for each of fiscal years 2006 and 2007.

(C) GROUP C.—For each of fiscal years 2005 through 2007, the Secretary shall make a grant in the amount of $93,629 to each of the institutions in group C (as described in subsection (a)(4)(C)).

(D) GROUP D.—For each of fiscal years 2005 through 2009, the Secretary shall make a grant in the amount of $1,877,258 to each of the institutions classified in group D (as described in subsection (a)(4)(D)).

(E) LIMITED GRANTS FOR GROUPS B AND C.—For each of fiscal years 2005 and 2006, of the amounts made available to carry out this section—

(i) not less than $250,000 shall be used to establish or maintain the teaching of undergraduate, transportation-related courses; and
(ii) not more than $500,000 for the fiscal year, and $1,000,000 in the aggregate, may be used to construct or improve transportation-related laboratory facilities; and
(iii) not more than $300,000 for the fiscal year may be used for student internships of not more than 180 days in duration to enable students to gain experience by working on transportation projects as interns with design or construction firms.

(B) FACILITIES AND ADMINISTRATION FEE.—Not more than 19 percent of any grant made available to a university transportation center established under subsection (a) or (b) may be used for the construction or operation of the teaching, research, and administration facilities; and

(F) LIMITATION ON AVAILABILITY OF FUNDS.—Funds made available under this subsection shall remain available for obligation for a period of 2 years after September 30 of the fiscal year for which the funds are authorized.

SEC. 512. TRANSPORTATION ANALYSIS SIMULATION SYSTEM

(a) Continuation of Transims Development.—

(1) In general.—The Secretary shall continue the deployment of the advanced transportation simulation model known as the Transportation Analysis Simulation System referred to in this section as TRANSIMS) developed by the Los Alamos National Laboratory.

(2) Requirements and Considerations.—In carrying out paragraph (1), the Secretary shall—

(A) further improve TRANSIMS to reduce the cost and complexity of using the TRANSIMS,

(B) continue development of TRANSIMS for applications to facilitate transportation planning, regulatory compliance, and response to natural disasters and other transportation disruptions; and

(C) assist State transportation departments and metropolitan planning organizations, especially, as of the date of the study, as compared with the purpose of national security; and

(b) Eligible Activities.—The Secretary shall use funds made available to carry out this section—

(1) to further develop TRANSIMS for additional applications, including—

(A) congestion relief measures;

(B) major investment studies;

(C) economic impact analyses;

(D) alternative transportation system studies;

(E) freight movement studies;

(F) emergency evacuation studies;

(G) port studies; and

(H) airport studies;

(2) provide training and technical assistance with respect to the implementation and application of TRANSIMS to States, local governments, and metropolitan planning organizations with responsibility for travel modeling;

(3) develop methods to simulate the national transportation infrastructure as a single, integrated system for the movement of individuals and goods;

(4) provide funding to State transportation departments and metropolitan planning organizations for implementation of TRANSIMS;

(5) allocate funds.—Of the funds made available to carry out this section for each fiscal year, not less than 15 percent shall be allocated for activities described in subsection (b)(3).

(c) Funding.—Of the amounts made available under section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for each of fiscal years 2005 through 2009, the Secretary shall use $933,082 to carry out this section.

(d) Availability of Funds.—Funds made available under this section shall be available to the Secretary through the Transportation Planning, Research, and Development Account of the Office of the Secretary.

(b) Other University Funding.—No university (other than university transportation centers referred to in section 510(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005) shall receive funds made available under section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for each of fiscal years 2005 through 2009, the Secretary shall use $933,082 to carry out this section.

(c) Conforming Amendment.—Section 5005 of title 49, United States Code (as added by subsection (a)) shall receive funds made available under section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for each of fiscal years 2005 through 2009, the Secretary shall use $933,082 to carry out this section.

(b) Reliable University Funding.—No university (other than university transportation centers referred to in section 510(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005) shall receive funds made available under section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for each of fiscal years 2005 through 2009, the Secretary shall use $933,082 to carry out this section.

(c) Conforming Amendment.—Section 5005 of title 49, United States Code (as added by subsection (a)) shall receive funds made available under section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for each of fiscal years 2005 through 2009.
analyses performed by, agencies within the Department; and
(C) recommendations relating to:
(i) the future efforts of the Department in the area of surface transportation with respect to—
(I) types of data collected; 
(II) methods of data collection; 
(III) types of analyses performed; and 
(IV) transfer agreements or other transactions with the Secretary, or receiving grants, to perform research or provide technical assistance to support them; and
(ii) the duplication may be reduced or eliminated;
and
(ii) each agency of the Department may cooperate with, and complement the efforts of, the others.
(4) CONSULTATION.—In conducting the study, the Board shall consult with such stakeholders, agencies, and other entities as the Board considers to be appropriate.
(5) REPORT.—Not later than 1 year after the date on which a grant is provided, or a cooperative agreement or transfer contract is entered into, for a study under paragraph (1)—
(A) the Board shall submit to the Secretary, the Committee on Environment and Public Works, and the Committee on Transportation and Infrastructure of the House of Representatives a final report on the results of the study; and
(B) the results of the study shall be published—
(i) by the Secretary, on the Internet website of the Department; and
(ii) by the Board, on the Internet website of the Board.
6. IMPLEMENTATION OF RESULTS.—The Bureau shall implement any recommendations made with respect to the results of the study under this subsection.
7. COMPLIANCE.—(A) In general.—The Comptroller General of the United States shall conduct a review of the study under this section (m);
(B) NONCOMPLIANCE.—If the Comptroller General of the United States determines that the Bureau failed to conduct the study under this subsection, the Bureau shall be ineligible to receive funding under the Highway Trust Fund until such time as the Bureau conducts the study under this subsection.
8. CONFORMING AMENDMENTS.—Section III of title 49, United States Code, is amended—
(1) by redesignating subsection (k) as subsection (m); and
(2) by inserting after subsection (j) the following:
“(k) ANNUAL REPORT.—
“(1) IN GENERAL.—For fiscal year 2005 and each fiscal year thereafter, the Bureau shall prepare and submit to the Secretary an annual report that—
“(A) describes progress made in responding to study recommendations for the fiscal year; and
“(B) summarizes the activities and expenditure of funds by the Bureau for the fiscal year.
“(2) AVAILABILITY.—The Bureau shall—
“(A) make the report described in paragraph (1) available to the public; and
“(B) publish the report on the Internet website of the Bureau.
“(g) COMMUNITY REPORTS.—The report required under paragraph (1) may be included in or combined with the Transportation Statistics Annual Report required by subsection (i).
9. TRANSFER AGREEMENTS OR OTHER TRANSACTIONS.—(A) National Academy of Sciences; (ii) the American Association of State Highway and Transportation Officials; (iii) the Federal Highway Administration; (iv) a Federal laboratory; (v) a State agency; (vi) an authority, association, institution, or organization; or (vii) a for-profit or nonprofit corporation.
10. COMPETITION.—All parties entering into contracts, cooperative agreements, or other transactions with the Secretary, or receiving grants, to perform research or provide technical assistance to support them shall be selected, to the maximum extent practicable—
(i) on a competitive basis; and
(ii) on the basis of the results of peer review of proposals submitted to the Secretary for this purpose. This paragraph applies only to proposals submitted after the date of enactment of this Act.
11. AVAILABILITY.—(A) The Secretary shall make the report required under section 2001(a)(3) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 available under this section.
(B) The Secretary shall provide for the purpose of conducting a comprehensive, in-depth motorcycle crash causation study that employs the common international methodology for in-depth motorcycle accident investigation of the Organization for Economic Cooperation and Development, to the maximum extent practicable, integrated and coordinated with similar activities conducted by the Federal Highway Administration, the local technical assistance program, university transportation centers, and national programs and activities supported with funds authorized by this title.
12. ALLOCATIONS.—(1) IN GENERAL.—For each of fiscal years 2005 through 2009, of the funds made available under section 2001(a)(1)(A), the Secretary shall set aside $9,586,289 to carry out this section.
(2) ALLOCATION OF FUNDS.—The funds made available under paragraph (1) are—
(A) 20 percent shall be allocated to the Center for Environmental Excellence established under subsection (b)(1);
(B) 30 percent shall be allocated to the Center for Operations Excellence established under subsection (b)(2); and
(C) 50 percent shall be allocated to the Center for Excellence in Surface Transportation Safety established under subsection (b)(3).
(3) APPLICABILITY OF TITLE 23.—Funds made available under this section shall be available for the purpose of conducting the study described in subsection (a) and shall be apportioned as provided under chapter 23 of title 23, United States Code, except that the Federal share shall be 100 percent.
13. MOTORCYCLE CRASH CAUSATION STUDY GRANTS.—(a) Grants.—The Secretary shall provide grants for the purpose of conducting a comprehensive, in-depth motorcycle crash causation study that employs the common international methodology for in-depth motorcycle accident investigation of the Organization for Economic Cooperation and Development.
(b) FUNDING.—Of the amounts made available under section 2001(a)(1)(A), $1,407,943 for each of fiscal years 2005 and 2006 shall be available under this section.
14. TRANSPORTATION TECHNOLOGY INNOVATION AND DEMONSTRATION PROGRAM.—Section 31070 of the Transportation Equity Act for the 21st Century (112 Stat 449; 112 Stat. 864; 115 Stat. 2330) is amended by striking paragraph (3) and inserting the following:
“(c) INTELLIGENT TRANSPORTATION INFRASTRUCTURE.—
“(1) DEFINITIONS.—In this paragraph:
“(A) CONGESTED AREA.—The term ‘congested area’ means a metropolitan area that experiences significant traffic congestion, as determined by the Secretary on an annual basis.
“(B) DEPLOYMENT AREA.—The term ‘deployment area’ means any of the metropolitan areas of Baltimore, Birmingham, Boston, Chicago, Cleveland, Dallas/Ft. Worth, Denver, Detroit, Houston, Indianapolis, Las Vegas, Los Angeles, Miami, New York/Northern New Jersey, Northern Kentucky/Cincinnati, Oklahoma City, Orlando, Philadelphia, Phoenix, Pittsburgh, Portland, Providence, San Diego, San Francisco, St. Louis, Seattle, Tampa, and Washington, District of Columbia.
“(C) METROPOLITAN AREA.—The term ‘metropolitan area’ means any area that—
“(aa) has a population exceeding 300,000; and
“(bb) is located in a deployment area; and
“(cc) has a congested area; “
“(bd) meets criteria established by the Secretary in conjunction with the intelligent vehicle highway systems corridor program.

“(II) INCLUSIONS.—The term ‘metropolitan area’ means an area containing a transportation corridor serving a metropolitan area.

“(iii) ORIGINAL CONTRACT.—The term ‘original contract’ means a contract under which the Department of Transportation contract number DDTS 59–99–D–00445 T020013,

“(iv) PROGRAM.—The term ‘program’ means the 2-part intelligent transportation infrastructure program carried out under this paragraph.

“(v) STATE TRANSPORTATION DEPARTMENT.—The term ‘State transportation department’ means

“(I) a State transportation department (as defined in section 101 of title 23, United States Code) and

“(II) a designee of a State transportation department (as so defined) for the purpose of entering into contracts.

“(vi) UNCOMMITTED FUNDS.—The term ‘uncommitted funds’ means the total amount of funds that, as of the date that is 180 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, remain uncommitted under the original contract.

“(b) INTELLIGENT TRANSPORTATION INFRASTRUCTURE PROGRAM.—

“(i) IN GENERAL.—The Secretary shall carry out a 2-part intelligent transportation infrastructure program in accordance with this paragraph to advance the deployment of an operational intelligent transportation infrastructure system, through measurement of various transportation system activities, to simultaneously—

“(I) aid in transportation planning and analysis; and

“(II) make a significant contribution to the ITS program under this title.

“(ii) OBJECTIVES.—The objectives of the program shall be—

“(I) to plan and integrate an infrastructure of the measurement of various transportation system metrics to aid in planning, analysis, and maintenance of the Department of Transportation, including the buildout, maintenance, and operation of greater than 40 metropolitan area systems with a total cost of not to exceed $2,000,000 for each metropolitan area;

“(II) to develop and support commercialization initiatives to generate revenues that will be reinvested in the intelligent transportation infrastructure system;

“(III) to aggregate and disseminate data into reports for multipoint data distribution techniques; and

“(IV) with respect to part I of the program under subparagraph (C), to use an advanced information dissemination and monitoring system with entities with experience with the Department of Transportation in the design and monitoring of high-reliability, mission-critical voice and data systems.

“(c) PART I.—

“(I) IN GENERAL.—In carrying out part I of the program, the Secretary shall award the contract to a consortium for the purpose of deploying intelligent transportation infrastructure systems in deployment areas, as defined by the Secretary, the entity may deploy the systems in accordance with this paragraph in 1 or more congested areas, with the consent of the State transportation departments for the congested areas.

“(II) PART II.—

“(I) IN GENERAL.—In carrying out part II of the program, the Secretary shall award, on a competitive basis, contracts for the deployment of intelligent transportation infrastructure systems that have been accepted by the Secretary in congested areas, with the consent of the State transportation departments for the congested areas.

“(II) REQUIREMENTS.—The Secretary shall award contracts conditionally on

“(I) for individual congested areas among entities that seek to deploy intelligent transportation infrastructure systems in the congested areas; and

“(II) on the condition that the terms of each contract awarded require the entity deploying the intelligent transportation infrastructure system to ensure that the deployed system is compatible (as determined by the Secretary) with systems deployed in other congested areas under this paragraph.

“(d) PROVISIONS IN CONTRACTS.—The Secretary shall require that each contract for the deployment of an intelligent transportation infrastructure system under this subparagraph contain such provisions relating to the provision of owner- ship, maintenance, fixed price, and revenue sharing as the Secretary considers to be appropriate.

“(e) USE OF FUNDS FOR UNDEVELOPED SYSTEMS.—

“(I) IN GENERAL.—If, under part I or part II of the program, a State transportation department for a deployment area or congested area does not consent by the later of the date that is 180 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, or another date determined jointly by the State transportation department and the deployment area or congested area, to participate in the deployment of an intelligent transportation infrastructure system in the deployment area or congested area, upon application by any other deployment area or congested area not so consented by the earlier of the dates that are specified in this subparagraph, the Secretary shall award the contracts described in subparagraph (C)(i).

“(II) NO INCLUSION IN COST LIMITATION.—Costs paid using funds provided through a supplementation under clause (i) shall not be considered in determining the limitation on maximum cost described in subparagraph (F)(i)(A).

“(II) FEDERAL SHARE; LIMITS ON COSTS OF SYSTEMS FOR METROPOLITAN AREAS.—

“(I) FEDERAL SHARE.—In clause (ii), the Federal share of the cost of any project or activity carried out under the program shall be 80 percent.

“(II) LIMIT ON COSTS OF SYSTEM FOR EACH METROPOLITAN AREA.—

“(I) IN GENERAL.—Not more than $2,000,000 may be provided under this subparagraph for deployment of an intelligent transportation infrastructure system for a metropolitan area.

“(II) FUNDING UNDER EACH PART.—A metropolitan area in which an intelligent transportation infrastructure system is deployed under part I or part II of the program under subparagraph (C) or (D), respectively, through the use of funds under subparagraph (E), may not receive any additional deployment under the other part of the program.

“(g) Use of funds.—

“(I) IN GENERAL.—An intelligent transportation system project described in this paragraph or paragraph (6) that involves privately-owned intelligent transportation system components and is carried out using funds made available from the Highway Trust Fund shall not be subject to any law (including a regulation of a State or political subdivision of a State prohibiting or regulating commercial activities in the right-of-way of a highway for which Federal and State funds have been spent for planning, design, construction, or maintenance for the project, if the Secretary determines that such use is in the public interest.

“(II) EFFECT OF SUBPARAGRAPH.—Nothing in this subparagraph affects the authority of a State or political subdivision of a State—

“(I) to regulate highway safety or

“(II) under sections 253 and 322(c)(7) of the Communications Act of 1934 (47 U.S.C. 253, 322(c)(7))

“(II) FUNDING.—

“(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of any funds in the Highway Trust Fund (other than the Mass Transit Account) to carry out subparagraph (D) $4,465,409 for each fiscal year.

“(i) ADDITIONAL AMOUNTS.—In addition to the funds authorized to be carried out under this subprogram, funds made available under title II of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, under titles 23 and 49, United States Code, for projects and activities the objectives of which are consistent with the objectives described in subparagraph (B)(ii), may be used to carry out part I of the program.

“(iii) AVAILABILITY; NO REDUCTION OR SET- ASIDES.—Amounts made available by this subparagraph—

“(I) shall remain available until expended; and

“(II) shall not be subject to any reduction or set-aside.

“(iv) NO EFFECT ON PREVIOUSLY COMMITTED FUNDS.—Nothing in this paragraph affects any uncommitted funds committed under this subparagraph, funds made available under title II of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, under titles 23 and 49, United States Code, for projects and activities the objectives of which are consistent with the objectives described in subparagraph (B)(ii), may be used to carry out part I of the program before the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005.

“(v) CONTRACT AUTHORITY.—Except as provided in subparagraph (F)(i), funds authorized to be appropriated under this subparagraph shall be available for obligation in the same manner as if funds appropriated under the original contract under chapter 1 of title 23, United States Code.

Subtitle C—Intelligent Transportation System Research

SEC. 2201. INTELLIGENT TRANSPORTATION SYSTEM PROGRAM AUTHORITY; TECHNOLOGICAL ASSISTANCE PROGRAM

(a) IN GENERAL.—Chapter 6 of title 23, United States Code (as amended by section 522 of title 23, United States Code, as amended by this Act), is amended by adding at the end the following:

“SUBCHAPTER II—INTELLIGENT TRANSPORTATION SYSTEM RESEARCH AND TECHNICAL ASSISTANCE PROGRAM

“§ 521. Finding

“Congress finds that continued investment in architecture and standards development, research, technical assistance for State and local governments, and system development is needed to accelerate the rate at which intelligent transportation systems are incorporated into the national surface transportation system; that

“(1) it is in the national interest to improve transportation safety and efficiency and reduce costs and negative impacts on communities and the environment;

“(2) as a result of that innovation, improve transportation safety and efficiency and reduce costs and negative impacts on communities and the environment.

“§ 522. Goals and purposes

“(a) GOALS.—The goals of the intelligent transportation system research and technical assistance program include

“(1) enhancement of surface transportation efficiency and facilitation of internationalism and international trade;

“(2) a significant portion of future transportation needs, including public access to employment, goods, and services; and

“(3) activity carried out under the program shall be in coordination with the intelligent vehicle highway systems corridor program.

“(b) STRATEGIC RESEARCH AND TECHNICAL ASSISTANCE PROGRAM

“(1) IN GENERAL.—The Secretary may provide strategic research and technical assistance for the development and implementation of intelligent transportation systems and infrastructure, including the development of standards and guidelines, and provide technical support for the implementation of intelligent transportation systems and infrastructure.

“(2) INCLUSION OF RESEARCH AND TECHNICAL ASSISTANCE.—The Secretary shall ensure that the research and technical assistance activities described in paragraph (1) are incorporated into the national surface transportation program.
“(B) to reduce regulatory, financial, and other transaction costs to public agencies and system users;

(2) the acceleration of the use of intelligent transportation systems to assist in the achievement of national transportation safety goals, including the enhancement of safe operation of motor vehicles and nonmotorized vehicles, with particular emphasis on decreasing the number and severity of collisions;

(3) protection and enhancement of the natural environment and communities affected by surface transportation, with particular emphasis on assisting State and local governments in achieving national environmental goals;

(4) improvement of the ability of all users of surface transportation systems, including—

(A) operators of commercial vehicles, passenger vehicles, and motorcycles;

(B) users of public transportation services (with respect to intelligent transportation system user services); and

(C) individuals with disabilities; and

(5) enhancement of the ability of the United States to respond to emergencies and natural disasters;

(B) enhancement of national security and defense mobility.

(b) PURPOSES.—The Secretary shall carry out activities under the intelligent transportation systems program in cooperation with the Bu-

(1) to research, develop, and operationally test intelligent transportation systems; and

(2) to provide technical assistance in the nationwide application of those systems as a component of the surface transportation systems of the United States; and

(3) to improve regional cooperation, interoperability, and operations for effective intelligent transportation system performance;

(4) to promote the innovative use of private resources;

(5) to assist State transportation departments in developing a workforce capable of developing, operating, and maintaining intelligent transportation systems;

(6) to maintain an updated national ITS architecture and consensus-based standards while ensuring an effective Federal presence in the formulation of domestic and international ITS standards;

(7) to advance commercial vehicle operations components of intelligent transportation systems—

(A) to improve the safety and productivity of commercial vehicle drivers; and

(B) to reduce costs associated with commercial vehicle operations and Federal and State commercial vehicle regulatory requirements;

(8) to evaluate system and benefits of intelligent transportation systems projects;

(9) to improve, as part of the Archival Data User Service and in cooperation with the Bu-

(1) to use $1,407,943 for each fiscal year for advisory committees described in paragraph (1).

(2) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—Any advisory committee described in paragraph (1) shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

PROCUREMENT METHODS.—The Secretary shall develop and provide appropriate technical assistance and guidance to State and local agencies in evaluating and selecting appropriate methods of deployment and procurement for intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including innovative and nontraditional methods such as Information Technology Omnibus Procurement (as developed by the Secretary).

(5) EVALUATIONS.—

(1) GUIDELINES AND REQUIREMENTS.—

(A) GENERAL.—The Secretary shall issue revised guidelines and requirements for the evaluation of operational tests and other intelligent transportation systems projects carried out under this subchapter.

(B) OBJECTIVITY AND INDEPENDENCE.—The guidelines and requirements issued under subparagraph (A) shall include provisions to ensure the objectivity and independence of the evaluator so as to avoid any real or apparent conflict of interest or potential influence on the outcome by—

(i) parties to any such test; or

(ii) any other formal evaluation carried out under this subchapter.

(2) FUNDING.—The guidelines and requirements issued under subparagraph (A) shall establish evaluation funding levels based on the size and scope of each test that ensure adequate evaluation of the results of the test or project.

(2) SPECIAL RULE.—Any survey, question-naire, or interview that the Secretary considers necessary to carry out the evaluation of any test or project under paragraph (1) of this subsection shall not be subject to section 35 of title 41.

§5325. National ITS Program Plan

(a) IN GENERAL.—

(1) NOT LATER THAN 1 YEAR AFTER THE DATE OF ENACTMENT OF THE SAFE, ACCOUNTABLE, FLEXIBLE, AND EFFICIENT TRANSPORTATION SECURITY ACT OF 2002 (49 U.S.C. 20001 et seq.).

(2) TECHNICAL ASSISTANCE, TRAINING, AND INFORMATION.—The Secretary may provide technical assistance, training, and information to State and local governments seeking to implement, operate, maintain, or evaluate intelligent transportation system technologies and services.

(3) TRANSPORTATION PLANNING.—The Secret-

(a) INFORMATION CLEARINGHOUSE.—The Sec-

(a) INTRODUCTORY SECTION.—The term ‘‘transportation infrastructure’’ means physically constructed facilities, equipment, or information processing used singly or in combination to improve the efficiency or safety of a transportation system.

(b) PURPOSES.—The Secretary shall carry out activities under the intelligent transportation systems program in cooperation with the Bu-

(c) TRANSPORTATION PLANNING Policy.—The Sec-

(d) DEVELOPMENT.—The Secretary shall carry out the intelligent transportation system research and technical assistance program in cooperation with the Bu-

(e) TECHNICAL ASSISTANCE, TRAINING, AND IN-
Act of 2005, the Secretary, in consultation with interested stakeholders (including State transportation departments) shall develop a 5-year National ITS Program Plan.

" §527. Commercial vehicle information systems and networks deployment.

"(a) DEFINITIONS.—In this section:

"(1) COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS.—The term ‘commercial vehicle information systems and networks’ means the information systems and communications networks that are needed to the Secretary to:

"(A) improve the safety of commercial vehicle operations;

"(B) increase the efficiency of regulatory inspections to reduce administrative burdens by advancing technology to facilitate inspections and increase the effectiveness of enforcement efforts;

"(C) advance electronic processing of registration information, driver licensing information, fuel tax information, inspection and crash data, and other safety information;

"(D) enhance the safe passage of commercial vehicles across the United States and across international borders; and

"(E) promote the exchange of information among the States and encourage multistate cooperation and corridor development.

"(2) PERIOD OF EFFECTIVENESS.—A provisional standard established under paragraph (1) or (2) shall:

"(A) be published in the Federal Register; and

"(B) have an effect until such time as the designated standards development organization adopts and publishes a standard.

"(3) WAIVER.—To establish PROVISIONAL CRITICAL STANDARD.

"(1) IN GENERAL.—The Secretary may waive the requirement under subsection (b)(2) to establish a provisional standard if the Secretary determines that additional time would be productive in, or that establishment of a provisional standard would be counterproductive to, the timely achievement of the objectives identified in subsection (a).

"(2) NOTICE.—The Secretary shall publish in the Federal Register a notice that describes:

"(A) each standard for which a waiver of the provisional standard requirement is granted under paragraph (1);

"(B) the reasons for and effects of granting the waiver; and

"(C) an estimate as to the date on which the standard is expected to be adopted through a process consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 742 note; 110 Stat. 783).

"(3) WITHDRAWAL OF WAIVER.—

"(A) IN GENERAL.—The Secretary may withdraw a waiver granted under paragraph (1) at any time.

"(B) NOTICE.—On withdrawal of a waiver, the Secretary shall publish in the Federal Register a notice that describes:

"(i) each standard for which the waiver has been withdrawn; and

"(ii) the reasons for withdrawing the waiver.

"(C) CONFORMITY WITH NATIONAL ITS ARCHITECTURE.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall ensure that intelligent transportation system projects carried out using funds made available from the Highway Trust Fund and other project support that is consistent with a national ITS architecture, applicable standards or provisional standards, and protocols developed under subsection (a).

"(2) DISCRETION OF SECRETARY.—The Secretary may authorize exceptions to paragraph (1) for projects designed to achieve specific research objectives outlined in—

"(A) the National ITS Program Plan under section 525; or

"(B) the surface transportation research and technology development strategic plan developed under section 506.

"(3) EXCEPTIONS.—Paragraph (1) shall not apply to funds used for operation or maintenance of an intelligent transportation system in existence on the date of enactment of this subchapter.

"(4) EXPANDED DEPLOYMENT.—The term ‘expanded deployment’ means the deployment of systems in a State that—

"(A) exceed the requirements of a core deployment of commercial vehicle information systems and networks;

"(B) improve safety and the productivity of commercial vehicle operations; and

"(C) enhance transportation security.

"(b) PROGRAM.—The Secretary shall carry out a commercial vehicle information systems and networks program to:

"(1) improve the safety and productivity of commercial vehicles and drivers; and

"(2) enhance the capability for intelligent transportation systems applications for commercial vehicle operations, including commercial vehicle, commercial driver, and carrier-specific information systems and networks.

"(c) DEPLOYMENT GRANTS.—

"(1) IN GENERAL.—The Secretary shall make grants to eligible States for the core deployment of commercial vehicle information systems and networks to:

"(D) enhance the security of commercial vehicle systems and networks; and

"(E) expand the deployment of systems deployed under this subsection.
“(A) have a commercial vehicle information systems and networks program plan and a top level system design approved by the Secretary; 

(b) certify to the Secretary that the commercial vehicle information systems and networks deployment activities of the State (including hardware procurement, software and system development, and infrastructure modifications)— 

(i) with the national intelligent transportation systems and commercial vehicle information systems and networks architecture standards and: 

(ii) promote interoperability and efficiency, to the maximum extent practicable; and 

(C) agree to execute interoperability tests developed by the Motor Carrier Safety Administration to verify that the systems of the State conform with the national intelligent transportation systems architecture, applicable standards and protocols for commercial vehicle information systems and networks. 

(3) AMOUNT OF GRANTS.—The maximum aggregate amount a State may receive under this subsection may not exceed 5 percent of the core deployment of commercial vehicle information systems and networks.

(4) USE OF FUNDS.— 

(A) IN GENERAL.—Subject to subparagraph (B), funds from a grant under this subsection may be used for the core deployment of commercial vehicle information systems and networks.

(B) REMAINING FUNDS.—An eligible State that has completed the core deployment of commercial vehicle information systems and networks, or completed the deployment before core deployment grant funds are expended, may use the remaining grant funds for the expanded deployment of commercial vehicle information systems and networks in the State.

(c) EXPANDED DEPLOYMENT GRANTS.— 

(1) IN GENERAL.—Each fiscal year, from the funds remaining after the Secretary has made core deployment grants under subsection (d), the Secretary may make grants to eligible States, on request, for the expanded deployment of commercial vehicle information systems and networks. 

(2) ELIGIBILITY.—Each State that has completed the core deployment of commercial vehicle information systems and networks shall be eligible for an expanded deployment grant.

(3) GRANTS.—Each fiscal year, the Secretary may distribute funds available for expanded deployment grants equally among the eligible States in an amount that does not exceed $2,500,000 for each State.

(4) USE OF FUNDS.—A State may use funds from a grant under this subsection only for the expanded deployment of commercial vehicle information systems and networks.

(f) FEDERAL SHARE.—The Federal share of the cost of a project funded by funds made available to carry out this subchapter shall be 80 percent.

§529. Research and development 

(a) IN GENERAL.—The Secretary shall carry out a comprehensive program of intelligent transportation system research, development, and operational tests of intelligent vehicles and intelligent infrastructure systems, and other similar activities that are necessary to carry out this subchapter.

(b) SPECIAL AREAS.—Under the program, the Secretary shall give priority to funding projects that— 

(i) assist in the development of an interconnected national intelligent transportation system that— 

(A) improves the reliability of the transportation system; 

(B) supports national security; 

(C) reduces, by at least 20 percent, the cost of manufacturing, deploying, and operating intelligent transportation systems and network components; 

(D) could assist in deployment of the Armed Forces in response to a crisis; and 

(E) improves the response to, and evacuation of the public during, an emergency situation; 

(ii) address traffic management, incident management, toll collection, traveler information, or highway operations systems with goals of— 

(A) reducing metropolitan congestion by 5 percent by 2010; and 

(B) ensuring that a national, interoperable 511 system, along with a national traffic information system that includes a user-friendly, comprehensive website, is fully implemented for use by travelers throughout the United States by September 30, 2010; and 

(iii) subject to subsection (d), improving communication between emergency care providers and trauma centers; and 

(iv) subject to subsection (d), incorporating intelligent vehicle and roadway technologies that are consistent with the national intelligent transportation systems and commercial vehicle information systems and networks architecture, applicable standards and protocols for commercial vehicle information systems and networks.

(2) M ASS TRANSIT CATEGORY.

(A) DEFINITIONS.

(1) the collection of data to permit objective evaluation of the results of the tests; 

(B) the development of cost-benefit information that is useful to others contemplating deployment of similar systems; and 

(C) the development and implementation of standards.

(D) FEDERAL SHARE.—The Federal share of the costs of operational tests under subsection (a) shall not exceed 40 percent.

§529. Use of funds 

(a) IN GENERAL.—For each fiscal year, not more than $5,000,000 of the funds made available to carry out this subchapter shall be used for infrastructure research, development, and testing of new technologies that— 

(i) are consistent with the national intelligent transportation systems and commercial vehicle information systems and networks architecture, applicable standards and protocols for commercial vehicle information systems and networks. 

(ii) are based on an assessment of the needs of similar systems; and 

(iii) improve sensing and wireless communications for transportation system technologies (such as wireless communications) for— 

(A) emergency services; 

(B) road pricing; and 

(C) local economic development; and 

(D) use by travelers throughout the United States by September 30, 2010; and 

(2) MASS TRANSIT CATEGORY.

(A) DEFINITIONS.

(1) the collection of data to permit objective evaluation of the results of the tests; 

(B) the development of cost-benefit information that is useful to others contemplating deployment of similar systems; and 

(C) the development and implementation of standards.

(D) FEDERAL SHARE.—The Federal share of the costs of operational tests under subsection (a) shall not exceed 40 percent.

§529. Use of funds
contract authority provided in the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 or for which appropriations are provided in accordance with authority contained in that Act.

(i) 69–1120–0–1–001 (Administrative Expenses).

(ii) 69–1134–0–1–001 (Capital Investment Grants).

(iii) 69–4191–0–7–401 (Discretionary Grants).

(iv) 69–1129–0–1–001 (Formula Grants).

(v) 69–8363–0–7–401 (Formula Grants and Research).

(vi) 69–1127–0–1–001 (Interstate Transfer Grants and Transits).

(vii) 69–1125–0–1–001 (Job Access and Reverse Commute).

(viii) 69–1122–0–1–001 (Miscellaneous Expenditure and Receipts).

(ix) 69–1139–0–1–001 (Major Capital Investment Grants).

(x) 69–1121–0–1–001 (Research, Training, and Education Resources).

(xi) 69–8350–0–7–401 (Trust Fund Share of Expenses).

(xii) 69–1137–0–1–001 (Transit Planning and Research).

(xiii) 69–1136–0–1–001 (University Transportation Research).

(xiv) 69–8321–0–1–001 (Washington Metropolitan Area Transit Authority)."

(b) HIGHWAY REVENUE ALIGNMENT.—Section 251(b)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(1)(B)) is amended—

(1) in clause (i)—

(A) inserting “each of fiscal years 2006 through 2009” after “submits the budget”;

(B) by inserting “the obligation limitation and outlay limit for” after “adjustments to”; and

(C) by striking “prior to clause (iii)(I)(cc).” and inserting the following: “(i) OMB shall take the actual level of highway receipts for the current year and subtract from the estimated level of highway receipts in clause (iii) plus any amount previously calculated under clauses (i)(II) and (ii) for that year.

(ii) OMB shall take the current estimate of highway receipts for the current year and subtract the estimated level of highway receipts in clauses (i)(II) for that year.

(iii) OMB shall—

(aa) take the sum of the amounts calculated under subclauses (I) and (II) and add that amount to the estimated level of highway receipts set forth in section 3103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for the highway category for the budget year, and calculate the outlay change resulting from that change in obligations relative to that amount for the budget year and each outyear using current estimates; and

(bb) after making the calculation under item (aa), adjust the amount of obligations set forth in section 3103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for the highway category for the budget year and outyear using current estimates; and

(cc) by striking clause (iii)(I)(cc).” and inserting the following:

(i) for fiscal year 2005, $34,163,000,000;

(ii) for fiscal year 2006, $36,972,000,000;

(iii) for fiscal year 2007, $38,241,000,000;

(iv) for fiscal year 2008, $39,432,000,000; and

(v) for fiscal year 2009, $40,557,000,000.

(ii) In this subparagraph, the term “highway receipts” means the governmental receipts and interest credited to the highway account of the Highway Trust Fund.”.

(c) CONTINUATION OF SEPARATE SPENDING CATEGORIES.—For the purpose of section 251(c) of the Transportation Equity Act for the 21st Century, the following shall be included in highway receipts as defined in section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(c)), the discretionary spending limits for the highway category and the mass transit category shall be—

(I) for fiscal year 2005—

(A) $33,677,000,000 for the highway category;

and

(B) $6,844,000,000 for the mass transit category;

(II) for fiscal year 2006—

(A) $37,086,000,000 for the highway category;

and

(B) $5,989,000,000 for the mass transit category;

(III) for fiscal year 2007—

(A) $40,192,000,000 for the highway category;

and

(B) $7,493,000,000 for the mass transit category;

(IV) for fiscal year 2008—

(A) $41,831,000,000 for the highway category; and

(B) $8,479,000,000 for the mass transit category;

(V) for fiscal year 2009—

(A) $42,883,000,000 for the highway category; and

(B) $9,131,000,000 for the mass transit category.

(d) ADDITIONAL ADJUSTMENTS.—Section 251(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(1)) is amended in part, by the agency head.

(1) Agency Head.—The term ‘agency head’ means—

(A) the Secretary of Transportation; and

(B) the head of each other Federal agency that is included in the regular basic, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) Department or Concrete Project.—The term ‘cement or concrete project’ means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

(A) involves the procurement of cement or concrete; and

(B) is carried out in whole or in part using Federal funds.

(3) Recovered Mineral Component.—The term ‘recovered mineral component’ means—

(A) ground granulated blast furnace slag;

(B) coal combustion fly ash;

(C) blast furnace slag aggregate;

(D) silica fume;

(E) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects for, in whole or in part, by the agency head.

(b) IMPLEMENTATION OF REQUIREMENTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete in incorporating recovered mineral component in cement or concrete projects.

(2) PRIORITY.—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

(3) CONFORMANCE.—The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

(f) FULL IMPLEMENTATION STUDY.—

(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with this section, may realize energy savings and environmental benefits attainable with substitution of recovered...
mineral component in cement used in cement or concrete projects.

(2) REQUIREMENTS.—In establishing criteria under paragraph (1), the Administrator shall consider—

(A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and

(B) any environmental and public health risks and benefits derived from the removal, transportation, and use in transportation projects of granular mine tailings.

(3) PUBLIC PARTICIPATION.—In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

(4) APPLICABILITY OF CRITERIA.—On the establishment of the criteria under paragraph (1), any use of the granular mine tailings described in paragraph (1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established under paragraph (1).

(b) EFFECT OF SECTIONS.—Nothing in this section or section 6005 affects any requirement of any law (including a regulation) in effect on the date of enactment of this section.

(c) EXTENSION OF TRANSFERS OF CERTAIN MINERAL TAILINGS FOR USE.—

(1) HIGHWAY TRUST FUND.—

Sec. 3001. EXTENSION OF HIGHWAY-RELATED TAXES AND TRUST FUNDS.

(a) EXTENSION OF TAXES.—

(1) IN GENERAL.—The following provisions are each amended by striking “2005” each place it appears and inserting “2011”:

(A) Section 404(a)(1)(C)(iii)(D) (relating to rate of tax on special motor fuels).

(B) Section 404(a)(2)(B) (relating to rate of tax on special motor fuels).

(C) Section 404(m)(1) (relating to certain alcoholic fuels).

(D) Section 405(c) (relating to termination of tax on heavy trucks and trailers).

(E) Section 407(d) (relating to termination of tax on tires).

(F) Section 408(d)(1) (relating to termination of tax on gasoline, diesel fuel, and kerosene).

(G) Section 484(f) (relating to period in effect).

(H) Section 482(c)(4) (relating to taxable period).

(I) Section 482(d) (relating to special rule for taxable period in which termination date occurs).

(2) FLOOR STOCKS REFUNDS.—Section 462(a)(1) (relating to floor stocks refunds) is amended—

(A) by striking “2005” each place it appears and inserting “2011”, and

(B) by striking “2006” each place it appears and inserting “2012”.

(3) EXTENSION OF CERTAIN EXEMPTIONS.—The following provisions are each amended by striking “2005” and inserting “2011”:

(A) Section 22(e) (relating to certain tax-free sales).

(B) Section 482(b)(3) (relating to termination of exemptions for highway use tax).
(2) AQUATIC RESOURCES TRUST FUND.—
(A) SPORT FISH RESTORATION ACCOUNT.—Para-
graph (2) of section 9504(b) is amended by strik-
ing “Surface Transportation Extension Act of 2004,” and inserting in its place the following:
“Safe, Accountable, Flexible, and Efficient
Transportation Equity Act of 2005.”
(B) EXCEPTION TO LIMITATION ON TRANS-
PORTATION.—Paragraph (2) of section 9504(d) is amended by striking “June 1, 2005” and insert-
ning “October 1, 2009.”

(3) EFFECTIVE DATE.—The amendments made
by this section shall take effect on the date of
the enactment of this Act.

SEC. 5102. MODIFICATION OF ADJUSTMENTS OF
ASSAY OR ANNOTATIONS.
(a) IN GENERAL.—Section 9503(d) (relating to
adjustments for apportionments) is amended—
(1) by striking “24-month” in paragraph (1)(B) and inserting “36-month”;
(2) by striking “2 years” in the heading for paragraph (3) and inserting “4 years”;
(b) MEASUREMENT OF NET HIGHWAY RE-
CEPTS.—Section 9503(d) is amended by redesign-
ating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:
“(6) MEASUREMENT OF NET HIGHWAY RE-
CEPTS.—For purposes of making any estimate under paragraph (1) of net highway receipts for periods beginning on or after the date specified in subsection (b)(1), the Secretary shall treat—
“(A) each expiring provision of subsection (b) which is related to appropriations or transfers to the Highway Trust Fund to have been en-
tended through the end of the 48-month period referred to in paragraph (1)(B), and
“(B) with respect to each tax imposed under the section referred to in subsection (b)(1), the rate of such tax during the 48-month period referred to in paragraph (1)(B) to be the same as the rate of such tax as in effect on the date of such extension.

(c) EFFECTIVE DATE.—The amendments made
by this section shall take effect on the date of
the enactment of this Act.

Subttitle B—Excise Tax Reform and
Simplification
PART I—HIGHWAY EXCISE TAXES

SEC. 5201. MODIFICATION OF GAS GUZZLER TAX.
(a) UNIFORM APPLICATION OF TAX.—Subpara-
graph (A) of section 4046(b)(1) (defining auto-
mobile) is amended by striking the second sen-
tence.
(b) EFFECTIVE DATE.—The amendment made
by this section shall take effect on October 1, 2005.

SEC. 5202. EXCLUSION FOR TRACTORS WEIGHING
19,500 POUNDS OR LESS FROM FED-
ERAL EXCISE TAX ON HEAVY TRUCKS
AND TRAILERS.
(a) IN GENERAL.—Subsection (a) of section 4051 (relating to imposition of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the follow-
ing new paragraph:
“(4) EXCLUSION FOR TRACTORS WEIGHING 19,500 POUNDS OR LESS.—The tax imposed by para-
graph (1) shall not apply to tractors of the kind
chiefly used for highway transportation in com-
bination with or as part of a semitrailer or trailer
if such tractor has a gross vehicle weight of 19,500
pounds or less (as determined under regulations
prescribed by the Secretary).”
(b) EFFECTIVE DATE.—The amendments made
by this section shall apply to sales after Sep-
tember 30, 2005.

SEC. 5203. EXEMPTION FOR EQUIPMENT FOR
TRANSPORTING BULK BEDS OF FARM CROPS FROM EXCISE TAX ON
RETAIL SALE OF HEAVY TRUCKS AND
TRAILERS.
(a) IN GENERAL.—Section 4053 of the Internal
Revenue Code of 1986 (relating to exemptions) is amended by adding at the end the following new paragraph:
“(9) EQUIPMENT FOR TRANSPORTING BULK BEDS OF FARM CROPS.—Any box, container, recei-
table, bin, or other similar article the length
of which does not exceed 26 feet, which is mounted or placed on an automobile truck, and which is sold to a person who certifies to the seller that—
“(A) such equipment is actively engaged in the trade or business of farming,
“(B) the primary use of the article is to haul to
and from farm bulk beds of farm crops grown in connection with such trade or business,
“(C) the article is not used for transportation
of natural gas or petroleum gas.

(b) EFFECTIVE DATE.—The amendments made
by this section shall take effect on October 1,
2005.

SEC. 5204. VOLUMETRIC EXCISE TAX CREDIT FOR
ALTERNATIVE FUELS.
(a) IMPOSITION OF TAX.—
(1) IN GENERAL.—Section 4081(b)(2)(A) (relat-
ing to rates of tax), as amended by section 5611
of this Act, is amended—
(A) by striking “and” at the end of clause (ii),
(B) by striking the period at the end of clause
(iii), and
(C) by adding at the end the following new
clauses:
“(iv) in the case of compressed natural gas and
hydrogen, 1.83 cents per gallon,
“(v) in the case of liquefied natural gas, any
liquid fuel (other than ethanol and methanol) derived from coal (including peat), and
“non-liquid alternative fuel sold by the taxpayer for use as a motor fuel in a highway vehicle.

(b) ALTERNATIVE FUEL.
(1) IN GENERAL.—Section 4083(a)(1) (defining
taxable fuel) is amended—
(i) by striking “and” at the end of subpara-
graph (B),
(ii) by striking the period at the end of sub-
pargraph (C) and inserting “, and”, and
(iii) by adding at the end the following new
subparagraph:
“(C) ALTERNATIVE FUEL.—The term ‘alter-
native fuel means—
“(A) compressed or liquefied natural gas,
“(B) P Series Fuels (as defined by the Sec-
retary of Energy under section 13221(2) of title
42, United States Code),
“(C) hydrogen,
“(D) any alternative fuel (other than ethanol
and methanol) derived from coal (including peat), and
“(E) liquid hydrocarbons derived from biomass
(as defined in section 29(c)(3)).

(c) CONFORMING AMENDMENT.—Section
4041(a), as amended by section 5101 of this Act,
is amended by striking paragraphs (2) and (3)
and inserting the following:
“(2) SPECIAL MOTOR FUELS.—
“(A) IN GENERAL.—There is hereby imposed a tax on each gallon of alternative fuel (other than gasoline, diesel oil or fuel oil) and liquefied petroleum gas—
“(i) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat
if such motor vehicle or motorboat is used as fuel in such motor vehicle or motor-
boat, or
“(ii) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such fuel under clause (i).

“(B) EXEMPTION FOR PREVIOUSLY TAXED
FUEL.—No tax shall be imposed by this para-
graph on the sale or use of any alternative fuel
or liquefied petroleum gas if tax was imposed on such alternative fuel or liquefied petroleum gas under section 4081 and the tax thereon was not collected or refunded.

“(C) RATE OF TAX.—Except as otherwise pro-
vided, the rate of the tax imposed by this para-
graph shall be the rate of tax specified in clause
(ii), (iv), or (v) of section 4081(b)(2)(A) on the
alternative fuel which is in effect at the time of
such sale or use. In the case of liquefied petroleum
gas, the rate of the tax imposed by this paragraph shall be 33.4 cents per gallon.

“(D) BUS USE.—No tax shall be imposed by this
paragraph on any alternative fuel, other than
described in subparagraph (B) or (C) of section
6247(b)(2) (relating to school bus and intracity
transportation).

(2) ALTERNATIVE FUEL Mixture CREDIT.—Section
6427(a) (relating to credits) is amended by strik-
ing paragraphs (2) and (3) and by inserting after
the period at the end of paragraph (2) by adding at the end the following new para-

graph:
“(3) the alternative fuel credit, plus
“the alternative fuel mixture credit.”

(3) ALTERNATIVE FUEL AND ALTERNATIVE FUEL
MIXTURE CREDIT.—Section 6426 (relating to cred-
it for fuel alcohol and biodiesel mixtures) is amended by redesignating subsections (d) and
(e) as subsections (f) and (g) and by inserting after
subsection (c) the following new sub-

section:
“(d) ALTERNATIVE FUEL CREDIT.—
“(1) IN GENERAL.—For purposes of this sec-
tion, the alternative fuel credit is the product of
50 cents and the number of gallons of an alter-
native fuel or gasoline gallon equivalents of a
nonliquid alternative fuel sold by the taxpayer for use as a motor fuel taxable under
section 4081.

“(2) ALTERNATIVE FUEL.—For purposes of this
section, the term ‘alternative fuel’—
“(A) has the meaning given such term by sub-
paragraphs (A), (B), (C), and (D) of section
4083(a)(4),
“(B) includes any liquid fuel derived from
coal (including peat) through the Fischer-
Tropsch process,
“(C) does not include ethanol, methanol, or
biodiesel,
“(D) GASOLINE GALLON EQUIVALENT.—For pur-
poses of this subsection, the term ‘gasoline gal-
lon equivalent’ means, with respect to any non-
liquid alternative fuel, the amount of such fuel having a BTU content of 124,800 (higher heating
value).

“(4) TERMINATION.—This subsection shall not
apply to any sale, use, or removal for any pe-
riod after September 30, 2011.

“(e) ALTERNATIVE FUEL MIXTURE CREDIT.—
“(1) IN GENERAL.—For purposes of this sec-
tion, the alternative fuel mixture credit is the
product of 50 cents and the number of gallons of alternative fuel used by the taxpayer in pro-
ducing any alternative fuel mixture for sale or
use in a trade or business of the taxpayer.

“(2) ALTERNATIVE FUEL MIXTURE.—For pur-
poses of this section, the term ‘alternative fuel mixture’ means a mixture of alternative fuel and

taxable fuel (as defined in subparagraph (A), (B), or (C) of section 4086(a)(1)) which—

(A) is sold by the taxpayer producing such mixture to any person for use as fuel in a high-speed vessel;

(B) is used as a fuel in a highway vehicle by the taxpayer producing such mixture.

(2) This subsection shall not apply to any sale, use, or removal for any period after September 30, 2009.

(3) CONFORMING AMENDMENTS.—

(A) The section heading for section 4626 is amended by striking “ALCOHOL FUEL AND BIODIESEL” and inserting “CERTAIN ALCOHOL FUEL AND BIODIESEL”.

(B) The table of sections for subsection B of chapter 65 is amended by striking “alcohol fuel” and inserting “alcohol fuel” and “biomass-based diesel” and “biodiesel”.

(C) Section 6427(a) is amended by striking “in paragraphs (1) and (2) and inserting “in the headings for paragraphs (1) and (2) and inserting “in paragraph (1) and inserting “in paragraph (1) and inserting “in paragraph (1) and inserting paragraph (2) or (3) of section 4041(a) or section 4041(c)” and inserting “section 4041(a)(2) or 4041(c)”.

(D) Section 4627(e) is amended—

(i) by inserting “or the alternative fuel mixture credit” after “biomass-based diesel credit” in paragraph (1),

(ii) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (3) the following new paragraph:

(4) ALTERNATIVE FUEL.—

If any person produces an alternative fuel described in section 4626 in such person’s trade or business, the Secretary shall pay (without interest) to such person—

(A) an alternative fuel tax credit equal to 30 percent of the price for which such mixture is sold, and

(B) a storage and transfer tax equal to 10 percent of the price for which such mixture is sold.

(3) CONFORMING AMENDMENTS.—

(A) Section 4710(c) is amended by inserting “as provided in this section, section 9503(c)(4), and section 9503(c)(5), or section 9503(c)(6)” and inserting “as provided in this section, section 9503(c)(4), or section 9602(b)”.

(B) Section 9503(c)(4) is amended by striking “as provided in this section, section 9503(c)(4), or section 9602(b)” and inserting “as provided in this section, section 9503(c)(4), or section 9602(b)”.

(4) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2009.

PART III.—ALCOHOL FUEL AND BIODIESEL MIXTURES

SEC. 5211. ELIMINATION OF AQUATIC RESOURCES TRUST FUND AND TRANSFORMATION OF SPORT FISH RESTORATION ACCOUNT.

(a) SIMPLIFICATION OF FUNDING FOR BOAT SAFETY ACCOUNT.—

(1) IN GENERAL.—

Section 5903(c)(4) (relating to transfers from Trust Fund for motorboat fuel taxes) is amended—

(A) by striking “Fund” and all that follows through “shall be transferred” in subparagraph (B) and inserting “Fund which is attributable to motorboat fuel taxes received on or after October 1, 2005, and before October 1, 2011, shall be transferred”;

(B) by striking subparagraph (A), and

(C) by redesignating subparagraphs (B) through (E) as subparagraphs (A) through (D), respectively.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraphs of section 5903(c)(4), as redesignated by paragraph (1)(C), are amended—

(i) by striking “Account” in the heading thereof and inserting “BOATING TRUST FUND”;

(ii) by striking “or (B)” in clause (i), and

(iii) by striking “account in the Aquatic Resources” and inserting “and Boating”.

(B) Paragraph (5) of section 5903(c) is amended by striking “Account in the Aquatic Resources” in subparagraph (A) and inserting “and Boating”.

(b) MINGLING OF ACCOUNTS.—

(1) IN GENERAL.—

Subsection (a) of section 5904 is amended to read as follows:

(a) CREATION OF AQUATIC RESOURCES TRUST FUND.—There is hereby established in the Treasury of the United States a trust fund to be known as the ‘Sport Fish Restoration and Boating Trust Fund’. Such Trust Fund shall hold such amounts as may be appropriated, credited, or paid to it as provided in this section, section 5903(c)(4), section 9503(c)(5), section 9602(b), and section 9602(c).

(2) CONFORMING AMENDMENTS.—

(A) Subsection (b) of section 5904, as amended by section 5901 of this Act, is amended—

(i) by striking “ACCOUNT” in the heading thereof and inserting “AND BOATING TRUST FUND”;

(ii) by striking “Account” both places it appears in paragraphs (1) and (2) and inserting “Boating Trust Fund”, and

(iii) by striking “and” both places it appears in the headings for paragraphs (1) and (2) and inserting “and Trust Fund”.

(B) Subsection (d) of section 5904, as amended by section 5901 of this Act, is amended—

(i) by striking “AQUATIC RESOURCES” in the heading thereof;

(ii) by striking “any Account in the Aquatic Resources” in paragraph (1) and inserting “the Sport Fish Restoration and Boating”, and

(iii) by striking “Account” in paragraph (1) and inserting “Trust Fund”.

(C) Subsection (e) of section 5904 is amended by striking “Boating Safety Account and Sport Fish Restoration Account” and inserting “Sport Fish Restoration and Boating Trust Fund”.

(D) Section 5904 is amended by striking “AQUATIC RESOURCES” in the heading thereof and inserting “SPORT FISH RESTORATION AND BOATING”.

(3) E XEMPTION FROM TAX ON AIR TRANSPORTATION FOR HELICOPTERS.

Every item relating to section 5904 in the table of sections for title 49, United States Code, is amended by striking “as provided in this section, section 9503(c)(4), or section 9602(b)” and inserting “as provided in this section, section 9503(c)(4), or section 9602(b)”.

(4) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2009.

SEC. 5212. REPEAL OF HARBOR MAINTENANCE TAX ON EXPORTS.

(a) IN GENERAL.—

Section 4662 (relating to export of sport fishing equipment) is amended to read as follows:

(1) IMPOSITION OF TAX.—

(A) IN GENERAL.—There is hereby imposed on the export of any article of fishing equipment by the manufacturer, producer, or importer a tax equal to 10 percent of the price for which so sold.

(B) LIMITATION ON TAX IMPOSED ON FISHING RODS AND POLES.—The tax imposed by subparagraph (A) on any fishing rod or pole shall not exceed $5.

(b) CONFORMING AMENDMENTS.—

Section 4616(a)(2) is amended by striking paragraph (1) and inserting “paragraph (1)(A)

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2009.

SEC. 5213. CAP ON EXCISE TAX ON CERTAIN FISHING EQUIPMENT.

(a) IN GENERAL.—

Paragraph (1) of section 4161 (relating to sport fishing equipment) is amended to read as follows:

(1) IMPOSITION OF TAX.—

(A) IN GENERAL.—There is hereby imposed on the use of any article of fishing equipment by the manufacturer, producer, or importer a tax equal to 10 percent of the price for which so sold.

(b) CONFORMING AMENDMENTS.—

Section 4161(a)(2) is amended by striking paragraph (1) and inserting “paragraph (1)(A)

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2009.
of at least 100 miles” after “by air” in clause (i), and (2) by striking “or” at the end of subsection (i) of clause (ii), by striking the period at the end of sub-subsection (II) of clause (ii) and inserting “; and”, and by adding at the end of clause (ii) the following new subclause: “(III) not connected by paved roads to another airport.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2005.

SEC. 5223. EXEMPTION FROM TAXES ON TRANSPORTATION PROVIDED BY SEAPLANES.

(a) IN GENERAL.—Section 4261 (relating to imposition of tax) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (j) the following new subsection: “(k) EXEMPTION FOR SEAPLANES.—No tax shall be imposed by this section or section 4271 on any air transportation by a seaplane with respect to any segment consisting of a takeoff from, and a landing on, water, but only if the places at which such takeoff and landing occur have not received and are not receiving financial assistance from the Airport and Airways Trust Fund.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transportation beginning after September 30, 2005.

SEC. 5224. CERTAIN SIGHTSEEING FLIGHTS EXEMPT FROM TAXES ON AIR TRANSPORTATION.

(a) IN GENERAL.—Section 4281 (relating to small aircraft on nonestablished lines) is amended by adding at the end the following new sentence: “For purposes of this section, an aircraft shall not be considered as operated on an established line at any time during which such aircraft is being operated on a flight the sole purpose of which is sightseeing.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to transportation beginning after September 30, 2005, but shall not apply to any amount paid before such date for such transportation.

PART IV.—TAXES RELATING TO ALCOHOL

SEC. 5231. REPEAL OF SPECIAL OCCUPATIONAL TAXES ON PRODUCERS AND MARKETERS OF ALCOHOLIC BEVERAGES.

(a) REPEAL OF OCCUPATIONAL TAXES.—

(1) IN GENERAL.—The following provisions of part II of subchapter A of chapter 51 (relating to occupational taxes) are hereby repealed: (A) Subpart A (relating to proprietors of distilleries, bonded wine cellars, etc.). (B) Subpart B (relating to brewers). (C) Subpart D (relating to wholesale dealers) (other than sections 5114, 5115, and 5116). (D) Subpart E (relating to retail dealers) (other than section 5124). (E) Subpart G (relating to general provisions) (other than sections 5142, 5143, 5145, and 5146). (F) NONBEVERAGE DOMESTIC DRAWBACK.—Section 5131 is amended by striking “; on payment of a special tax per annum,”. (G) INDUSTRIAL USE OF DISTILLED SPIRITS.—Section 5276 is hereby repealed. (H) CONFORMING AMENDMENTS.—

(1) The heading for part II of subchapter A of chapter 51 and the table of subparts for such part are amended to read as follows: “PART II—MISCELLANEOUS PROVISIONS

Subpart A. Manufacturers of stills.

Subpart B. Nonbeverage domestic drawback claimants.

Subpart C. Recordkeeping and registration by dealers.

Subpart D. Other provisions.”.

(B) The table of parts for such subchapter A is amended by striking the item relating to part II and inserting the following new item: “Part II. Miscellaneous provisions.”

(2) The following provisions of part II of such subchapter (relating to manufacturers of stills) is redesignated as subpart A.

(3)(A) Subpart F of such part II (relating to nonbeverage domestic drawback claimants) is redesignated as subpart B and sections 5131 through 5134 are redesignated as sections 5111 through 5114, respectively.

(B) The table of sections for such subpart B, as so redesignated, is amended—

(i) by redesignating the items relating to sections 5111 through 5114, respectively, as so redesignated,

(ii) by inserting “AND RATE OF TAX” in the item relating to section 5111, respectively, as so redesignated,

(iii) by redesignating subparagraph (A), as amended—

(1) by striking “AND RATE OF TAX” in the section heading,

(2) by striking the subsection heading for subsubsection (a),

(iii) by striking the subsection heading for subsubsection (b),

(iv) by redesignating subsection (c) as subsubsection (b),

(v) by redesigning subsubsection (d) as subsubsection (c),

(vi) by redesigning subsubsection (e) as subsubsection (d),

(vii) by redesigning paragraph (B) as paragraph (A), and

(viii) by redesigning subsubsection (a).

(4) Part II of subchapter A of chapter 51 is amended by adding after subpart B, as redesignated by paragraph (3), the following new subpart:

“Subpart C.—Recordkeeping and Registration by Dealers.”

‘‘Sec. 5121. Recordkeeping by wholesale dealers.

‘‘Sec. 5122. Recordkeeping by retail dealers.

‘‘Sec. 5123. Preservation and inspection of records, and entry of premises for inspection.

‘‘Sec. 5124. Registration by dealers.”

(B) CONFORMING AMENDMENTS.

(1) PART II OF SUBCHAPTER A OF CHAPTER 51 IS AMENDED—

(i) by striking the section heading and inserting the following new heading: “PART II. RECORDKEEPING BY WHOLESALE DEALERS.”

(ii) by redesigning subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

“(1) WHOLESALE DEALER IN LIQUORS.—The term ‘wholesale dealer in liquors’ means any dealer (other than a wholesale dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

“(2) WHOLESALE DEALER IN BEER.—The term ‘wholesale dealer in beer’ means any person who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

“(3) WHOLESALE DEALER.—The term ‘wholesale dealer’ means any person who sells, or offers for sale, distilled spirits, wines, or beer.

“(4) PRESUMPTION IN CASE OF SALE OF 20 WINE GALLONS OR MORE.—The sale, or offer for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumptive evidence that the person making such sale, or offer for sale, is engaged in or carrying on the business of a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be. Such presumption may be overcome by evidence satisfactorily showing that such sale, or offer for sale, was made to a person other than a dealer.”

(C) Subsection (c) of section 5212(a), as so redesignated, is amended by striking “section 5146” and inserting “section 5123”.

(2) Section 5124 (relating to records) is redesignated as section 5123.

(i) by striking the section heading and inserting the following new heading:

“PART II. RECORDKEEPING BY RETAIL DEALERS.”

(ii) by striking “section 5146” in section (c) and inserting “section 5123”, and

(iii) by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

“(1) RETAIL DEALERS.—For purposes of this section—

“(1) RETAIL DEALER IN LIQUORS.—The term ‘retail dealer in liquors’ means any dealer (other than a retail dealer in beer or a limited retail dealer who sells, or offers for sale, distilled spirits, wines, or beer, to any person other than a dealer).

“(2) RETAIL DEALER IN BEER.—The term ‘retail dealer in beer’ means any dealer (other than a retail dealer who sells, or offers for sale, but not distilled spirits or wines, to any person other than a dealer).

“(3) LIMITED RETAIL DEALER.—The term ‘limited retail dealer’ means any fraternal, civic, chamber of commerce, labor, charitable, benevolent, or ex-servicemen’s organization making sales of distilled spirits, wines or beer on the occasion of any kind of social, amusement, dance, picnic, banquet, or festival held by it, or any person making sales of distilled spirits, wines or beer to the members, guests, or patrons of bona fide fairs, reunions, picnics, carnivals, or other similar outings, if such organization or person is not otherwise engaged in business as a dealer.

“(4) DEALER.—The term ‘dealer’ has the meaning given such term by section 5121(c)(3).”

(3) Section 5146 is moved to subpart C of part II of subchapter A of chapter 51, inserted after section 5122, and redesignated as section 5123.

(4) Subpart C of part II of subchapter A of chapter 51, as amended by paragraph (1), is amended by adding at the end the following new section:

“PART II. REGISTRATION BY DEALERS.

Every dealer who is subject to the recordkeeping requirements under section 5121 or 5122 shall register with the Secretary such dealer’s name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In case of a firm or company, the names of the several persons constituting the same, and the places of residence, shall be so registered.”.

(9) Section 7012 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

“(4) For provisions relating to registration by dealers in distilled spirits, wines, and beer, see section 5141.”

(10) Part II of subchapter A of chapter 51 is amended by inserting after subpart C the following new subpart:

“Subpart D.—Other Provisions

‘‘Sec. 5131. Packaging distilled spirits for industrial uses.

‘‘Sec. 5132. Prohibited purchases by dealers.’’

(11) Section 5116 is moved to subpart D of part II of subchapter A of chapter 51, inserted after the table of sections for such subchapter, as section 5131, and amended by inserting “(as defined in section 5121(c))” after “dealer” in subsection (a).

(12) Subpart D of part II of subchapter A of chapter 51 is amended by adding at the end the following new section:

“PART II. PROHIBITED PURCHASES BY DEALERS.

“(a) IN GENERAL.—Except as provided in regulations prescribed by the Secretary, it shall be unlawful for a dealer to purchase distilled spirits, wines, or beer, to resell from a retail dealer in liquors. For penalty and forfeiture provisions applicable to violations of section (a), see sections 5676 and 7302.”

(13) Subsection (b) of section 5002 is amended—

(A) by striking “section 5112(a)” and inserting “section 5121(a)

(B) by striking “section 5112” and inserting “section 5121(c)”.

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(C) by striking “section 5122” and inserting “section 5122(c)”.

(14) Subparagraph (A) of section 5160(c)(2) is amended by striking “section 5124” and inserting “section 5134”.

(15) Subsection (d) of section 5052 is amended to read as follows:

“(d) BREWER.—For purposes of this chapter, the term ‘brewer’ includes any person who brews beer or produces beer for sale. Such term shall not include any person who produces only beer exempt from tax under section 5053(e).”.

(16) The text of section 5162 is amended to read as follows:

“For provisions requiring recordkeeping by wholesale liquor dealers, see section 5112; and by retail liquor dealers, see section 5122.”.

(17) Subsection (b) of section 5402 is amended by striking “section 5092” and inserting “section 5092(d)”.

(18) Section 5673 is amended by striking “or 5091”.

(19) (A) Part V of subchapter J of chapter 51 is hereby repealed.

(B) The table of parts for such subchapter J is amended by striking the item relating to Part V.

(20) (A) Sections 5142, 5143, and 5145 are moved to subchapter D of chapter 52, inserted after section 5732, redistribute as sections 5732, 5733, and 5734, respectively, and amended by striking “this part” each place it appears and inserting “this subsection”.

(B) Section 5732, as redesignated by subparagraph (A), is amended by striking “(except the tax imposed by section 5131)” each place it appears.

(C) Paragraph (2) of section 5733(c), as redesignated by subparagraph (A), is amended by striking “liquors” both places it appears and inserting “tobacco products and cigarette papers and tubes”.

(D) The table of sections for subchapter D of chapter 52 is amended by adding at the end the following text:

“Sec. 5732. Payment of tax.
Sec. 5733. Provisions relating to liability for occupational taxes.
Sec. 5734. Application of State laws.”.

(E) Section 5731 is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(21) Subsection (c) of section 6071 is amended by striking “section 5142” and inserting “section 5732”.

(22) Paragraph (1) of section 7625 is amended:

(A) by striking “subpart F” and inserting “subpart B”;

(B) by striking “section 5131(a)” and inserting “section 5117”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2008, but shall not apply to taxes imposed for periods before such date.

SEC. 5232. MODIFICATION OF LIMITATION ON RATE OF RUM EXCISE TAX COVER OVER TO PUERTO RICO AND VIRGIN ISLANDS.

(a) IN GENERAL.—Section 7632(f)(1) (relating to limitation on cover over of tax on distilled spirits) is amended by inserting “, and $13.50 in the case of distilled spirits brought into the United States after December 31, 2005, and before January 1, 2007” after “2006”.

(b) SPECIAL RULE.—

(1) IN GENERAL.—After December 31, 2005, and before January 1, 2007, the Commonwealth of Puerto Rico shall make a Conservation Trust Fund transfer from the treasury of Puerto Rico within 30 days from the date of each cover overpayment to such treasury under section 7652(e) of the Internal Revenue Code of 1986.

(2) CONSERVATION TRUST FUND TRANSFER.—

(A) IN GENERAL.—For purposes of this section, the term “Conservation Trust Fund transfer” means a transfer to the Puerto Rico Conservation Trust Fund of an amount equal to

50 cents per proof gallon of the taxes imposed under section 5001 or section 7652 of such Code on distilled spirits that are covered over to the treasury of Puerto Rico under section 7652(e) of such Code.

(B) TREATMENT OF TRANSFER.—Each Conservation Trust Fund transfer shall be treated as principal for purposes of the income from which to be available for use by the Puerto Rico Conservation Trust Fund for the purposes for which the Trust Fund was established.

(C) RULES.—

(i) IN GENERAL.—Upon notification by the Secretary of the Treasury that a Conservation Trust Fund transfer has not been made by the Commonwealth of Puerto Rico, such transfer shall serve as principal for an endowment, the income from which shall be available for use by the Puerto Rico Conservation Trust Fund for the purposes for which the Trust Fund was established.

(ii) GOOD-CAUSE EXCEPTION.—If the Secretary of the Treasury, after consultation with the Governor of Puerto Rico, determines that the Commonwealth of Puerto Rico made a required Conservation Trust Fund transfer, the Secretary of the Treasury shall report such transfer to the Secretary of the Treasury of Puerto Rico, and the Secretary of the Treasury shall deduct and withhold from the next cover overpayment to be made to the treasury of Puerto Rico under section 7652(e) of such Code an amount equal to the appropriate Conservation Trust Fund transfer and interest thereon at the underpayment rate established under section 5621 of such Code as of the due date of such cover overpayment following the notification of nontransfer, the Secretary of the Treasury shall not deduct the amount of such nontransfer from any other cover overpayment.

(D) TREATMENT OF TRANSFER.—Each Conservation Trust Fund transfer shall serve as principal for an endowment, the income from which shall be available for use by the Puerto Rico Conservation Trust Fund for the purposes for which the Trust Fund was established.

(E) MODIFICATION OF LIMITATION ON RUM EXCISE TAX COVER OVER TO PUERTO RICO AND VIRGIN ISLANDS.—(1) IN GENERAL.—For purposes of this section, the average tax-financing cost per calendar year is the amount of interest that would accrue at the deemed financing rate during a 60-day period on an amount equal to the deemed Federal excise tax per case.

(2) DEFINED FEDERAL EXCISE TAX PER CASE.—For purposes of paragraph (1), the deemed Federal excise tax per case is $25.68.

(3) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section:

(A) Case.—The term ‘case’ means 12 80-proof 750-milliliter bottles.

(B) NUMBER OF CASES IN LOT.—The number of cases in any lot of distilled spirits shall be determined by dividing the number of liters in such lot by 9.

(C) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking ‘plus’ at the end of paragraph (18), by striking the period at the end of paragraph (19), and inserting ‘plus’, and by adding at the end the following new paragraph:

“(20) the distilled spirits credit determined under section 5011(a).”.

(D) CONFORMING AMENDMENT.—The table of sections for subpart A of part I of subchapter A of chapter 52 is amended by adding at the end the following new item:

“Sec. 5011. Income tax credit for average cost of carrying excise tax.”.

(E) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after September 30, 2005.

SEC. 5234. QUARTERLY EXCISE TAX FILING FOR SMALL ALCOHOL EXCISE TAXPAYERS.

(a) IN GENERAL.—Subsection (d) of section 5061 relating to time for collecting tax on distilled spirits, wines, and beer is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

“(4) TAXPAYERS LIABLE FOR TAXES OF NOT MORE THAN $50,000.—In general.—In the case of any taxpayer who reasonably expects to be liable for not more than $50,000 in taxes imposed with respect to distilled spirits, wines, and beer under subpart A, C, and D for any calendar quarter, such taxpayer may file a return and be liable for not more than $50,000 in such taxes in the preceding calendar year, the last day of the period for the payment of tax shall be the 14th day after the last day of the calendar quarter during which the action giving rise to the imposition of such tax occurs.

(b) NO APPLICATION AFTER LIMIT EXCEEDED.—Subparagraph (A) shall not apply to any taxpayer for any portion of the calendar year following the first date on which the aggregate amount of tax due under subparts A, C, and D for any calendar quarter during such calendar year exceeds $50,000, and any tax under such subparts which has not been paid on such date shall be due on the 14th day after the last day of the period during which such tax occurs.

(c) CALENDAR QUARTER.—For purposes of this paragraph, the term ‘calendar quarter’ means the three-month period ending on March 31, June 30, September 30, or December 31.

(d) CONFORMING AMENDMENT.—Section 5061(d)(3) as redesignated by subsection (a), is amended by striking “paragraph (4)” and inserting “paragraph (5)”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable quarters beginning on and after January 1, 2006.”
PART V—SPORT EXCISE TAXES

SEC. 5241. CUSTOM GUNSMITHS.
(a) SMALL MANUFACTURERS EXEMPT FROM FIREARMS EXCISE TAX.—Section 4182 (relating to exemptions) is amended by redesignating subsection (c) as subsection (a) and by inserting after subsection (b) the following new subsection:

(c) SMALL MANUFACTURERS, ETC.—(1) IN GENERAL.—The tax imposed by section 4181 shall not apply to any pistol, revolver, or firearm described in such section if manufactured, produced, or imported by a person who manufactures, produces, or imports less than an aggregate of 50 of such articles during the calendar year.

(2) EXEMPTION.—The persons treated as one person for purposes of paragraph (1) shall be treated as a single employer for purposes of subsection (a) or (b) of section 52 shall be treated as

(b) EFFECTIVE DATE.
(1) IN GENERAL.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2005.

(2) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to create any inference with respect to the proper tax treatment of such articles before the effective date of such amendments.

Subtitle C—Miscellaneous Provisions

SEC. 5301. MOTOR FUEL TAX ENFORCEMENT ADVISORY COMMISSION.

(a) ESTABLISHMENT. There is established a Motor Fuel Tax Enforcement Advisory Commission (in this section referred to as the “Commission”).

(b) FUNCTION.—The Commission shall—

(1) review motor fuel revenue collections, historical and current;

(2) review the progress of investigations;

(3) study and make recommendations with respect to motor fuel taxes;

(4) monitor the progress of administrative regulation projects relating to motor fuel taxes;

(5) review the results of Federal and State agency cooperative efforts regarding motor fuel taxes;

(6) review the results of Federal interagency cooperative efforts regarding motor fuel taxes; and

(7) evaluate and make recommendations to the President and Congress regarding—

(A) the effectiveness of existing Federal enforcement programs regarding motor fuel taxes,

(B) enforcement personnel allocation, and

(C) proposals for regulatory projects, legislation, or funding.

(c) MEMBERS.—

(1) APPOINTMENT.—The Commission shall be composed of the following representatives appointed by the Chairmen and the Ranking Members of the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives:

(A) At least 1 representative from each of the following Federal entities: the Department of Homeland Security, the Department of Transportation, the Federal Motor Carrier Safety Administration, the Federal Aviation Administration, the Federal Highway Administration, the Department of Defense, and the Department of Justice.

(B) At least 1 representative from the Federation of Tax Administrators.

(C) At least 1 representative from any State department of transportation.

(D) 2 representatives from the highway construction industry.

(E) 6 representatives from industries relating to fuel distribution — refiners (2 representatives), distributors (1 representative), pipelines (1 representative), and terminal operators (2 representatives).

(F) 1 representative from the retail fuel industry.

(G) 2 representatives from the staff of the Committee on Finance of the Senate and 2 representatives from the staff of the Committee on Ways and Means of the House of Representatives.

(H) The Commission shall be composed of a majority of representatives from such industries as the Commission determines to be necessary for the Commission to carry out its duties under this section.

(2) TERMS.—Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(3) CHAIRMAN.—The Chairman of the Commission shall be elected by the members.

(d) FUNDING.—Such sums as are necessary shall be available from the Highway Trust Fund for the expenses of the Commission.

(e) CONSULTATION.—Upon request of the Commission, representatives of the Department of the Treasury shall be available for consultation to assist the Commission in carrying out its duties under this section.

(f) OBTAINING DATA.—The Commission may secure directly from any department or agency of the United States, information (other than information required by any law to be kept confidential by such department or agency) necessary for the Commission to carry out its duties under this section. Upon request of the Commission, representatives of the Department of the Treasury shall be available for consultation to assist the Commission in carrying out its duties under this section.

(g) T RAVEL EXPENSES.—Members shall be reimbursed for actual expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(h) OBTAINING DATA.—The Commission shall be composed of a majority of representatives from such industries as the Commission determines to be necessary for the Commission to carry out its duties under this section.

(i) MEMBERS.—Members shall be appointed pursuant to paragraph (1) shall be appointed from among individuals knowledgeable in the fields of public transportation finance or highway and transit programs, policy, and needs, and may include representatives of interested parties, such as State and local governments or other public transportation authorities or agencies, representatives of the transportation construction industry (including suppliers of technology, machinery and materials), transportation labor (including construction and providers), transportation providers, the financial community, and users of highway and transit systems.

(j) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(k) STAFF.—The Commission may appoint and fix the pay of such personnel as it considers appropriate.

(l) FUNDING.—Funding for the Commission shall be provided by the Secretary of the Treasury and by the Secretary of Transportation, out of funds available to those agencies for administrative and policy functions.

(m) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any department or agency of the United States may detail any of the personnel of that department or agency to the Commission to assist in carrying out its duties under this section.

(n) OBTAINING DATA.—The Commission may secure directly from any department or agency of the United States, information (other than information required by any law to be kept confidential by such department or agency) necessary for the Commission to carry out its duties under this section. Upon request of the Commission, the head of such department or agency shall furnish such nonconfidential information to the Commission. The Commission shall also gather evidence through such means as it may deem appropriate, including through holding hearings and soliciting comments by means of Federal Register notices.
SEC. 3303. EXPANSION OF HIGHWAY TRUST FUND EXPENDITURE PURPOSE TO INCLUDE FUNDING FOR STUDIES OF SUPPLEMENTAL OR ALTERNATIVE FINANCING FOR THE HIGHWAY TRUST FUND. (a) IN GENERAL.—From amounts available in the Highway Trust Fund, there is authorized to be expended for 2 comprehensive studies of supplemental or alternative funding sources for the Highway Trust Fund: (1) a study by the Western Transportation Institute of the College of Engineering at Montana State University for the study and report described in subsection (b), and (2) a study by the Public Policy Center of the University of Iowa for the study and report described in subsection (c). (b) STUDY OF FUNDING MECHANISMS.—Not later than December 31, 2006, the Western Transportation Institute of the College of Engineering at Montana State University shall report to the Secretary of the Treasury and the Secretary of the Interior on a study of Highway funding mechanisms of other industrialized nations, an examination of the viability of alternative funding proposals, including congestion pricing, greater reliance on tolls, privatization of facilities, and bonding for construction of added capacity, and an examination of increasing the rates of motor fuels taxes in effect on the date of the enactment of this Act, including the indexing of such rates. (c) STUDY ON FIELD TEST OF ONBOARD COMPUTER IMPLEMENTATION OF HIGHWAY USE TAXES.—Not later than December 31, 2007, the Public Policy Center of the University of Iowa shall direct, analyze, and report to the Secretary of the Treasury on a long-term field test of an approach to assessing highway use taxes based upon actual mileage driven by a specific vehicle on specific types of highways by use of an onboard computer that (1) is linked to satellites to calculate highway mileage traversed, (2) which computes the appropriate highway use tax for each of the Federal, State, and local governments as the vehicle makes use of the highways, and (3) data from which is periodically downloaded by the vehicle owner to a collection center for an assessment of highway use taxes due in each jurisdiction traversed. The components of the field test shall include 2 years for preparation, including selection of vendors and test participants, and 3-year testing period. SEC. 3304. DELTA REGIONAL TRANSPORTATION PLAN. (a) STUDY.—The Delta Regional Authority shall conduct a study of the transportation assets and needs in the States of Alabama, Arkansas, Louisiana, Mississippi, Missouri, and Tennessee which comprise the Delta region. (b) REGIONAL STRATEGIC TRANSPORTATION PLAN.—Upon completion of the study required under subsection (a), the Delta Regional Authority shall establish a regional strategic transportation plan to achieve efficient transportation systems in the Delta region. In developing the regional strategic transportation plan, the Delta Regional Authority shall consult with local planning and development districts, local governments, and regional governments, metropolitan planning organizations, State transportation entities, and Federal transportation agencies. (c) ENSURE TRANSPORTATION PLAN.—The study and plan under this section shall include the following transportation modes and systems: transit, rail, highway, interstate, bridges, air, airports, waterways, and ports. (d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Delta Regional Authority $500,000 for each of the fiscal years 2006 through 2009 for the purposes of this section, to remain available until expended. SEC. 3305. BUILD AMERICA CORPORATION. (a) ESTABLISHMENT OF BUILD AMERICA CORPORATION.—There is established a nonprofit corporation, to be known as the “Build America Corporation”. The Build America Corporation is not an agency or establishment of the United States Government. The purpose of the Corporation is to issue Build America bonds. The Corporation shall be subject, to the extent consistent with this section, to the laws of the State of Delaware applicable to corporations not for profit. (b) USE OF BUILD AMERICA BOND PROCEEDS.—The proceeds from the Build America Corporation bonds issued by the Build America Corporation as authorized by subsection (a) may be used to fund any qualified project. (c) QUALIFIED PROJECTS.—For purposes of this section— (1) IN GENERAL.—With respect to any Build America bonds issued by the Build America Corporation as authorized by subsection (a), the term “qualified project” means any— (A) qualified highway project, (B) qualified public transportation project, and (C) congestion relief project, proposed by 1 or more States and approved by the Build America Corporation, which meets the requirements under subparagraphs (A), (B), and (C) of paragraph (5). (2) QUALIFIED HIGHWAY PROJECT.—The term “qualified highway project” means a project for highway, interstate, or other public roadways that is eligible for assistance under title 23, United States Code. (3) QUALIFIED PUBLIC TRANSPORTATION PROJECT.—The term “qualified public transportation project” means a project for public transportation facilities or other facilities which are eligible for assistance under title 49, United States Code. (4) CONGESTION RELIEF PROJECT.—The term “congestion relief project” means an intermodal freight transfer facility, freight rail facility, freight railcar, intercity bus facility, border crossing facility, or other public or private facility approved as a congestion relief project by the Secretary of Transportation in accordance with such approvals, the Secretary of Transportation shall— (A) consider the economic, environmental, mo- bility, and safety improvements to be realized through the project, and (B) give preference to projects with national or regional significance, including any projects proposed by a combination of States or a combina- tion of States and private sector entities, in terms of generating economic benefits, support- ing international commerce, or otherwise enhancing the domestic competitiveness of the transportation system. (5) ADDITIONAL REQUIREMENTS FOR QUALIFIED PROJECTS.—For purposes of paragraph (1)— (A) COSTS OF QUALIFIED PROJECTS.—The re- quirement of this subparagraph is met if the costs of the qualified project funded by Build America bonds only relate to capital investments and do not include any costs relating to oper- ations, maintenance, or rolling stock. (B) APPLICABILITY OF FEDERAL LAW.—The re- quirement of this subparagraph is met if the re- quirements of any Federal law, including titles 23, 40, and 49 of the United States Code, which would otherwise apply to projects to which the United States is a party or to funds made avail- able under such law and projects assisted with those funds are applied to— (i) funds made available under Build America bonds for similar qualified projects, and (ii) similar qualified projects assisted by the Build America Corporation through the use of such funds. (C) UTILIZATION OF UPDATED CONSTRUCTION TECHNOLOGY FOR QUALIFIED PROJECTS.—The re- quirement of this subparagraph is met if the ap- propriate State agency relating to the qualified project has updated its accepted construction technologies to match a list prescribed by the Secretary of Transportation and in effect on the date of the approval of the project as a qualified project. SEC. 3306. INCREASE IN DOLLAR LIMITATION FOR QUALIFIED TRANSPORTATION PROPULSION BENEFITS. (a) IN GENERAL.—Section 132(f)(2) relating to limitation on exclusion is amended— (1) by striking “$100” in subparagraph (a) and inserting “$155 (in the case of any calendar year after 2009, the dollar amount specified in subparagraph (b) for such year)”, and (2) by striking “$175” in subparagraph (b) and inserting “$200”. (b) INFLATION ADJUSTMENT CONFORMING AMENDMENTS.—Subparagraph (A) of section 132(f)(6) (relating to inflation adjustment) is amended— (1) by striking the last sentence, (2) by striking “1999” and inserting “2001”, and (3) by striking “1998” and inserting “2007”. (c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005. SEC. 3307. TREASURY STUDY OF HIGHWAY FUELS USED BY TRUCKS FOR NON-TRANSPORTATION PURPOSES. (a) STUDY.—The Secretary of the Treasury shall conduct a study regarding the use of highway motor fuel by trucks that is not used for the propulsion of the vehicle. As part of such study— (1) in the case of vehicles carrying equipment that is unrelated to the transportation function of the vehicle— (A) the Secretary of the Treasury, in consulta- tion with the Secretary of Transportation, and with public notice and comment, shall determine the average annual pounds of fuel consumed per vehicle, by type of vehicle, used by the propulsion engine to provide the power to operate the equipment attached to the highway vehicle, and (B) the Secretary of the Treasury shall review the technical and administrative feasibility of exempting such nonpropulsive use of highway fuels for the highway motor fuels excise taxes, shall propose options for implementing exemp- tions for classes of vehicles whose nonpropulsive fuel use exceeds 50 percent, and (2) in the case where non-transportation equipment is run by a separate motor— (A) the Secretary of the Treasury shall deter- mine the average annual amount of fuel exempted from tax in the use of such equipment by equipment type, and (B) the Secretary of the Treasury shall review issues of administration and compliance related to the present-law exemption provided for such fuel use, and (3) the Secretary of the Treasury shall— (A) estimate the amount of taxable fuel con- sumed by trucks and the emissions of various pollutants due to the long-term idling of diesel engines, and (B) determine the cost of reducing such long- term idling through the use of plug-ins at truck
The amendments made by the amendment in subsection (a) after December 31, 2003, or

(b) the Secretary of the Treasury shall report and take action under subsection (a)(1) not later than July 1, 2006.

SEC. 5308. TAX-EXEMPT FINANCING OF HIGHWAY FACILITIES AND RAIL-TRUCK TRANSFER FACILITIES.

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 (relating to exempt facility bonds) shall be amended by striking the period at the end of paragraph (13), by striking the period at the end of paragraph (14), and by adding at the end the following:

"(15) QUALIFIED HIGHWAY FACILITIES, or

(16) qualified surface freight transfer facilities."

(b) QUALIFIED HIGHWAY FACILITIES AND QUALIFIED SURFACE FREIGHT TRANSFER FACILITIES.—Section 142 is amended by adding at the end the following:

(m) QUALIFIED HIGHWAY AND SURFACE FREIGHT TRANSFER FACILITIES.

(1) QUALIFIED HIGHWAY FACILITIES.—For purposes of subsection (a)(15), the term "qualified highway facilities" means—

(A) any surface transportation project which receives Federal assistance under title 23, United States Code (as in effect on the date of the enactment of this Act), or

(B) any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible which receives Federal assistance under such title 23, United States Code.

(2) QUALIFIED SURFACE FREIGHT TRANSFER FACILITIES.—For purposes of subsection (a)(16), the term "qualified surface freight transfer facilities" means the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under title 23 or title 49, United States Code (as in effect on the date of the enactment of this subsection).

(2) NATIONAL LIMITATION ON AMOUNT OF TAX-EXEMPT FINANCING FOR FACILITIES.—

(A) NATIONAL LIMITATION.—There is a national highway and surface freight transfer facility bond limitation for each calendar year.

Such limitation is $130,000,000 for 2005, $750,000,000 for 2006, 2007, 2008, and 2009, $1,870,000,000 for 2010, $2,000,000,000 for 2011, $2,000,000,000 for 2012, 2013, 2014, and 2015, and zero thereafter.

(B) ENFORCEMENT OF NATIONAL LIMITATION.—An issue shall not be treated as an issue described in subsection (a)(15) or (a)(16) if the aggregate face amount of bonds issued pursuant to such issue for any calendar year (when added to the aggregate face amount of bonds previously issued pursuant to such issue) exceeds the national highway and surface freight transfer facility bond limitation for such calendar year.

(C) ALLOCATION BY SECRETARY OF TRANSPORTATION.—The Secretary of Transportation shall allocate the amount described in subparagraph (A) among projects for qualified highway facilities and qualified surface freight transfer facilities in such manner as the Secretary determines appropriate.

(4) TENDURE OF PROCEEDS.—An issue shall not be treated as an issue described in subsection (a)(15) or (a)(16) unless at least 95 percent of the net proceeds of the issue is expended for projects described in subparagraph (A) not later than the 5-year period beginning on the date of issuance. If at least 95 percent of such net proceeds is not expended with such 5-year period, an issue shall be treated as containing a failure to meet the requirements of this subparagraph if the issuer uses all unspent proceeds of the issue to redeem bonds of the issue within 90 days after the end of such 5-year period. The Secretary, at the request of the issuer, may extend such 5-year period if the issuer establishes that any failure to meet such requirements is beyond the control of the issuer.

(c) EXEMPTION FROM GENERAL STATE VOLUME CAPS.—Paragraph (3) of section 146(a) of the Internal Revenue Code of 1986 (relating to alternative series for the issuance of bonds) shall be amended by striking "or (14)" and all that follows through the end of the paragraph and inserting "(14), (15), or (16) of section 142(a), and"

(d) EFFECTIVE DATE.—The amendments made by this section apply to bonds issued after the date of the enactment of this Act.

SEC. 5309. TAX-EXEMPT FINANCING OF STATE OWNERSHIP OF RAILROAD REAL ESTATE INVESTMENT TRUSTS.

(A) IN GENERAL.—Any State owns all of the outstanding stock of a corporation—

(1) which is a real estate investment trust on the date of the enactment of this Act,

(2) which is a non-operating class III railroad, and

(3) substantially all of the activities of which consist of the ownership, leasing, and operation by such corporation, and the property used by such corporation, and other property used by the corporation or other persons for railroad transportation and for economic development purposes.

B. The Secretary of Transportation shall, at such time as he determines appropriate and necessary in carrying out section 115 of the Internal Revenue Code of 1986, determine and notify the Secretary of the Treasury of the extent of the activities and the property described in subparagraph (B), and shall be treated as an essential governmental function to the extent such activities and property are an essential governmental function.

(c) ALLOCATION BY SECRETARY OF TRANSPORTATION.—

(A) Any State owning real property described in subparagraph (B) shall allocate the amount described in subparagraph (B) among the transfers of qualified property described in subparagraphs (A) and (B) and the transfers of other property described in subparagraphs (C) and (D) as the Secretary determines appropriate.

(B) Any transfer of qualified property described in subparagraph (B) (other than a transfer of qualified property described in subparagraph (C)) may be treated as a qualified investment in a qualified investment entity by the Secretary of the Treasury if the Secretary determines appropriate.

(d) TRANSFERS OF REAL PROPERTY.—

(A) Any transfer of real property by a State to an eligible qualified investment entity shall be treated as a qualified investment in such entity by the Secretary of the Treasury.

(B) Any transfer of a qualified investment entity by the Secretary of the Treasury shall be treated as a qualified investment in such entity by the Secretary of the Treasury.

(2) REQUIREMENTS.—The requirements of section 115 shall apply with respect to the credit provided by this section.

(3) CREDIT ALLOWED.—The credit allowed under this section shall be computed and allowed as provided in section 39a of chapter 1 (relating to foreign tax credits).

(4) APPLICABILITY.—The credit allowed under this section shall apply in the case of any qualified investment entity to which the Secretary of the Treasury determines and notifies the Secretary of the Treasury that the entity is an eligible qualified investment entity.
is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such property to the person or entity using such property shall be treated as the lessor of such property and such property shall be treated as real property for purposes of section 168, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such property determined without regard to subsection (d)).

‘‘(4) Property used outside United States, etc., not qualified.—No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1) or with respect to the portion of the cost of any property taken into account under section 179.

‘‘(5) Election not to take credit.—No credit shall be allowable under subsection (a) for any property if the taxpayer elects not to have this property apply to such property.

‘‘(6) Recapture rules.—Rules similar to the rules of section 179A(c)(4) shall apply.

‘‘(g) Regulations.—The Secretary shall prescribe such regulations as are necessary to carry out the provisions of this section.

‘‘(h) Termination.—This section shall not apply to any property placed in service after December 31, 2009.’’.

(a) AMENDMENTS RELATED TO SECTION 301 OF THE AMERICAN JOBS CREATION ACT OF 2004.—Section 6427 is amended—

(1) by striking subsection (f), and

(2) by adding at the end the following new paragraph:

‘‘(A) by striking “noncommercial aviation (as defined in section 4041(c)(2))’’ in subparagraph (A) and inserting “aviation which is not commercial aviation (as defined in section 4081(a))’’, and

(B) by striking “aviation which is not noncommercial aviation (as defined in section 4081(c))’’ in subparagraph (B) and inserting “commercial aviation’’.

‘‘(c) AMENDMENTS RELATED TO SECTION 1245 OF THE AMERICAN JOBS CREATION ACT OF 2004.—

(1) Paragraph (c)(4) of section 4081(d) is amended by striking “‘for use in commercial aviation’” and inserting “for use in commercial aviation by a person registered for such use under section 1245’’.

(2) So much of paragraph (2) of section 4081(d) as precedes subparagraph (A) is amended to read as follows:

‘‘(2) AVIATION FUELS.—The rates of tax specified in clauses (ii) and (iv) of subsection (a)(2)(A) shall be 4.3 cents per gallon.’’.

‘‘(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 to which they relate.’’.

(b) CONFORMING AMENDMENTS.—

(1) Section 1061(a) is amended by striking “and” at the end of paragraph (30) and inserting “; and’’ and by adding at the end the following new paragraph:

‘‘(30A) No credit shall be allowed under subsection (a) for any property if the taxpayer elects not to have this property apply to such property.’’.

(2) Section 55(c)(2) is amended by inserting “after” after “30(b)(1)’’.

(3) Section 6501(m) is amended by inserting “after” after “30(b)(4)’’.

(4) The table of sections for subpart B of part IV of chapter A of chapter 1 is amended by inserting after the item relating to section 30A the following new item:

‘‘Sec. 30B. Alternative fuel vehicle refueling property credit.’’.

‘‘(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any property placed in service after the date of the enactment of this Act, in taxable years ending after such date.’’.

SEC. 5311. MODIFICATION OF RECAPTURE RULES FOR AMORTIZABLE SECTION 197 INTEGABLES.

(a) IN GENERAL.—Subsection (b) of section 1245 is amended by adding at the end the following new paragraph:

‘‘(9) DISPOSITION OF AMORTIZABLE SECTION 197 INTANGIBLES.—

‘‘(A) In general.—If a taxpayer disposes of more than 1 amortizable section 197 intangible (as defined in section 197(c)) in a transaction or a series of related transactions, all such amortizable 197 intangibles shall be treated as 1 section 1245 property for purposes of this section.

‘‘(B) Exception.—Subparagraph (A) shall not apply to any amortizable section 197 intangible (as so defined) with respect to which the adjusted basis of such property is the fair market value.

‘‘(c) EFFECTIVE DATE.—The amendment made by this section shall apply to dispositions of property after the date of the enactment of this Act.

SEC. 5312. DIESEL FUEL TAX Evasion REPORT.

Not later than 360 days after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Secretary of Transportation, shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report concerning such evasion and the steps taken to combat evasion.

For the treatment of contingent payment convertible debt, see section 1275(d)(2).’’.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued on or after the date of the enactment of this Act.

SEC. 5502. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

‘‘SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

‘‘(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

‘‘(1) such person files any return that purports to be a return of a tax imposed by this title but which—

‘‘(A) does not contain information on which the substantial correctness of the self-assessment may be judged; or

‘‘(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

‘‘(2) the conduct referred to in paragraph (1)—

‘‘(A) is based on a position which the Secretary has determined as frivolous under section 6702(a), or

‘‘(B) reflects a desire to delay or impede the administration of Federal tax laws.

(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

‘‘(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (2), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

‘‘(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

‘‘(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term ‘specified frivolous submission’ means a specified submission if any portion of such submission—

‘‘(i) is based on a position which the Secretary has determined as frivolous under section 6702(a), or

‘‘(ii) reflects a desire to delay or impede the administration of Federal tax laws.

‘‘(B) SPECIFIED SUBMISSION.—The term ‘specified submission’ means—

‘‘(i) a request for a hearing under—

‘‘(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

‘‘(II) section 6323 (relating to notice and opportunity for hearing before levy), and

‘‘(ii) an application under—

‘‘(I) section 6159 (relating to agreements for payment of tax liability in installments),

‘‘(II) section 7122 (relating to compromises), or

‘‘(III) section 7811 (relating to taxpayer assistance orders),

‘‘(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with a notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

‘‘(4) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall publish (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall include in such list any position that the Secretary determines meets the requirements of section 6672(h)(2)(B)(i)(I).

‘‘(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

‘‘(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.’’.

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARING BEFORE LEVY.

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for
(g) **FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.

(2) **SECTION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking "(A)" and inserting "(A)(i)"; and

(B) by striking "(B)" and inserting "(ii)".

(C) **by striking the period at the end of the first sentence and inserting ": or"; and

(D) by inserting after subparagraph (A)(i) as so redesignated the following new subsection:

"(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A)."

(3) **STATEMENT OF GROUNDS.—Section 6320(b)(1) is amended by striking "under subsection [(a)(3)(B)]" and inserting "in writing under subsection [(a)(3)(B)] and states the grounds for the requested hearing".

(c) **TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) by inserting at the beginning of subsection (b) by striking "subsection [(a)(3)(B)]" and inserting "in writing under subsection [(a)(3)(B)] and states the grounds for the requested hearing"; and

(2) by inserting after subsection [(a)(3)(B)] and inserting "(e) and (g)".

(d) **TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 6202 is amended by striking "at any time after the due date of the return of the taxpayer under subchapter B of chapter 68" and inserting "by the Secretary".

(e) **CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6202 and inserting the following:

"Sec. 6202. Frivolous tax submissions.";

(f) **EFFECTIVE DATE.—The amendments made by this section shall apply to returns filed after the date of the enactment of this Act.

**SEC. 5503. INCREASE IN CERTAIN CRIMINAL PENALTIES.—

(a) **IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking "Any person who—" and inserting "(a) in general.—Any person who—";

and

(2) by adding at the end the following new subsection:

"(b) **INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6662(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall be less than the amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.";

( b) **REVOCATION OF OFFERS.—

(1) **ATTEMPT TO EVADE OR DEFraud TAx.—Section 7201 is amended—

(A) by striking "$100,000" and inserting "$500,000"; and

(B) by striking "$500,000" and inserting "$1,000,000";

and

(C) by striking "5 years" and inserting "10 years".

(2) **WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended by—

(A) in the first sentence—

(i) by striking "Any person" and inserting the following:

"(A) in general.—Any person," and

(ii) by striking "$25,000" and inserting "$50,000";

and

(B) in the second sentence, by striking "section" and inserting "subsection";

and

(C) by adding at the end the following new subsection:

"(B) **AGGREGATED FAILURE TO FILE.—

(1) **IN GENERAL.—In the case of any failure described in paragraph (2), the first sentence of subsection (a) shall be applied by substituting—

"(A) "felony" for "misconduct", and

"(B) "$500,000" ($1,000,000" for $25,000" ($100,000" and

"(C) 10 years for 1 year.";

(2) **FAILURE DESCRIBED.—A failure described in this paragraph is a failure to make a return described in subsection (a) for a period of 3 or more consecutive taxable years and the aggregated tax liability for such period is at least $100,000.

(3) **FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking "$100,000" and inserting "$500,000";

(B) by striking "$500,000" and inserting "$1,000,000"; and

(C) by striking "3 years" and inserting "5 years".

(g) **EFFECTIVE DATE.—The amendments made by this section shall apply to actions and failure to act, occurring after the date of the enactment of this Act.

**SEC. 5504. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.—

(a) **DETERMINATION OF PENALTY.—

(1) **IN GENERAL.—Notwithstanding any other provision of law, in the case of an applicable taxpayer—

(A) the determination as to whether any interest or applicable penalty is to be imposed with respect to any underpayment described in paragraph (2), or to any underpayment of Federal income tax attributable to items arising in connection with any such arrangement, shall be made without regard to the rules of subsections (b), (c), and (d) of section 6664 of the Internal Revenue Code of 1986, and

(B) if any such interest or applicable penalty is imposed, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(2) **APPLICABLE TAXPAYER.—For purposes of this subsection—

(A) **IN GENERAL.—The term "applicable taxpayer" means a taxpayer which—

(i) has underreported its United States income tax liability for any tax year, whether or not any item which directly or indirectly involves—

(I) any financial arrangement which in any manner relies on the use of offshore payment mechanisms (including credit, debit, or charge cards) issued by banks or other entities in foreign jurisdictions, or

(II) any offshore financial arrangement (including accounts, bank, financial institutions, corporations, partnerships, trusts, or other entities), and

(ii) has not signed a closing agreement pursuant to the Foreign Offshore Financial Institution Compliance Initiative established by the Department of the Treasury under Revenue Procedure 2003-11 or voluntarily disclosed its participation in such arrangement by notifying the Internal Revenue Service of such arrangement prior to the issue being raised by the Internal Revenue Service during the course of an examination.

(B) **AUTHORITY TO WAIVE.—The Secretary of the Treasury or the Secretary’s delegate may waive the application of paragraph (1) to any taxpayer if the Secretary’s delegate determines that the use of such offshore payment mechanisms is incidental to the transaction and, in addition, in the case of a trade or business, such use is conducted in the ordinary course of the trade or business of the taxpayer.

(C) **ISSUES RAISED.—For purposes of subparagraph (A)(ii), an issue shall be treated as an issue raised during an examination if the individual examining the return—

(i) communicates to the taxpayer knowledge about the specific item, or

(ii) has made a request to the taxpayer for information and the taxpayer could not make a complete response to that request without giving the examiner knowledge of the specific item.

(b) **DEFINITIONS AND RULES.—For purposes of this section—

(1) **APPLICABLE PENALTY.—The term "applicable penalty" means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) **FEES AND EXPENSES.—The Secretary of the Treasury may retain and use an amount not in excess of 25 percent of interest, penalties, additions to tax, and fines collected under this section to be used for enforcement and collection activities of the Internal Revenue Service. The Secretary shall keep adequate records regarding amounts so retained and used.

The amount credited as paid by any taxpayer shall be determined without regard to this paragraph.

(c) **EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if, as of the date of the enactment of this Act, the assessment of any interest, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

**SEC. 5505. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.—

(a) **LIMITATION ON EXEMPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paraphrase (2) of section 1296(c) (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

"Such term shall not include any period if the corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i)(I)."

(b) **EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of controlled foreign corporations beginning after March 2, 2005, and to taxable years of United States shareholders with or within which such taxable years of controlled foreign corporations end.

**SEC. 5506. DECLARATION BY CHIEF EXECUTIVE OFFICER OF A UNITED CORPORATE INCOME TAX RETURN.—

(a) **IN GENERAL.—The Federal annual tax return of or with respect to income shall also include a declaration signed by the chief executive officer of such corporation (or
other such officer of the corporation as the Secretary of the Treasury may designate if the corporation does not have a chief executive officer), under penalties of perjury, that the corporation has in all its processes and procedures that ensure that such return complies with the Internal Revenue Code of 1986 and that the chief executive officer was provided reasonable assurance of the material accuracy of such return. The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851 of such Code).

(b) EFFECTIVE DATE.—This section shall apply to Federal annual tax returns for taxable years ending after the date of the enactment of this Act.

SEC. 5507. TREASURY REGULATIONS ON FOREIGN TAX CREDIT.
(a) IN GENERAL.—Section 901 (relating to taxes of foreign countries and of possessions of United States) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) REGULATIONS.—The Secretary may prescribe regulations that allow a credit for a foreign tax, or foreign taxes among 2 or more foreign persons, in cases where the foreign tax is imposed on any person in respect of income of another person or in cases involving the inappropriateness of separation of the foreign tax from the related foreign income."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to returns covered by this section entered into after the date of the enactment of this Act.

SEC. 5508. WHISTLEBLOWER REFORMS.
(a) IN GENERAL.—Section 7623 (relating to expenses of detection of underpayments and fraud, etc.) is amended—

(1) by striking "The Secretary" and inserting "(a) in General.—If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual shall, subject to paragraph (2), receive an award unless such information is also provided to any other governmental body (including the IRS) or by any other person acting in cooperation with the Secretary in the investigation of the matter, and the Secretary determines that such individual had a substantial role in the discovery of the information that resulted in the award.

(2) by striking "at the end of paragraph (1)" and inserting "or",

(3) by striking "other than interest", and

(4) by adding at the end the following new subsections:

"(b) AWARDS TO WHISTLEBLOWERS.—

(1) IN GENERAL.—If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual shall, subject to paragraph (2), receive an award unless such information is also provided to any other governmental body (including the IRS) or by any other person acting in cooperation with the Secretary in the investigation of the matter, and the Secretary determines that such individual had a substantial role in the discovery of the information that resulted in the award.

(2) by striking "at the end of paragraph (1)" and inserting "or",

(3) by striking "other than interest", and

(4) by adding at the end the following new subsections:

"(A) IN GENERAL.—In the event the action described in paragraph (1) is one which the Whistleblower Office determines to be based principally on specific allegations (other than information provided by the individual described in paragraph (1)) resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from the news media, the Whistleblower Office may award such sums as it considers appropriate, but in no case more than 25 percent of the total amount of the information so provided, to such individual.

(B) NONAPPLICATION OF PARAGRAPH WHERE INDIVIDUAL IS ORIGINAL SOURCE OF INFORMATION.—Subparagraph (A) shall not apply if the information resulting in the initiation of the action described in paragraph (1) was originally provided by the individual described in paragraph (1) and disclosed to the Secretary of the Treasury by an employee of the Government or to any other person in connection with the employment relationship of the employee.

(C) REDUCTION IN OR DENIAL OF AWARD.—If the Whistleblower Office determines that the claim for an award under paragraph (1) or (2) is based on information that was not properly disclosed to the Secretary of the Treasury by an employee of the Government or to any other person in connection with the employment relationship of the employee, then the Whistleblower Office may reduce or deny an award under this subsection.

(D) REQUEST FOR ASSISTANCE.—The Whistleblower Office shall request that the Secretary of the Treasury provide information necessary to determine the extent to which the individual or legal representative of such individual in contributing to such award by the Whistleblower Office shall be subject to the rules under section 7661(b)(1).

(E) APPEAL OF AWARD DETERMINATION.—Any determination regarding an award under paragraph (1), (2), or (3) shall be subject to the filing by the individual described in such paragraph of a petition for review with the Tax Court under rules similar to the rules under section 7463 (without regard to the amount in dispute) and such petition shall be subject to the rules under section 7661(b)(1).

(F) APPLICATION OF THIS SUBSECTION.—This subsection shall apply with respect to any action—

(A) against any taxpayer, but in the case of any individual, only if such individual's gross income exceeds $20,000 for any taxable year subject to such action, and

(B) if the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed $20,000.

(G) ADDITIONAL RULES.—

(A) NO CONTRACT NECESSARY.—No contract with the Internal Revenue Service is necessary for any individual to receive an award under this subsection.

(B) REPRESENTATION.—Any individual described in paragraph (1) or (2) may be represented before the Commissioner by an attorney, a certified public accountant, or an Enrolled Agent.

(C) AWARD NOT SUBJECT TO INDIVIDUAL ALTERNATIVE MINIMUM TAX.—No award received under this subsection shall be included in gross income for purposes of determining alternative minimum taxable income.

(D) WHISTLEBLOWER OFFICE.—

(1) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the 'Whistleblower Office' which—

(A) shall at all times operate at the direction of the Commissioner, and consult with other divisions in the Internal Revenue Service as directed by the Commissioner,

(B) shall analyze information received from any individual described in paragraph (a) and either investigate the matter itself or assign it to the appropriate Internal Revenue Service office,

(C) shall monitor any action taken with respect to such matter,

(D) shall inform such individual that it has accepted the individual's information for further review,

(E) may require such individual and any legal representative of such individual to disclose any information so provided,

(F) in its discretion may request additional assistance from such individual or any legal representative of such individual, and

(G) shall determine the amount to be awarded to such individual.

(2) FUNDING FOR OFFICE.—There is authorized to be appropriated $10,000,000 for each fiscal year for the Whistleblower Office. These funds shall be used to maintain the Whistleblower Office and also to reimburse other Internal Revenue Service offices for related costs, such as costs of investigation and collection.

(3) REPRESENTATION.—

(A) IN GENERAL.—Any assistance requested under paragraph (1)(F) shall be under the direction and control of the Whistleblower Office or the individual who is responsible for the matter under subparagraph (A). To the extent the disclosure of any returns or return information to the individual or legal representative is required for the performance of such assistance, such disclosure shall be pursuant to a contract entered into between the Secretary and the recipients of such information. No individual or legal representative whose assistance is so requested may by reason of such request represent himself or herself as an employee of the Government.

(B) FUNDING OF ASSISTANCE.—From the amounts available for expenditure under subsection (b), the Whistleblower Office may, with the agreement of the individual described in subsection (b), reimburse the costs incurred by any legal representative of such individual in providing assistance described in subparagraph (A).

(C) REPORT BY SECRETARY.—The Secretary shall each year conduct a study and report to Congress on the use of this section, including—

(1) an analysis of the use of this section during the preceding year and the results of such use, and

(2) any legislative or administrative recommendations regarding the provisions of this section and its application.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to returns covered by this section entered into after the date of the enactment of this Act.

SEC. 5509. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.
(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

"(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, settlement, or otherwise) to, or at the direction or request of, a government or entity described in paragraph (4) in relation to the violation of any law by the investigation or inquiry by such government or entity into the potential violation of any law.

(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION.—Paragraph (1) shall not apply to any amount which—

(A) is paid to the IRS or an entity to which the IRS has assigned the right to receive such payment in connection with a suit in which no government or entity described in paragraph (4) is a party,

(B) is paid to the IRS or an entity to which the IRS has assigned the right to receive such payment in connection with a suit in which the IRS is a party,

(C) is paid to the IRS or an entity to which the IRS has assigned the right to receive such payment in connection with a suit in which the IRS is an intervenor, and

(D) is paid to the IRS or an entity to which the IRS has assigned the right to receive such payment in connection with a suit in which the IRS is a party or an intervenor,

(3) REQUEST FOR ASSISTANCE.—

(A) IN GENERAL.—Any assistance requested under paragraph (1)(F) shall be under the direction and control of the Whistleblower Office or the individual who is responsible for the matter under subparagraph (A). To the extent the disclosure of any returns or return information to the individual or legal representative is required for the performance of such assistance, such disclosure shall be pursuant to a contract entered into between the Secretary and the recipients of such information. No individual or legal representative whose assistance is so requested may by reason of such request represent himself or herself as an employee of the Government.

(B) FUNDING OF ASSISTANCE.—From the amounts available for expenditure under subsection (b), the Whistleblower Office may, with the agreement of the individual described in subsection (b), reimburse the costs incurred by any legal representative of such individual in providing assistance described in subparagraph (A).

(4) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

(A) a governmental entity, or

(B) a governmental entity, and

(C) is a nonregulatory entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 15(b)(7)), or

(D) is a governmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

(5) EXCEPTION FOR TAX DUES.—Paragraph (1) shall not apply to any amount paid or incurred as reimbursement to the government for the costs of investigation or litigation.

(6) DOMESTIC RETURNS.—No deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred by a domestic partnership, limited liability company, or corporation, in relation to the violation of any law by the investigation or inquiry by such entity into the potential violation of any law.
of this Act, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an agreement requiring court approval unless the approval was obtained before such date.

SEC. 5510. FREEZE OF INTEREST SUSPENSION RULES WITH RESPECT TO LISTED TRANSACTIONS.
(a) IN GENERAL.—Paragraph (2) of section 903(d)(2) of the American Jobs Creation Act of 2005 is amended to read as follows:—

‘‘(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—

(A) IN GENERAL.—The amendments made by subsection (c) shall apply with respect to interest accruing after October 3, 2004.

(B) SPECIAL RULE FOR CERTAIN LISTED TRANSACTIONS.—

(i) IN GENERAL.—Except as provided in clause (ii) or (iii), in the case of any listed transaction, the amendments made by subsection (c) shall also apply with respect to interest accruing on or before October 3, 2004.

(ii) PARTICIPANTS IN SETTLEMENT INITIATIVES.—Reference to a listed transaction if, as of May 9, 2005—

(I) the taxpayer is participating in a published settlement initiative which is offered by the Secretary or his delegate to a group of similarly situated taxpayers claiming benefits from the listed transaction, or

(II) a closing agreement under section 7121 with respect to the listed transaction, the amendments made by subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

(iii) COST-OF-LIVING ADJUSTMENT.—

(I) IN GENERAL.—In the case of an expatriation date occurring in any calendar year after 2005, the $600,000 amount under subparagraph (A) shall be increased equal to—

(l) such dollar amount, multiplied by—

(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by such Secretary for calendar year ‘‘1992’’ in subparagraph (B) thereof.

(iv) Rounding rules.—If any amount after adjustment under clause (i) is not a multiple of $1,000, such amount shall be rounded to the next lower multiple of $1,000.

(4) ELECTION TO CONTINUE TO BE TAXED AS UNITED STATES CITIZEN.

(A) IN GENERAL.—If a covered expatriate elects the application of this paragraph—

(i) this section and subsection (b) shall not apply to the expatriate, but

(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

(B) REQUIREMENTS.—Subparagraph (A) shall not apply to an individual unless the individual—

(I) provides security for payment of tax in such form and amount as the Secretary may require,

(II) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

(III) complies with such other requirements as the Secretary may prescribe.

(C) ELECTION.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

(b) ELECTION TO DEFER TAX.

(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold on the day before the expatriation date or with respect to the gain from such sale treated as sold on the day before the expatriation date, the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part as the expatriation date, the due date for such return as the Secretary may prescribe).

(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

(3) TERMINATION OF POSTPONEMENT.—No tax may be postponed under this subsection later than the due date for the tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

(4) SECURITY.—

(A) IN GENERAL.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

(5) WAIVER OF CERTAIN RIGHTS.—No election made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

(7) INTEREST.—For purposes of section 6621—

(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

(B) section 6621(a)(2) shall be applied by substituting ‘‘5 percentage points’’ for ‘‘3 percentage points’’ in subparagraph (B) thereof.

(8) COVERED EXPATRIATE.—For purposes of this section—

(I) IN GENERAL.—Except as provided in paragraph (2), the term ‘‘covered expatriate’’ means an expatriate.

(II) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

(A) the individual—

(i) became at birth a citizen of the United States, and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

(ii) has not been a resident of the United States (as defined in section 7701(a)(26)) during the 5 taxable years preceding the 10 taxable years during which the election date occurred, or

(B)(i) the individual’s relinquishment of United States citizenship occurs before such individual attains age 18, and

(ii) the individual has not been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

(9) EXCEPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

(1) EXCEPT PROPERTY.—This section shall not apply to the following:

(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).
“(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

(ii) any amount equal to the present value of the expatriate’s nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includable in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan’s behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

(D) APPLICABLE PLANS.—This paragraph shall apply to—

(i) any qualified retirement plan (as defined in section 497(c)),

(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(b)(1)(A), and

(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

(e) DEFINITIONS.—For purposes of this section—

(1) EXPATRIATE.—The term ‘expatriate’ means—

(A) any United States citizen who relinquishes citizenship, and

(B) any long-term resident of the United States who—

(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(4)), or

(ii) remains to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

(2) EXPATRIATION DATE.—The term ‘expatriation date’ means—

(A) the date an individual relinquishes United States citizenship, or

(B) in the case of a long-term resident of the United States—

(i) the date on which the individual ceases to be a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country,

(ii) the date the individual renounces such individual’s United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (3) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)), or

(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), but

(C) if an individual’s voluntary relinquishment of United States nationality is accomplished by an act of renunciation or voluntary relinquishment, is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

(4) LONG-TERM RESIDENT.—The term ‘long-term resident’ has the meaning given to such term by section 871(e)(2).

(5) SPECIFICALLY APPLICABLE TO BENEFICIARIES’ INTERESTS IN TRUST.—

(A) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

(i) the individual shall not be treated as having sold any such interest,

(ii) such interest shall be treated as a separate share in the trust, and

(iii) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution of income from the trust determined before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution of income from the trust determined after the expatriation date for the present value of the interest, and

(D) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in lieu of any other tax imposed by this title, determined under subsection (a), in an amount equal to the present value of such interest.

(6) DETERMINATIONS UNDER SUBPARAGRAPH (B).—(i) the tax determined under paragraph (1) as if the date before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, and

(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax.

(7) NONVESTED INTEREST.—The term ‘nonvested interest’ means with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

(8) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

(9) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust created under a retirement plan to which subsection (d)(2) applies.

(10) DETERMINATION OF BENEFICIARIES’ INTEREST IN TRUST.—

(A) DETERMINATIONS UNDER SUBPARAGRAPH (A).—For purposes of paragraph (1), a beneficiary’s interest in a trust shall be based upon all relevant facts and circumstances, including any letter of wishes or similar document, historical patterns of trust distributions, and the existence of
and functions performed by a trust protector or any similar adviser.

(2) OTHER DETERMINATIONS.—For purposes of this section—

(A) THE EFFECTIVE OWNERSHIP.—If a benefici- 
 iciary of a trust is a corporation, partnership, 
  trust, or estate, the shareholders, partners, or 
  beneficiaries shall be deemed to be the trust 
  beneficiaries for purposes of this section.

(B) TAXPAYER RETURN POSITION.—A tax-
  payer shall clearly indicate on its income tax re-
  turn—

(1) if the methodology used to determine that 
  taxpayer’s trust interest under this section, and 

(2) if the taxpayer knows (or has reason to 
  know) that any taxpayee beneficiary of such trust 
  is using a different methodology to determine 
  such beneficiary’s trust interest under this sec-

(C) TERMINATION OF DEFERRALS, ETC.—In the 
  case of any covered expatriate, notwithstanding 
  any other provision of this title—

(1) any period during which recognition of 
  income or gain is deferred shall terminate on the 
  day before the expatriation date, and

(2) any extension of time for payment of tax 
  shall cease to apply on the day before the expa-
  triation date.

(D) BY REASON OF THIS SECTION.—Any portion of such tax 
  shall be due and payable at the time and in the 
  manner prescribed by the Secretary.

(E) IMPOSITION OF TENTATIVE TAX.—

(1) In the case of an individual in which it is 
  required to include any amount in gross income 
  under subsection (a) for any taxable year, there 
  is hereby imposed, immediately before the expa-
  triation date, an amount equal to the amount of tax 
  which would be imposed if the taxable year were a 
  short taxable year ending on the expatriation date.

(2) DUE DATE.—The due date for any tax im-
  posed by paragraph (1) shall be the 90th day after 
  the expatriation date.

(F) DEFINITION OF TERMINATION OF UNITED 
  STATES CITIZENSHIP.—

(1) IN GENERAL.—An individual shall not 
  cease to be a United States citizen for purposes 
  of this chapter before the date on which the indi-
  vidual’s citizenship is treated as relinquished under 
  section 877A(e)(3).

(2) DUAL CITIZENS.—Under regulations 
  prescribed by the Secretary, subparagraph (A) 
  shall not apply to an individual who became at birth 
  a citizen of another country.

(G) PUNITIVE DAMAGES.

(1) IN GENERAL.—No deduction shall be 
  allowed for any payment (including any amount 
  paid or incurred for punitive damages in con-
  nection with any judgment in, or settlement of, 
  any action). This paragraph shall not apply to 
  punitive damages described in section 162.

(2) CONFORMING AMENDMENT.—The heading 
  for section 162(g) is amended by inserting “OR 
  PUNITIVE DAMAGES” after “LAW”.

(3) EFFECTIVE DATE.—This section shall not 
  apply to any tax year beginning after the date 
  of the enactment of this Act.

(H) APPLICATION.—This section shall not 
  apply to an expatriate (as defined in section 
  877A(e)) whose expatriation date (as so defined) 
  occurs on or after the date of the enactment of 
  the Safe, Accountable, Flexible, and Efficient 
  Transportation Equity Act of 2005.

(I) APPLICATION.—This section shall not 
  apply to any expatriate subject to section 
  877A(e).

(J) FEES AND INHERITANCES FROM COVERED 
  EXPATRIATES.—

(1) IN GENERAL.—Subsection (a) shall not ex-
  clude from gross income the value of any prop-
  erty acquired by gift, bequest, devise, or inherit-
  ance from a covered expatriate after the expa-
  triation date. For purposes of this subsection, 
  any term used in such section which is also 
  used in section 877A shall have the same mean-

(2) EXCEPTIONS FOR TRANSFERS OTHERWISE 
  SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) 
  shall not apply to any property if either—

(A) the gift, bequest, devise, or inheritance is 
  (i) shown on a timely filed return of tax im-
  posed by chapter 12 as a taxable gift by the 
  covered expatriate, or

(ii) included in the gross estate of the cov-
  ered expatriate for purposes of chapter 11 and 
  shown on a timely filed return of tax imposed 
  by chapter 11 of the estate of the covered expa-
  triate,

(B) no such return was timely filed but no such 
  return would have been required to be filed 
  even if the covered expatriate were a citizen or 
  long-term resident of the United States.

(2) TREATMENT OF TAX.

(A) IN GENERAL.—Any tax paid under 
  section 6103(l) (relating to gifts, etc. not included 
  in gross income) is amended by adding at the 
  end the following new paragraph:

(2) TREBLE DAMAGES.

(A) IN GENERAL.—This section shall apply to 
  any person to or on behalf of another person 
  to whom punitive damages (as defined in section 
  162) are owed, or to whom punitive damages are 
  owed by reason of this section for the taxable 
  year in which the punitive damages are 
  incurred.

(B) by redesignating paragraphs (1) and (2) as 
  subparagraphs (A) and (B), respectively, 
  (B) by striking “(i)” and inserting:

(A) TREBLE DAMAGES.—If punitive 
  damages are owed under this section, 
  punitive damages shall be multiplied 
  by a factor determined by the 
  Attorney General or the Attorney 
  General’s delegate, the Secretary shall disclose 
  such factor to the person owed the 
  punitive damages, and the person 
  owed the punitive damages shall 
  include such punitive damages 
  in gross income.

(3) EFFECTIVE DATE.—This section shall not 
  apply to any tax year beginning after the date 
  of the enactment of this Act.

SEC. 553. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Section 162(g) (relating to 
  treble damages payments under the antitrust 
  laws) is amended—

(2) PUNITIVE DAMAGES.

(A) TREBLE DAMAGES.—If punitive 
  damages are owed under this section, 
  punitive damages shall be multiplied 
  by a factor determined by the 
  Attorney General or the Attorney 
  General’s delegate, the Secretary shall disclose 
  such factor to the person owed the 
  punitive damages, and the person 
  owed the punitive damages shall 
  include such punitive damages 
  in gross income.

(B) by striking “(i)” and inserting:

(A) TREBLE DAMAGES.—If punitive 
  damages are owed under this section, 
  punitive damages shall be multiplied 
  by a factor determined by the 
  Attorney General or the Attorney 
  General’s delegate, the Secretary shall disclose 
  such factor to the person owed the 
  punitive damages, and the person 
  owed the punitive damages shall 
  include such punitive damages 
  in gross income.

(2) DUE DATE FOR TAXABLE YEAR ENDING ON THE 
  EXPATRIATION DATE—This section shall apply to 
  any person to or on behalf of another person 
  to whom punitive damages (as defined in section 
  162) are owed, or to whom punitive damages are 
  owed by reason of this section for the taxable 
  year in which the punitive damages are 
  incurred.

(3) DUE DATE FOR TAXABLE YEAR BEGINNING ON OR 
  AFTER THE EXPATRIATION DATE—This section shall not 
  apply to any tax year beginning after the date 
  of the enactment of this Act.

SEC. 554. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

"Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer’s liability (or agreement) to pay punitive damages.”
person as insurance or otherwise by reason of the other person’s liability (or agreement) to pay the punitive damages.”.

(3) CONFORMING AMENDMENT.—The table of sections of subtitle B of chapter 1 is amended by adding at the end the following new item:

"Sec. 91. Punitive damages compensated by insurance or otherwise.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 5514. APPLICATION OF EARNINGS STRIPING RULES TO PARTNERS WHICH ARE C CORPORATIONS.

(a) In General.—Section 6657 (relating to limitations for interest on certain indebtedness) is amended by redesignating paragraph (3) as paragraph (2) and by inserting after paragraph (2) the following new paragraph:

"(3) LIMITATION ON INTEREST.—The limitation on interest incurred on or after the date of the enactment of this Act.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after the date of the enactment of this Act.

SEC. 5515. ELIMINATION OF DOUBLE DEDUCTION FOR MINING EXPLORATION AND DEVELOPMENT COSTS UNDER THE MINIMUM TAX.

(a) In General.—Section 6671(b) (relating to expenses treated as compensation) is amended by striking "$570" and inserting "$1,250", and by striking "$15" and inserting "$25".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to checks or money orders received after the date of the enactment of this Act.

SEC. 5516. LIMITATION OF EMPLOYER DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES.

(a) In General.—Paragraph (2) of section 274(e) (relating to expenses treated as compensation) is amended to read as follows:

"(2) EXPENSES TREATED AS COMPENSATION.—Expenses for goods, services, and facilities, to the extent that the expenses do not exceed the amount of the expenses which are treated by the taxpayer as wages, or the fair value of the goods, services, or facilities, as compensation to an employee on the taxpayer’s return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages)."

(b) PERSONS NOT EMPLOYEES.—Paragraph (9) of section 274(e) is amended by striking "to the extent that the expenses are includible in the gross income" and inserting "to the extent that the expenses which are includible in the gross income."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to exchanges occurring after the date of the enactment of this Act.

SEC. 5517. INCREASE IN PENALTY FOR BAD CHECKS AND MONEY ORDERS.

(a) In General.—Section 5656 (relating to expenses treated as compensation) is amended by striking a new item:

"(8) Assumptions, including the assumptions applicable to the tax-exempt portion of the tax paid on the sale of financial capital or the proceeds from a financial capital transaction, that are used in the calculation of the assumed rate of return for the tax-exempt portion of the tax paid on the sale of financial capital or the proceeds from a financial capital transaction, which are not specifically described in the terms of the financial capital transaction or the transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be reported if the present value of the anticipated economic returns of the person leasing the money or acquiring the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

(b) Artificial Income Shifting and Basis Adjustments.—The term ‘tax-indifferent party’ shall not be respected if—

(i) It results in an allocation of income or gain to the tax-indifferent party in excess of the party’s economic substance.

(ii) It results in a basis adjustment or shifting of basis on an asset to the party acquiring the asset.

(iii) The term ‘tax-indifferent party’ means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party subject to a transaction if the items taken into account with respect to the transaction do not have economic substance or lacks a business purpose.

(c) Exception for Personal Transactions of Individuals.—In the case of a transaction entered into in connection with a trade or business activity engaged in for the production of income, the term ‘tax-indifferent party’ means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party subject to a transaction if the items taken into account with respect to the transaction do not have economic substance or lacks a business purpose.

(d) Attorney Fees.—In applying paragraph (1)(B)(ii) to the lessee of tangible property, a deduction shall be disregarded in determining whether any such benefits are allowable.

(e) Other Common Law Doctrines Not Affected.—Except as specifically provided in this section, such provisions of this subsection shall not be construed as altering or superseding any other rule of law, and the provisions of this Act shall be construed as being in addition to any such other rule of law.

(f) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, the provisions of this subsection may include or incorporate such regulations as are necessary or appropriate to carry out the purposes of this subsection.

SEC. 5518. TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subchapter N of this chapter.

SEC. 5659. SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.

(a) Special Rules for Financing Transactions.—The term ‘tax-indifferent party’ means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party subject to a transaction if the items taken into account with respect to the transaction do not have economic substance or lacks a business purpose.

(b) Tax-Indifferent Party.—The term ‘tax-indifferent party’ means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party subject to a transaction if the items taken into account with respect to the transaction do not have economic substance or lacks a business purpose.

(c) Exception for Personal Transactions of Individuals.—In the case of an individual, the term ‘tax-indifferent party’ means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party subject to a transaction if the items taken into account with respect to the transaction do not have economic substance or lacks a business purpose.

(d) Attorney Fees.—In applying paragraph (1)(B)(ii) to the lessee of tangible property, a deduction shall be disregarded in determining whether any such benefits are allowable.

(e) Other Common Law Doctrines Not Affected.—Except as specifically provided in this section, such provisions of this subsection shall not be construed as altering or superseding any other rule of law, and the provisions of this Act shall be construed as being in addition to any such other rule of law.

(f) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, the provisions of this subsection may include or incorporate such regulations as are necessary or appropriate to carry out the purposes of this subsection.
SEC. 5522. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) In General.—Subchapter A of chapter 68 is amended by inserting after section 662A the following new section:

"(a) Imposition of Penalty.—If a taxpayer has an noneconomic substance transaction under- statement for any taxable year, there shall be added to the amount of tax by which such statement is under- 
statement under section 6662(a)(1), if section 6662A were 
applied by taking into account items attrib- 
utable to noneconomic substance transactions 
rather than by taking such items into account, 
and would apply without regard to this paragraph.

(b) Reduction of Penalty for Disclosed Trans- 
action.—(1) A taxpayer qualifying under section (1) shall be appli- 
cated by substitution of '20 percent' for '40 percent' with respect to the portion of any noneconomic sub- 
stance transaction understatement with respect to 
which the relevant facts affecting the tax 
treatment of the item are adequately disclosed in 
the return or a statement attached to the return.

(c) Non-economic Substance Transaction Understatement.—For purposes of this subsection—

(1) there is a lack of economic substance (within the meaning of section 7701(o)(1)) for the transaction giving rise to the claimed benefit. (2) the transaction giving rise to the claimed benefit is not respected under section 7701(o)(2), or 
the transaction was not respected under sec- 
ction 6662B after the period at the end of the 
third sentences.

(2) any noneconomic substance transaction 
understatement. For purposes of this sub- 
section, the term 'noneconomic substance trans- 
action understatement' has the meaning given the term by subsection (e) and (f), respectively, and by inserting after subparagraph (B) the following:

"(i) the portion of any reportable transaction 
understatement under section 6662B with respect to any noneconomic sub- 
stance transaction, or

(2) there is a lack of economic substance (within the meaning of section 7701(o)(1)) for the transaction giving rise to the claimed benefit, the transaction was not respected under section 7701(o)(2), or 
the transaction fails to meet the require- 
ments of paragraph (2) with respect to a like.
SEC. 5335. JOINT TASK FORCE ON OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—The Secretary of the Treasury shall establish a joint task force—

(1) to make recommendations to the Internal Revenue Service concerning offers-in-compromise, including offers which raise questions of public policy, or economic hardship grounds for compromise of a tax liability under section 7122 of the Internal Revenue Code of 1986,

(2) to review the extent to which the Internal Revenue Service has used its authority to resolve longstanding cases by forgoing penalties in order to expedite the resolution of such cases, and

(3) the recommendations as to how the Internal Revenue Service’s evaluation of offers-in-compromise should include—

(A) the taxpayer’s compliance history,

(B) the amount of the tax liability,

(C) the taxpayer’s representations as to why payment of the tax cannot be made,

(D) any other factors which the Secretary deems relevant,

(E) the training of employees in identifying and handling offers-in-compromise, and

(F) the efforts the Internal Revenue Service has made to correctly identify such offers, including the training of employees in identifying and evaluating such offers.

(b) ADDITIONAL RULES RELATING TO TREATMENT OF OFFERS.—

(1) UNPROCESSABLE OFFER IF PAYMENT REQUIREMENTS ARE NOT MET.—Paragraph (3) of section 7122(a)(5) of the Internal Revenue Code (providing for evaluation of offers), as redesignated by subsection (a), is amended by inserting “and” at the end of subclause (X) and inserting “and, by redesignating subsection (X) as subsection (XI), and by inserting after the end of the following new subclause:—

“(C) any offer-in-compromise which does not meet the requirements of clause (X) shall be returned to the taxpayer as unprocessable.”

(2) DEEMED ACCEPTANCE OF OFFER NOT REQUIRED.—Subparagraph (C) of section 7122(a)(5) of the Internal Revenue Code, as redesignated by subsection (a), is amended by inserting “and” at the end of subclause (X) and inserting “and, by redesignating subsection (X) as subsection (XI), and by inserting after the end of the following new subclause:

“(C) any offer-in-compromise which does not meet the requirements of clause (X) shall be returned to the taxpayer as unprocessable.”

(3) DEEMED ACCEPTANCE OF OFFER NOT REQUIRED WITHIN CERTAIN PERIOD.—Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 60 months after the date of the submission of such offer, unless—

(A) such offer is rejected by the Secretary, or

(B) such offer is not received at the address of the Internal Revenue Service charged with operating the offer-in-compromise program.

(c) EFFECTIVE DATE.—The amendments made by this section shall—

(1) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(2) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(d) effective date.—The amendments made by this section shall—

(1) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(2) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(3) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(4) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(5) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(6) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(7) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(8) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(9) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(10) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(11) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(12) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(13) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(14) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(15) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(16) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(17) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(18) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(19) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(20) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(21) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(22) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(23) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,

(24) apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act,
(E) Paragraph (4) of section 6427 is amended—
   (i) by striking “aviation-grade” in subparagraph (A),
   (ii) by striking “section 4081(a)(2)(A)” and inserting “section 4081(a)(2)(iii),”
   (iii) by striking “aviation-grade kerosene” in subparagraph (B) and inserting “kerosene used in aviation as described in subparagraph (A),” and
   (iv) by striking “AVIATION-GRADE KEROSENE” in the heading thereof and inserting “KEROSENE USED IN COMMERCIAL AVIATION.”

(F) Section 6427(a)(6)(B), as redesignated by paragraph (2)(B), is amended by striking “aviation-grade kerosene” in subparagraph (C) and inserting “kerosene used in aviation.”

(c) TRANSFERS FROM HIGHWAY TRUST FUND OF TAXES ON FUELS USED IN AVIATION TO AIRPORT AND AIRWAY TRUST FUND.—

(1) IN GENERAL.—Section 5903(c) (relating to expenditures from Highway Trust Fund), as amended by this Act, is amended by adding at the end the following new paragraph:

“(7) TRANSFERS FROM THE TRUST FUND FOR CERTAIN AVIATION FUEL TAXES.—The Secretary shall pay from time to time from the Highway Trust Fund into the Airport and Airway Trust Fund amounts (as determined by the Secretary) equivalent to the taxes received on or after October 1, 2005, and before October 1, 2011, under sections 4041 and 4081 with respect to fuels used in a nontaxable use (as described in section 4041) that are qualified nonfuel kerosene or aviation-grade kerosene.”

(2) CONFORMING AMENDMENTS.—

(A) Section 5903(a) is amended by striking “appropriate or credited to the Airport and Airway Trust Fund” and inserting “appropriated or credited to the Airport and Airway Trust Fund.”

(B) Section 5903(b)(1) is amended—
   (i) by striking “subsections (c) and (e) of section 4041” in subparagraph (A) and inserting “section 4041(c),” and
   (ii) by striking “and aviation-grade kerosene” in subparagraph (C) and inserting “and kerosene to the extent attributable to the rate specified in section 4081(a)(2)(C)”.

(C) Section 5903(b) is amended by striking paragraph (3).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes levied on or after September 30, 2005.

SEC. 5612. REPEAL OF ULTIMATE VENDOR REFUND CLAIMS WITH RESPECT TO FARMING.

(a) IN GENERAL.—Subparagraph (A) of section 6247(f)(6) (relating to registered vendors to administer claims for refund of diesel fuel or kerosene sold to farmers and State and local governments, as redesignated by section 5611, is amended to read as follows:

“(A) in the heading thereof.—Paraphraph (1) shall not apply to diesel fuel or kerosene used by a State or local government.”

(b) CONFIRMING AMENDMENT.—The heading of paragraph (6) of section 6247(f), as so redesignated, is amended by striking “FARMERS.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after September 30, 2005.

SEC. 5613. REFUNDS OF EXCISE TAXES ON EXEMPT SALES OF FUEL BY CREDIT CARD ISSUER.

(a) GASOLINE.—

(1) IN GENERAL.—Paragraph (4) of section 6416(a) (relating to condition to allowance) is amended to read as follows:

“(A) the following new subparagraph:

“(B) CREDIT CARD ISSUER.—For purposes of this subsection, if the sale of gasoline described in subparagraph (A) (determined without regard to the registration status of the ultimate vendor) is made to the ultimate purchaser, the person extending the credit to the ultimate purchaser (paragraph (1) shall not apply and the person extending the credit to the ultimate purchaser shall be treated as the person (and the only person) who paid the tax, but only if such person—

“(i) is registered under section 4101, and
   (ii) has established, under regulations prescribed by the Secretary, that the person purchased such article, or
   (iii) has obtained from the ultimate purchaser the written consent from the ultimate purchaser to the allowance of the credit or refund, and
   (iv) has otherwise made arrangements which directly or indirectly assure the ultimate vendor of reimbursement of such tax.

(C) by striking subparagraph (A) and inserting three new subparagraphs:

“(A) by striking “aviation-grade” in subparagraph (A),
   (B) by striking “section 4081(a)(2)(iii)” and inserting “section 4081(a)(2)(iii),”
   (C) by striking paragraph (C) and inserting

“(D) CREDIT CARD ISSUER.—For purposes of this paragraph, if the sale of any fuel described in subparagraph (A) (determined without regard to the registration status of the ultimate vendor) was made by a credit card issuer, the person extending the credit to the ultimate purchaser shall be treated as the person (and the only person) who paid the tax, but only if such person—

“(i) is registered under section 4019, and
   (ii) has established, under regulations prescribed by the Secretary, that the person purchased such article, or
   (iii) has obtained from the ultimate purchaser the written consent from the ultimate purchaser to the allowance of the credit or refund, and
   (iv) has otherwise made arrangements which directly or indirectly assure the ultimate vendor of reimbursement of such tax.

”

(b) DIESEL FUEL OR KEROSENE.—

(1) IN GENERAL.—Section 4041(g)(4) is amended—
   (A) by inserting “farming” in the heading thereof and inserting “FARMING,”
   (B) by striking “section 4081(a)(2)(iii)” and inserting “section 4081(a)(2)(iii),”
   (C) by striking “except as provided in subparagraph (D)” and inserting “except as provided in subparagraph (D),”
   (D) by striking “the amount” in subparagraph (D) and inserting “the amount,” and
   (E) by adding at the end the following new subparagraph:

“(D) CREDIT CARD ISSUER.—Except as provided in subparagraph (A) for sales after December 1, 2005, and before December 1, 2011, with respect to fuels used in a nontaxable use (as described in section 4041) that are qualified nonfuel kerosene or aviation-grade kerosene, the person extending the credit to the ultimate purchaser shall be treated as the person (and the only person) who paid the tax, but only if such person—

“(i) is registered under section 4101, and
   (ii) has established, under regulations prescribed by the Secretary, that the person purchased such article, or
   (iii) has obtained from the ultimate purchaser the written consent from the ultimate purchaser to the allowance of the credit or refund, and
   (iv) has otherwise made arrangements which directly or indirectly assure the ultimate vendor of reimbursement of such tax.

”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 2005.

SEC. 5614. ADDITIONAL REQUIREMENT FOR EXEMPT PURCHASES OF AVIATION FUEL.

(a) STATE AND LOCAL GOVERNMENTS.—

(1) Subparagraph (C) of section 6416(b)(2) (relating to specified uses and resales) is amended to read as follows:

“(C) sold to a State or local government for the exclusive use of a State or local government (as defined in section 4221(d)(4) and certified as such by such State) or to a qualified volunteer fire department (as defined in section 501(c)(2) and certified as such by the State) for its exclusive use;”

(2) Section 4041(g)(2) (relating to other exemptions) is amended by striking “or the District of Columbia” and inserting “the District of Columbia, or a qualified volunteer fire department (as defined in section 1502(c)) (and certified as such by the State or the District of Columbia)”.

(b) NONPROFIT EDUCATIONAL ORGANIZATIONS.—

(1) Section 6416(b)(2)(D) is amended by inserting “(as defined in section 4221(d)(5) and certified to be in good standing by the State in which such organization is providing educational services)” after “organization”.

(2) Section 4041(g)(4) is amended—
   (A) by inserting “(certified to be in good standing by the State in which such organization is providing educational services)” after “organization” the first place it appears, and
   (B) by striking “by a” and inserting “use by a”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 2005.

SEC. 5615. REREGISTRATION IN EVENT OF CHANGE IN OWNERSHIP.

(a) IN GENERAL.—Section 4010(a) (relating to registration) is amended by adding at the end the following new paragraph:

“(4) REREGISTRATION IN EVENT OF CHANGE IN OWNERSHIP.—Under regulations prescribed by the Secretary, a person (other than a corporation the stock of which is regularly traded on an established securities market) shall be required to reregister under this section if after a transaction (or series of related transactions) more than 50 percent of ownership interests in, or assets of, such person are held by persons other than persons (or persons related thereto) who held more than 50 percent of such interests or assets before the transaction (or series of related transactions).

(b) CONFORMING AMENDMENTS.—

(1) CIVIL PENALTY.—Section 7619 (relating to failure to register) is amended—
   (A) by inserting “or REREGISTER” after “REGISTER” in the heading for subsection (a), and
   (B) by inserting “or REREGISTER” after “REGISTER” in the heading thereof.

(2) CRIMINAL PENALTY.—Section 7232 (relating to failure to register under section 4010, false statements of registration status, etc.) is amended—
   (A) by inserting “or reregister” after “reregister” each place it appears,
   (B) by inserting “or REREGISTER” after “REGISTRATION” in the heading for subsection (a), and
   (C) by inserting “or REREGISTER” after “REGISTER” in the heading thereof.

(3) CLERICAL AMENDMENTS.—The item relating to section 6719 in the table of sections for part I of chapter B of section 68 and the item relating to section 7322 in the table of sections for part II of chapter A of title 75 are each amended by inserting “or REREGISTER” after “reregister”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 2005.

SEC. 5616. EXPEDITED EFFECTIVE DATE.

The amendments made by this section shall apply to sales after December 31, 2005.
§5616. RECONCILIATION OF ON-LOADED CARGO TO ENTERED CARGO.

(a) IN GENERAL.—Subsection (a) of section 343 of the Trade Act of 2002 is amended by inserting at the end of paragraph (4) the following new paragraph:

"(4) TRANSMISSION OF DATA.—Pursuant to paragraph (2), not later than 1 year after the date of enactment of this paragraph, the Secretary of Homeland Security, after consultation with the Secretary of the Treasury, shall establish an electronic data interchange system through which the United States Customs and Border Protection, in transmitting to the Internal Revenue Service information pertaining to cargoes of any taxable fuel (as defined in section 4823 of the Internal Revenue Code of 1986) that the United States Customs and Border Protection has obtained electronically under its regulations adopted in accordance with paragraph (1). For this purpose, not later than 1 year after the date of enactment of this paragraph, all filers of required cargo information for such taxable fuels (as so defined) must provide such information to the United States Customs and Border Protection through such electronic data interchange system.",

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 5617. REGISTRATION OF DEEP-DRAFT VESSELS.

In applying section 4010 of the Internal Revenue Code of 1986 and after the date of enactment of this Act, the Secretary of the Treasury shall require the registration under such section of every operator of a vessel described in section 4042(o)(1) of such Code.

SEC. 5618. TAXATION OF GASOLINE BLENDSTOCKS AND KEROSENE.

With respect to fuel entered or removed after September 30, 2003, the Secretary of the Treasury shall, in applying section 4018 of the Internal Revenue Code of 1986—

(1) prohibit the nontaxable entry or removal of any gasoline blend stock without the imposition of tax under section 4081 of such Code, and

(2) include mineral spirits in the definition of kerosene.

SEC. 5619. NONAPPLICATION OF EXPORT EXEMPTION TO DELIVERY OF FUEL TO MOTOR VEHICLES REMOVED FROM UNITED STATES.

(a) In General.—Section 4221(d)(2) (defining export) is amended by adding at the end the following new sentence: “Such term does not include the delivery of a taxable fuel (as defined in section 4083(a)(1)) into a fuel tank of a motor vehicle which is shipped or driven out of the United States.”

(b) REFORMING AMENDMENTS.—

(1) Section 4041(g) (relating to other exemptions) is amended by adding at the end the following new sentence: “Paragraph (3) shall not apply to the sale of a liquid for delivery into a fuel tank of a motor vehicle which is shipped or driven out of the United States.”

(2) Clause (ii) of section 4002(a)(1)(A) (relating to tax on any motor vehicle sold in the United States) is amended by inserting “or a railway vehicle” after the period at the end of such clause.

SEC. 5620. PENALTY WITH RESPECT TO CERTAIN ADULTERATED FUELS.

(a) IN GENERAL.—Part I of subsection B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

"SEC. 6729A. PENALTY WITH RESPECT TO CERTAIN ADULTERATED FUELS.

“(a) IN GENERAL.—Any person who knowingly transfers for resale, sells for resale, or holds out for sale any liquid for use in a diesel-powered highway vehicle or a diesel-powered train which does not meet applicable EPA regulations (as defined in section 45H(c)(2)), shall pay a penalty of $10,000 for each such transfer, sale, or holding out for resale, in addition to the tax on such liquid (if any).

“(b) PENALTY IN CASE OF RETAILERS.—Any person who knowingly holds out for sale (other than for resale) any liquid described in subsection (a), shall pay a penalty of $10,000 for each such holding out for sale, in addition to the tax on such liquid (if any).”

(b) DEDICATION OF REVENUE.—Paragraph (5) of section 5603(b) (relating to certain penalties) is amended by inserting “6729A,” after “5620.”

(c) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding at the end the following new item:

“Sec. 6729A. Penalty with respect to certain adulterated fuels.”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any transfer, sale, or holding out for sale or resale occurring after the date of the enactment of this Act.

TITLE VI—PUBLIC TRANSPORTATION

SEC. 6001. SHORT TITLE.

This title may be cited as the “Federal Public Transportation Act of 2005”.

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

(a) AMENDMENTS TO TITLE 49.

(1) Section 4041(g) (relating to other exemptions) is amended—

(A) by striking “mass transportation” and inserting “urban mass transportation”;

(B) by redesignating paragraphs (8) through (18) as paragraphs (9) through (19), respectively;

(C) by striking paragraph (9) and inserting the following:

“(9) MASS TRANSPORTATION.—The term ‘mass transportation’ means public transportation.

“(10) MOBILITY MANAGEMENT.—The term ‘mobility management’ means a short-range planning or management activity or project that does not include operating public transportation services and—

“(A) improves coordination among public transportation providers, including private companies engaged in public transportation;

“(B) addresses customer needs by tailoring public transportation services to specific market niches or
targets;

“(C) manages public transportation demand;”

(2) by amending paragraph (11), as redesignated, to read as follows:

“(11) PUBLIC TRANSITIATION.—The term ‘public transportation’ means transportation by a conveyance that provides local regular and continuing general or special transportation service to the public, but does not include school bus, charter bus, intercity bus or passenger rail, or sightseeing transportation.

“(12) URBANIZED AREA.—The term ‘urbanized area’ means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an ‘urbanized area’ by the Secretary of Commerce.”

SEC. 6005. METROPOLITAN PLANNING PROCESS.

Section 5303 is amended to read as follows:

“§ 5303. Metropolitan transportation planning

“(a) DEFINITIONS.—As used in this section and in section 5304, the following definitions shall apply:

(1) CONSULTATION.—A ‘consultation’ occurs when a party—
(A) confers with another identified party in accordance with an established process;
(B) makes use of an existing procedure; or
(C) periodically informs that party about action taken.

(2) METROPOLITAN PLANNING AREA.—The term ‘metropolitan planning area’ means the geographic area determined by agreement between the metropolitan planning organization and the Governor under subsection (d).

(3) METROPOLITAN PLANNING ORGANIZATION.—The term ‘metropolitan planning organization’ means the Board of the organization designated under subsection (c).

(4) NONMETROPOLITAN AREA.—The term ‘nonmetropolitan area’ means any geographic area outside all designated metropolitan planning areas.

(5) NONMETROPOLITAN LOCAL OFFICIAL.—The term ‘nonmetropolitan local official’ means any elected or appointed official of general purpose local government located in a nonmetropolitan area who is responsible for transportation services for such local government.

(6) GENERAL REQUIREMENTS.—

(1) DEVELOPMENT OF PLANS AND PROGRAMS.—The objectives described in section 5301(a), each metropolitan planning organization, in cooperation with the State and public transportation operators, shall develop transportation plans and programs for metropolitan planning areas of the State in which it is located.

(2) CONTENTS.—The plans and programs developed under paragraph (1) for each metropolitan planning area shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an interregional transportation system for the State and the United States.

(3) PROCESS OF DEVELOPMENT.—The process for developing the plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(4) PLANNING AND PROJECT DEVELOPMENT.—The metropolitan planning organization, the State, and other transportation agencies and the appropriate public transportation provider shall agree upon the approaches that will be used to evaluate alternatives and identify transportation projects that will address the most complex problems and pressing transportation needs in the metropolitan area.

(5) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

(1) IN GENERAL.—To carry out the transportation planning process under this section, a metropolitan planning organization shall be designated in each urbanized area.

(A) by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the existing urbanized area population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area) as appropriate to carry out this section.

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

(2) CONTINUING DESIGNATION.—The designation of a metropolitan planning organization under this subsection or any other provision of State or local law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

(3) DESIGNATION OF MORE THAN 1 METROPOLITAN PLANNING ORGANIZATION.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 metropolitan planning organization for the area appropriate.

(4) METROPOLITAN PLANNING AREA BOUNDARIES.—

(1) IN GENERAL.—For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

(2) INCLUDED AREA.—Each metropolitan planning area—

(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Office of Management and Budget.

(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING METROPOLITAN PLANNING AREAS.—The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the re-designation of the existing metropolitan planning organization.

(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the boundaries of the metropolitan planning area as of the date of enactment of the Federal Public Transportation Act of 2005 shall be retained, except that the boundaries may be adjusted by agreement of the Governor and the metropolitan planning organization in accordance with paragraph (5).

(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—If an urbanized area is designated after the date of enactment of this paragraph in a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area shall—

(A) be established in accordance with subsection (c)(1); and

(B) shall encompass the areas described in paragraph (2)(A).

(6) COORDINATION IN MULTISTATE AREAS.—

(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a metropolitan area to designate that portion of the metropolitan area and the other States with which the Governor has cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to metropolitan areas within the States.

(B) to establish such agencies, joint or otherwise, as the States may determine suitable for purposes of the agreement compact effective.

(2) LAKE TAHOE REGION.—

(A) DEFINITION.—In this paragraph, the term ‘Lake Tahoe region’ has the meaning given in title 23, section 105 (94 Stat. 3234). (B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

(ii) coordinate the transportation planning process with the planning process required of States and local governments under this section and section 5304.

(C) INTERSTATE COMPACT.—

(i) IN GENERAL.—Subject to clause (ii) and notwithstanding subsection (c), to carry out the transportation planning process required by this section, California and Nevada may designate a metropolitan planning organization for theLake Tahoe region, by agreement between the Governor of the State of California, the Governor of the State of Nevada, and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area), or in accordance with procedures established by applicable State or local law.

(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

(A) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

(B) FUNDING.—In addition to funds made available to the metropolitan planning organization under other provisions of title 23 and this chapter, not more than 1 percent of the funds allocated under section 202 of title 23 may be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.

(C) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—

(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

(ii) may, in accordance with chapter 2 of title 23, be funded using funds allocated under sections 202 of title 23.

(D) COORDINATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

(1) NONATTAINMENT AREAS.—If more than 1 metropolitan planning organization has jurisdiction within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall consult with the other metropolitan planning organizations designated for
such area and the State in the coordination of plans required by this section.

"(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE METROPOLITAN PLANNING AREAS.—If a transportation improvement funded from the highway trust fund is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate their plans regarding the transportation improvement.

"(3) INTERREGIONAL AND INTERSTATE PROJECT IMPACTS.—Planning for National Highway System, commuter rail projects, or other projects with substantial impacts outside a single metropolitan planning area or State shall be coordinated among the affected contiguous metropolitan planning organizations and States.

"(4) COORDINATION WITH OTHER PLANNING PROCESSES.—

(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to coordinate its planning process, to the maximum extent practicable, with those officials responsible for other types of planning activities that are affected by transportation, including State and local land use planning, economic development, environmental protection, airport operations, energy planning, and freight.

(B) OTHER CONSIDERATIONS.—The metropolitan planning process shall develop transportation plans in consideration of its coordination with, other related planning activities within the metropolitan area. This should include the design and delivery of transportation services within the metropolitan area that are provided by—

(i) recipients of assistance under this chapter;

(ii) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide non-emergency transportation services; and

(iii) recipients of assistance under section 204 of title 23.

(g) SCOPE OF PLANNING PROCESS.—

"(1) IN GENERAL.—A transportation plan under this subsection shall include a discussion of—

(A) the types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetland, and other environmental functions; and

(B) the potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat, hydrological, or environmental functions affected by the plan.

(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

(3) CONTENTS.—A transportation plan under this subsection shall be—

(A) developed by the metropolitan planning organization; and

(B) submitted to the Governor for information purposes at such time and in such manner as the Governor may require.

(5) DEVELOPMENT OF TRANSPORTATION PLAN.—

A transportation plan shall develop a transportation plan for its metropolitan planning area in accordance with this subsection, and update such plan—

(A) at least less frequently than once every 5 years in areas designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)), and in areas that were nonattainment for any year that has been redesignated as attainment, in accordance with paragraph (3) of such section, with a maintenance plan under section 175A of the Clean Air Act (42 U.S.C. 758a); or

(B) not less frequently than once every 5 years in areas designated as attainment, as defined in section 107(d) of the Clean Air Act.

(C) COORDINATION FACTORS.—In developing the transportation plan under this section, each metropolitan planning organization shall consider the factors described in subsection (f) over a 20-year forecast.

(D) FINANCIAL ESTIMATES.—For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall develop estimates of funds that will be available to support plan implementation.

(E) MITIGATION ACTIVITIES.—

(A) IN GENERAL.—Each metropolitan planning organization shall include a discussion of—

(i) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat, hydrological, or environmental functions affected by the plan.

(B) CONSULTATION.—The discussion described in paragraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

(3) CONTENTS.—A transportation plan under this subsection shall include a discussion of—

(A) an identification of transportation facilities, including major roadways, transit, multimodal and intermodal facilities, intermodal connectors, and other related facilities identified by the metropolitan planning organization, which should function as an integrated metropolitan transportation system, emphasizing those facilities that serve important national and regional transportation functions;

(B) a functionally significant (i) demonstrates how the adopted transportation plan can be implemented; (ii) includes resources from public and private sources that are reasonably expected to be made available to carry out the plan; (iii) recommends any additional financing strategies and opportunities; and (iv) may include, for illustrative purposes, additional projects that would be included in

the adopted transportation plan if approved by the Secretary and reasonable additional resources beyond those identified in the financial plan were available;

(C) operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and freight;

(D) capital investment and other strategies to preserve the existing metropolitan transportation infrastructure and provide for multimodal transportation improvements based on regional priorities and needs; and

(E) proposed transportation and transit enhancement activities.

(f) SCOPE OF PLANNING PROCESS.—

(A) IN GENERAL.—Each metropolitan area, the metropolitan planning organization shall consult, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerns, the development of a long-range transportation plan.

(B) ISSUES.—The consultation shall involve—

(i) transportation plans with state conservation plans or with maps, if available;

(ii) transportation plans to inventories of natural or historic resources, if available; or

(iii) consideration of areas where wildlife crossing structures may assist in compensating for loss of habitat, wildlife habitat linkage areas.

(5) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

(A) DEVELOPMENT OF SALE PLAN.—Each transportation plan prepared by a metropolitan planning organization shall be—

(A) coordinated by the metropolitan planning organization; and

(B) submitted to the Governor for information purposes at such time and in such manner as the Governor may require.

(5) DEVELOPMENT OF PLANNING PROCESS.—

Not less frequently than every 4 years, each metropolitan planning organization shall develop and adopt a plan for participation in the process for developing the metropolitan transportation plan and programs by—

(A) citizens;

(B) affected public agencies;

(C) representatives of public transportation employees;

(D) freight shippers;

(E) providers of freight transportation services;

(F) private providers of transportation;

(G) representatives of users of public transit; and

(H) representatives of users of pedestrian walkways and bicycle transportation facilities.

(2) CONTENTS OF PARTICIPATION PLAN.—The participation plan shall—

(A) include a functionally significant (i) demonstrates how the adopted transportation plan can be implemented; (ii) includes resources from public and private sources that are reasonably expected to be made available to carry out the plan; (iii) recommends any additional financing strategies and opportunities; and (iv) may include, for illustrative purposes, additional projects that would be included in

(i) the contents of the transportation plan; and

(3) METHODS.—The participation plan shall provide that the metropolitan planning organization shall, to the maximum extent practicable—

(A) coordinate its planning process with, to the maximum extent practicable,

(B) consult, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerns, the development of a long-range transportation plan.

(A) IN GENERAL.—Each metropolitan area, the metropolitan planning organization shall consult, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

(B) ISSUES.—The consultation shall involve—

(i) transportation plans with state conservation plans or with maps, if available;

(ii) transportation plans to inventories of natural or historic resources, if available; or

(iii) consideration of areas where wildlife crossing structures may assist in compensating for loss of habitat, wildlife habitat linkage areas.

(5) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

(A) DEVELOPMENT OF SALE PLAN.—Each transportation plan prepared by a metropolitan planning organization shall be—

(A) coordinated by the metropolitan planning organization; and

(B) submitted to the Governor for information purposes at such time and in such manner as the Governor may require.

(5) DEVELOPMENT OF PLANNING PROCESS.—

Not less frequently than every 4 years, each metropolitan planning organization shall develop and adopt a plan for participation in the process for developing the metropolitan transportation plan and programs by—

(A) citizens;

(B) affected public agencies;

(C) representatives of public transportation employees;

(D) freight shippers;

(E) providers of freight transportation services;

(F) private providers of transportation;

(G) representatives of users of public transit; and

(H) representatives of users of pedestrian walkways and bicycle transportation facilities.

(2) CONTENTS OF PARTICIPATION PLAN.—The participation plan shall—

(A) include a functionally significant (i) demonstrates how the adopted transportation plan can be implemented; (ii) includes resources from public and private sources that are reasonably expected to be made available to carry out the plan; (iii) recommends any additional financing strategies and opportunities; and (iv) may include, for illustrative purposes, additional projects that would be included in

(i) the contents of the transportation plan; and

(3) METHODS.—The participation plan shall provide that the metropolitan planning organization shall, to the maximum extent practicable—

(A) coordinate its planning process with, to the maximum extent practicable,
“(A) hold any public meetings at convenient and accessible locations and times; and

(B) employ visualization techniques to describe plans; and

(C) disclose public information available in electronically accessible format and means, such as the World Wide Web.

(4) CERTIFICATION.—Before the metropolitan planning organizations approve a transportation plan or program, each metropolitan planning organization shall certify that it has complied with the requirements of the participation plan it has adopted.

(I) TRANSPORTATION IMPROVEMENT PROGRAM.

(1) DEVELOPMENT AND UPDATE.—

(A) IN GENERAL.—In cooperation with the State and affected operators of public transportation, a metropolitan planning organization designated for a metropolitan planning area shall develop a transportation improvement program for the area.

(B) PARTICIPATION.—In developing the transportation improvement program, the metropolitan planning organization, in cooperation with the Governor and any affected operator of public transportation, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i).

(2) PUBLICATION.—The transportation improvement program shall be updated not less than once every 4 years and shall be approved by the metropolitan planning organization and the Governor.

(3) IMPLEMENTATION.—Projects listed in the transportation improvement program may be selected for advancement consistent with the project selection criteria established by the metropolitan planning organization.

(4) MAJOR AMENDMENTS.—Major amendments to the list described in subsection (E), including the addition, deletion, or concept and scope change of a regionally significant project, may not be advanced without

(i) appropriate public involvement;

(ii) financial planning;

(iii) transportation conformity analyses; and

(iv) a finding by the Federal Highway Administration and Federal Transit Administration that the plan was produced in a manner consistent with this section.

(2) INCLUDED PROJECTS.—

(A) PROJECTS UNDER CHAPTER 1 OF TITLE 23 AND TITLE 21.—Projects contained in a transportation improvement program developed under this section for a metropolitan area shall include the projects and strategies within the metropolitan area that are proposed for funding under chapter 1 of title 23 and this chapter.

(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.—

(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the metropolitan transportation improvement program.

(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not regionally significant shall be grouped in 1 line item or identified individually in the metropolitan transportation improvement program.

(3) EFFECT.—

(A) IN GENERAL.—Except as otherwise provided under subsection (k)(4), the selection of federally funded projects in metropolitan planning area shall be carried out, from the approved transportation plan—

(i) by the State, in the case of projects under chapter 1 of title 23 or section 5308, 5310, 5311, or 5312; and

(ii) by the designated recipient, in the case of projects selected under section 5307; and

(iii) in cooperation with the metropolitan planning organization.

(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, a change in the project priority of the transportation improvement program in place of another project in the same transportation improvement program without the approval of the Secretary.

(4) PUBLICATION OF TRANSPORTATION IMPROVEMENT PROGRAM.—A transportation improvement program involving Federal participation shall be made readily available by the metropolitan planning organization for public review, including, to the maximum extent practicable, in electronically accessible formats and means, such as the World Wide Web.

(5) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—During each calendar year, a metropolitan planning organization shall include

(A) projects under chapter 1 of title 23 or section 5308, 5310, 5311, or 5312;

(B) national highway system projects;

(C) projects under section 5307; and

(D) projects under section 5308 or 5310.

(5) CERTIFICATION.—

(A) IN GENERAL.—The Secretary shall—

(i) ensure that the metropolitan planning processes of the metropolitan planning organization serving a transportation management area is being carried out in accordance with Federal law;

(ii) subject to subparagraph (B), certify, not less frequently than once every 4 years in nonattainment and maintenance areas (as defined in the Clean Air Act) and not less than once every 5 years in attainment areas (as defined under such Act), that the requirements of this paragraph are met with respect to the metropolitan planning process.

(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A)(i) if

(i) the transportation planning process complies with the requirements of this section and all other applicable Federal law; and

(ii) the transportation improvement program for the metropolitan planning area have been approved by the metropolitan planning organization and the Governor.

(C) PENALTY FOR FAILING TO CERTIFY.—

(i) WITHHOLDING PROJECT FUNDS.—If the metropolitan planning process of a metropolitan planning organization or a metropolitan planning area is not certified, the Metropolitan Planning Organization shall withhold any funds otherwise available to the metropolitan planning area for projects funded under title 23 and this chapter.

(ii) RESTORATION OF WITHHELD FUNDS.—Any funds withheld under clause (i) shall be restored to the metropolitan planning area when the metropolitan planning process is certified by the Secretary.

(7) REVIEW OF CERTIFICATION.—In making a certification under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

(8) ABBREVIATED PLANS FOR CERTAIN AREAS.—

(A) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and transportation improvement program for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, after considering the complexity of transportation problems in the area.

(B) NONATTAINMENT AREAS.—The Secretary may not approve plans for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

(9) ADDITIONAL REQUIREMENTS FOR CERTAIN METROPOLITAN PLANNING AREAS.—

(A) IN GENERAL.—Notwithstanding any other provisions of title 23 or this chapter, Federal funds may not be advanced for transportation projects classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) for any highway project that will result in a significant increase in the number of non-occupant vehicles unless the project is addressed through a congestion management process.
State implementation plan, as required by the
(2) AVAILABILITY OF FUNDS.—Funds set
aside under section 104(f) of title 23 or section
5308 of this title shall be available to carry out
this section.

(2) CONTENTS.—The Plan and the Program
developed pursuant to this section shall provide for the
development and integrated management and operation
of transportation systems and facilities (including pedestrian walkways and bicycle
infrastructures, dedicated bus lanes, and intermodal
transportation systems) for the State, and
(3) make available to carry out the Plan; and

(b) May include, for illustrative purposes,

(c) May assist in compensating for loss of habitat,

(d) May include, for illustrative purposes,

(e) May include, for illustrative purposes,

(f) May include, for illustrative purposes,

(g) May include, for illustrative purposes,

(h) May include, for illustrative purposes,

(i) May include, for illustrative purposes,

(j) May include, for illustrative purposes,

(k) May include, for illustrative purposes,

(l) May include, for illustrative purposes,

(m) May include, for illustrative purposes,

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(o) May include, for illustrative purposes,

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(u) May include, for illustrative purposes,

(v) May include, for illustrative purposes,

(w) May include, for illustrative purposes,

(x) May include, for illustrative purposes,

(y) May include, for illustrative purposes,

(z) May include, for illustrative purposes,

(A) MINIMUM REQUIREMENTS.—The Plan shall

(B) COORDINATION.—The Plan shall include

(C) STATEWIDE TRANSPORTATION PLAN.

(D) AGRICULTURAL LANDS.—The Secretary of

(E) ENVIRONMENTAL MITIGATION ACTIVITIES.

(F) ENVIRONMENTAL MITIGATION ACTIVITIES.

(G) ENVIRONMENTAL MITIGATION ACTIVITIES.

(H) ENVIRONMENTAL MITIGATION ACTIVITIES.

(I) ENVIRONMENTAL MITIGATION ACTIVITIES.

(J) ENVIRONMENTAL MITIGATION ACTIVITIES.

(K) ENVIRONMENTAL MITIGATION ACTIVITIES.

(L) ENVIRONMENTAL MITIGATION ACTIVITIES.

(M) ENVIRONMENTAL MITIGATION ACTIVITIES.

(N) ENVIRONMENTAL MITIGATION ACTIVITIES.

(O) ENVIRONMENTAL MITIGATION ACTIVITIES.

(P) ENVIRONMENTAL MITIGATION ACTIVITIES.

(Q) ENVIRONMENTAL MITIGATION ACTIVITIES.

(R) ENVIRONMENTAL MITIGATION ACTIVITIES.

(S) ENVIRONMENTAL MITIGATION ACTIVITIES.

(T) ENVIRONMENTAL MITIGATION ACTIVITIES.

(U) ENVIRONMENTAL MITIGATION ACTIVITIES.

(V) ENVIRONMENTAL MITIGATION ACTIVITIES.

(W) ENVIRONMENTAL MITIGATION ACTIVITIES.

(X) ENVIRONMENTAL MITIGATION ACTIVITIES.

(Y) ENVIRONMENTAL MITIGATION ACTIVITIES.

(Z) ENVIRONMENTAL MITIGATION ACTIVITIES.
“(8) EXISTING SYSTEM.—The Plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

“(9) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each Plan prepared by a State shall be published or otherwise made available, including electronically accessible formats and means, such as the World Wide Web.

“(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—With respect to each metropolitan planning area in the State, the Program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan planning area under section 5303.

“(h) NONMETROPOLITAN AREAS.—With respect to each nonmetropolitan area in the State, the Program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

“(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribe, the Program shall be developed in consultation with the tribal government and the Secretary of the Interior.

“(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, operators of light transportation services, representatives of users of public transit, representatives of users of pedestrian walkways and bicycle transportation facilities, and other interested publics with a reasonable opportunity to comment on the proposed Program.

“(4) INCLUDED PROJECTS.—

“(A) IN GENERAL.—A Program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

“(B) LISTING OF PROJECTS.—

“(i) IN GENERAL.—The Program shall cover a minimum of 4 years, identify projects by year, be fiscally constrained by year, and be updated not less than once every 4 years.

“(ii) PUBLICATION.—An annual listing of projects for which funds have been obligated in the preceding 4 years in each metropolitan planning area, at least projects of fragment transportation services, representatives of users of public transit, representatives of users of pedestrian walkways and bicycle transportation facilities, and other interested publics with a reasonable opportunity to comment on the proposed Program.

“(5) PROJECT SELECTION FOR AREAS WITH FEWER THAN 50,000 INDIVIDUALS.—

“(A) IN GENERAL.—Each State, in cooperation with the affected nonmetropolitan local officials with responsibility for transportation, shall select projects to be carried out in areas with fewer than 50,000 individuals from the approved Program (excluding projects carried out under the National Highway System, the bridge program, or the interstate maintenance program under title 23 or sections 5310 and 5311 of this title).

“(B) CERTAIN PROGRAMS.—Each State, in consultation with the affected nonmetropolitan local officials with responsibility for transportation, may include in a metropolitan or statewide transportation plan projects to be carried out in areas with fewer than 50,000 individuals under the National Highway System, the bridge program, or the interstate maintenance program under title 23 or under sections 5310 and 5311 of this title.

“(6) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—A Program developed under this subsection shall be reviewed and based on a current planning finding approved by the Secretary not less frequently than once every 4 years.

“(7) PLANNING FINDING.—Not less frequently than once every 4 years, the Secretary shall determine whether the transportation planning process through which Plans and Programs are developed is consistent with this section and section 5303.

“(8) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, a project included in the approved Program may be advanced in place of another project in the program without the approval of the Secretary.

“(9) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary under this section regarding a metropolitan or nonmetropolitan transportation plan or the Program, shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“SEC. 6007. TRANSPORTATION MANAGEMENT AREAS.

“Section 5305 is repealed.

“SEC. 6008. PRIVATE ENTERPRISE PARTICIPATION. Section 5306 is amended—

“(1) in subsection (a)—

“(A) by striking ‘‘5305 of this title’’ and inserting ‘‘5308’’; and

“(B) by inserting ‘‘, as determined by local policies, criteria, and decision making,’’ after ‘‘feasible’’

“(2) in subsection (b) by striking ‘‘5303–5305 of this title’’ and inserting ‘‘5303, 5304, and 5308’’; and

“(3) by adding at the end following:

“(c) REGULATIONS.—

“(1) in paragraphs (1) and (2) after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall issue regulations describing how the requirements under this section relating to subsection (a) shall be enforced.’’

“SEC. 6009. URBANIZED AREA FORMULA GRANTS.

“(a) TECHNICAL AMENDMENTS.—Section 5307 is amended—

“(1) by striking subsections (b), (i), and (k); and

“(2) by redesignating subsections (i), (l), (m), and (n) as subsections (h), (i), (j), and (k), respectively.

“(b) DEFINITIONS. Section 5307(a) is amended—

“(1) by amending paragraph (2)(A) to read as follows:

“(A) an entity designated, in accordance with the planning process under sections 5303, 5304, and 5306, by the chief executive officer of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 that are attributable to transportation management areas designated under section 5303; or

“(2) by adding at the end following:

“(c) SUBRECIPRO. ‘‘The term ‘subrecipient’ means a State or local governmental authority, a non-Federal operator of public transportation service that may receive a Federal transit grant indirectly through a recipient, rather than directly from the Federal Government.’’

“(d) GENERAL AUTHORITY.—Section 5307(b) is amended—

“(1) by amending paragraph (1) to read as follows:

“(1) General Authority. The Secretary of Transportation may award grants under this section for—

“(A) capital projects, including associated capital maintenance items; and

“(B) planning, including mobility management systems; and

“(c) TRANSIT ENHANCEMENTS.—

“(D) operating costs of equipment and facilities for use in public transportation in an urbanized area with a population of more than 200,000; and

“(E) operating costs of equipment and facilities for use in public transportation in a portion or portions of an urbanized area with a population of at least 200,000, but not more than 225,000, if—

“(i) the urbanized area includes parts of more than one State;
“(iii) the population of the portion of the urbanized area is less than 30,000; and

“(iv) the grants will not be used to provide public transportation outside of the portion of the urbanized area.”

(2) by amending paragraph (2) to read as follows:

“(C) SPECIAL RULE FOR FISCAL YEARS 2005 THROUGH 2007.—

(A) INCREASED FLEXIBILITY.—The Secretary may award grants under this section, from funds made available to carry out this section for each of the fiscal years 2005 through 2007, to finance the operating cost of equipment and facilities for use in mass transportation in an urbanized area with a population of at least 200,000, as determined by the 2000 decennial census of population if—

(i) the urbanized area had a population of less than 200,000, as determined by the 1990 decennial census of population;

(ii) a portion of the urbanized area was a separate urbanized area with a population of less than 200,000, as determined by the 1990 decennial census of population;

(iii) the area was not designated as an urbanized area, as determined by the 1990 decennial census of population; or

(iv) a portion of the area was not designated as an urbanized area, as determined by the 1990 decennial census, and received assistance under section 5307(d) for fiscal year 2002.

(B) MAXIMUM AMOUNTS IN FISCAL YEAR 2005.—In fiscal year 2005—

(1) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall not be more than the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than the amount apportioned to the urbanized area under this section for fiscal year 2003; and

(iii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less than 25 percent of the amount the portion of the area received under section 5311 in fiscal year 2002; and

(2) by striking paragraph (4).

(D) GRANT RECIPIENT REQUIREMENTS.—Section 5307(d)(4) is amended—

(1) in subparagraph (A), by inserting “including safety and security aspects of the program” after “program”;

(2) in subparagraph (B), by striking “section” and all that follows and inserting “such, the recipient will comply with sections 5223 and 5325;”;

(3) in subparagraph (H), by striking “sections 5301(a) and 5303(b) of this title” and inserting “subsections (a) and (d) of section 5301 and sections 5303 through 5306;”;

(4) in subparagraph (I) by striking “and” at the end;

(5) in subparagraph (J), by striking the period at the end and inserting “; and”; and

(6) by adding at the end the following:

“(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall cover 80 percent of the net project cost.”;

(2) by striking “A grant for operating expenses” and inserting the following:

“(2) OPERATING EXPENSES.—A grant for operating expenses”;

(3) by striking the fourth sentence and inserting the following:

“(3) REMAINING COSTS.—The remainder of the net project cost shall be provided in cash from non-Federal sources or revenues derived from the sale of advertising and concessions and amounts received under a service agreement with a State or local social service agency or a private social service organization;”;

and

(4) by adding at the end the following:

“(7) REQUIREMENTS FOR MATCHING REQUIREMENTS.—Except as provided under this section, no other provision of this chapter applies to this section or to a grant made under this section.”

(F) REPORT.—Not later than January 1, 2009, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report on the implementation of this section and any recommendations of the Secretary regarding the application of this section.

SEC. 6010. PLANNING PROGRAMS.

(a) IN GENERAL.—Section 5308 is amended to read as follows:

“§5308. Planning programs

(1) GRANTS AUTHORIZED.—Under criteria established by the Secretary, the Secretary may award grants to States, authorities of the States, metropolitan planning organizations, and any local governmental agreements with other departments, agencies, or instrumentalities of the Government, or enter into contracts with private nonprofit or for-profit entities:

“(1) develop transportation plans and programs;

“(2) plan, engineer, design, and evaluate a public transportation project; or

“(3) conduct technical studies relating to public transportation, including—

“(A) studies related to the management, planning, operations, capital requirements, and economic feasibility; and

“(B) evaluations of previously financed projects;

“(C) peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analyses among metropolitan planning organizations and other transportation planners; and

“(D) similar and related activities preliminary to, and in preparation for, constructing, acquiring, or improving the operation of facilities and equipment.

(B) PURPOSE.—To the extent practicable, the Secretary shall ensure that amounts appropriated pursuant to section 5338 to carry out this section and sections 5303, 5304, and 5306 are used to support both existing and intensive transportation planning that considers the relationships among land use and all transportation modes, without regard to the programmatic source of the planning amounts.

(C) METROPOLITAN PLANNING PROGRAM.—

(1) ALLOCATIONS TO STATES.—

(A) IN GENERAL.—The Secretary shall allocate 80 percent of the amount made available under subsection (g)(3)(A) to States to carry out sections 5303 and 5306 in a ratio equal to the population under section 5307 of title 49, United States Code, for the provision of non-fixed route paratransit services in accordance with section 223 of the Americans with Disabilities Act (42 U.S.C. 12143), but only if the grant recipient in compliance with applicable requirements of that Act, including both fixed route and demand responsive service and the service is acquired by a non-Federal entity performing related functions) to which the recipient will comply with sections 5323 and 5325, and any recommendations of the Secretary regarding the application of this section.

(2) REPORT.—Not later than January 1, 2009, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report on the implementation of this section and any recommendations of the Secretary regarding the application of this section.
(D) that provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section.

(D) ALLOCATION FORMULA.—Amounts under this paragraph shall be allocated under section (g)(3)(A) to States to supplement amounts under paragraph (1) for metropolitan planning organizations.

(E) ALLOCATION FORMULA.—Amounts under this paragraph shall be allocated under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities in complex metropolitan planning areas under sections 5303, 5304, and 5306.

(d) STATE PLANNING AND RESEARCH PROGRAM.—(1) IN GENERAL.—The Secretary shall allocate amounts made available pursuant to subsection (g)(3)(B) to States for grants and contracts to carry out sections 5304, 5305, and 5306 so that each State receives an amount equal to the ratio of the population in urbanized areas in that State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census.

(2) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the amount allocated to that State under this section.

(3) REALLOCATION.—A State may authorize part of the amount made available under this subsection to be used to supplement amounts available under subsection (c).

(e) PLANNING CAPACITY BUILDING PROGRAM.—(1) ESTABLISHMENT.—The Secretary shall establish a Planning Capacity Building Program (referred to in this subsection as the “Program”) to support and fund innovative practices and enhancements in transportation planning.

(2) PURPOSE.—The purpose of the Program shall be to promote activities that support and strengthen the planning processes required under this section and sections 5302 and 5306.

(3) ADMINISTRATION.—The Program shall be administered by the Federal Transit Administration in cooperation with the Federal Highway Administration.

(4) USE OF FUNDS.—(A) IN GENERAL.—Appropriations authorized under subsection (g)(1) to carry out this subsection may be used—

(i) to provide incentive grants to States, metropolitan planning organizations, and public transportation operators; and

(ii) to conduct research, disseminate information, and provide technical assistance.

(B) CONTRACTS, COOPERATIVE AGREEMENTS.—In carrying out the activities described in subparagraph (A), the Secretary may—

(i) expend appropriated funds directly; or

(ii) award grants to, or enter into contracts, cooperative agreements, and other transactions with, a Federal agency, State agency, local government, emergency authority, association, nonprofit or for-profit entity, or institution of higher education.

(5) GOVERNMENT’S SHARE OF COSTS.—Amounts made available to carry out subsections (c), (d), and (e) may not exceed 80 percent of the costs of the activity unless the Secretary determines that it is in the interest of the Government not to require State or local matching funds.

(6) ALLOCATION OF FUNDS.—Of the amounts made available under section 5338(b)(2)(B) for fiscal year 2006 and each fiscal year thereafter to carry out this section—

(A) 200,000 shall be allocated for the Planning Capacity Building Program established under subsection (e); and

(B) $20,000,000 shall be allocated for grants under subsection (f) for alternatives analyses required by section 5306(e)(2)(A); and

(C) of the remaining amount—

(1) 17.28 percent shall be allocated for the metropolitan planning program described in subsection (d); and

(2) 82.72 percent shall be allocated for the activities described in subsection (e).

(7) DEFINED TERM.—As used in this section, the term ‘alternatives analysis’ means a study conducted as part of the transportation planning process required under sections 5303 and 5304, which includes the following—

(A) a determination of the technically feasible alternatives; and

(B) a comparison of the alternatives with respect to performance measures that assess the impacts on air quality, energy, environment, and economy.

(8) USE.—(A) Of the amounts made available under this section that have not been used—

(i) to support and fund innovative practices and projects for assistance to subrecipients which are public agencies, private companies engaged in public transportation, or private nonprofit organizations; and

(ii) to carry out this section that has not been used—

(I) grants awarded under this section; and

(II) grants awarded under this section that have not been used—

(1) to the Secretary, to carry out subsection (b), to make the findings of project justification; and

(2) to the recipient, to support and fund innovative practices and projects for assistance to subrecipients which are public agencies, private companies engaged in public transportation, or private nonprofit organizations; and

(3) of the remaining amount—

(I) 20 percent of the amount made available under section 5309(b) for projects required under sections 5303 and 5306; and

(II) 80 percent of the amount made available under subsection (c).

(B) the reliability of the forecasts of costs and utilization made by the recipient and the contractors to the recipient;

(C) the direct and indirect costs of relevant alternatives;

(D) factors such as—

(i) congestion relief;

(ii) improved mobility;

(iii) air pollution;

(iv) noise pollution;
“(v) energy consumption; and
“(vi) all associated ancillary and mitigation costs necessary to carry out each alternative analyzed.

“(E) reductions in local infrastructure costs achieved through compact land use development and positive impacts on the capacity, utilization, or longevity of other surface transportation assets that it affects;

“(F) the cost of suburban sprawl;

“(G) the degree to which the project increases the mobility of the public transportation dependent population or promotes economic development;

“(H) population density and current transit ridership in the corridor in which the project is proposed;

“(I) the technical capability of the grant recipient to construct the project;

“(J) any adjustment to the project justification necessary to reflect differences in local land, construction, and operating costs; and

“(K) other factors that the Secretary determines to be appropriate to carry out this chapter.

“(4) EVALUATION OF LOCAL FINANCIAL COMMITMENT.—

“(A) IN GENERAL.—In evaluating a project under paragraph (2)(C), the Secretary shall require that:

“(i) the proposed project plan provides for the availability of sufficient financial resources that the Secretary determines to be reasonable to cover unanticipated cost increases;

“(ii) each local government unit or entity, and each public transportation agency that supports the project, is dedicated to the proposed purposes; and

“(iii) the sources of local financing under paragraph (2)(C) are dedicated to the proposed purposes.

“(B) POLICY GUIDANCE.—The Secretary shall publish policy guidance regarding the new starts project review and evaluation process—

“(i) not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2005; and

“(ii) each time significant changes are made by the Secretary to the new starts project review and evaluation process and criteria, but no less frequently than once every 2 years.

“(5) PROJECT ADVANCEMENT AND RATING.

“(A) PROPOSED PROJECT.—In evaluating a project under paragraph (2)(C), the Secretary shall—

“(i) invite public comment to the project justification published under subparagraph (A); and

“(ii) publish a response to the comments received under subparagraph (i).

“(B) MAJOR CAPITAL INVESTMENT PROJECTS OF LESS THAN $75,000,000.—

“(1) PROJECT CONSTRUCTION GRANT AGREEMENT.—

“(A) IN GENERAL.—The Secretary shall enter into a project construction grant agreement, based on evaluations and ratings required under this subsection, with each grantee receiving less than $75,000,000 under this subsection for a new start project on long-range transportation plans that are not advance substituted from the plan-

“(B) E VALUATION.

“(I) IN GENERAL.—The Secretary may evaluate the consistency of predicted and evaluated fiscal capacity of State and local governments.

“(II) SELECTOR CRITERIA.—The Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Appropriations, the Senate Committee on Appropriations, and the Senate Committee on Banking, Housing, and Urban Affairs shall submit a report on the methodology used in evaluating the land use and economic development impacts of fixed guideway or partial fixed guideway projects and the impact of policies and programs to encourage transit-oriented development.

“(1) FULL FUNDING GRANT AGREEMENT.—An agreement under this paragraph shall be considered a full funding grant agreement for the purposes of subsection (g).

“(2) SELECTION CRITERIA.—The Secretary may not award a grant under this subsection for a new start project unless the Secretary determines that the project is—

“(i) based on the results of planning and alternatives analysis; and

“(ii) justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development; and

“(iii) supported by an acceptable degree of local financial commitment.

“(B) PLANNING AND ALTERNATIVES.—In evaluating a project under subparagraph (A), the Secretary shall analyze and consider the results of planning and alternatives analysis for the project.

“(C) PROJECT JUSTIFICATION.—In making the determinations under subparagraph (A)(ii), the Secretary shall—

“(i) determine the degree to which local land use policies are supportive of the public transportation project and the degree to which the project is likely to achieve local developmental goals;

“(ii) determine the cost effectiveness of the project at the time of the initiation of revenue service; and

“(iii) identify other factors that the Secretary determines to be appropriate to carry out this subsection.

“(D) LOCAL FINANCIAL COMMITMENT.—For purposes of subparagraph (A)(iii), the Secretary shall give that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable.

“(6) ADVANCEMENT OF PROJECT TO DEVELOPMENT AND CONSTRUCTION.

“(A) IN GENERAL.—A proposed project under this subsection may not advance from the planning and alternatives analysis stage to project development and construction unless—

“(i) the Secretary finds that the project meets the requirements of this subsection and there is a reasonable likelihood that the project will continue to meet such requirements; and

“(ii) the metropolitan planning organization that adopted the locally preferred alternative for the project into the long-range transportation plan.

“(B) EVALUATION.—In making the findings under subparagraph (A), the Secretary shall—

“(i) evaluate and rate the project as high, medium-high, medium, medium-low, or low, based on the results of the analysis of the project justification criteria and the degree of local financial commitment, as required under this subsection.

“(C) IMPACT REPORT.—In general.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2005, the Federal Transit Administration shall submit a report on the methodology to be used in evaluating the land use and economic development impacts of fixed guideway or partial fixed guideway projects and the impact of policies and programs to encourage transit-oriented development.

“(D) POLICY GUIDANCE.—Section 5309(f) is amended to read as follows:

“Section 5309(f).—(A) IN GENERAL.—After a reasonable time has elapsed since the last major decision on the project, the Secretary shall—

“(i) determine the degree to which local land use policies are supportive of the public transportation project and the degree to which the project is likely to achieve local developmental goals;

“(ii) determine the cost effectiveness of the project at the time of the initiation of revenue service; and

“(iii) identify other factors that the Secretary determines to be appropriate to carry out this subsection.
“(D) COLLECTION OF DATA ON CURRENT SYSTEM.—To be eligible for a full funding grant agreement, recipients shall have collected data on the operations of the system, according to the plans required, before the beginning of construction of the proposed new start project. Collection of this data shall be included in the full funding grant agreement or an electrified program.

(E) PUBLIC PRIVATE PARTNERSHIP PILOT PROGRAM.—

(2) AUTHORIZATION.—The Secretary may establish a pilot program to demonstrate the advantages of public-private partnerships for certain fixed guideway systems development projects.

(F) IDENTIFICATION OF QUALIFIED PROJECTS.—The Secretary shall identify qualified public-private partnership projects as permitted by the statute and local enabling laws and work with project sponsors to enhance project delivery and reduce overall costs.”.

(9) Government Share of Net Project Cost.—Section 5309(h) is amended to read as follows:

“(h) Government Share of Net Project Cost.—Section 5309(h) is amended to read as follows:

“(1) IN GENERAL.—The Secretary shall estimate the net project cost based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities.

“(2) ADJUSTMENT FOR COMPLETION UNDER BUDGET.—The Secretary may adjust the final net project cost as a result of the experience of the project evaluated under subsections (e) and (f) to include the cost of eligible activities not included in the originally defined project if the Secretary determines that the originally defined project has been completed at a cost that is significantly below the original estimate.

“(3) MAXIMUM GOVERNMENT SHARE.—(A) A grant for the project shall be for 80 percent of the net project cost, or the net project cost as adjusted under paragraph (2). The grant recipient requests a lesser grant percentage.

“(B) EXCEPTIONS.—The Secretary may provide a higher grant percentage than requested by the grant recipient if—

(i) the Secretary determines that the net project cost of the project is not more than 10 percent higher than the net project cost estimated by the Secretary; and

(ii) the project is a project for fixed guideway modernization.

“(4) MINIMUM GOVERNMENT SHARE.—The amounts made available under section 5323(b)(4) shall be allocated for capital projects for buses and bus-related equipment and facilities.

“(5) FIXED GUIDEWAY MODERNIZATION.—The amounts made available for fixed guideway modernization under section 5323(b)(2)(A) for fiscal year 2006 and each fiscal year thereafter shall be available in each fiscal year for projects that meet the definitions in subsection (b)(2)(A) and (B) and are eligible for federal funding under section 5323(b)(2)(A) and (B).

“(6) EXCEPTION.—The amounts made available under paragraphs (3) and (4) shall be for 80 percent of the net project cost, or the net project cost as adjusted under paragraph (2).

“(7) DEDICATION OF FUNDS.—The amounts made available under paragraphs (3) and (5) shall be for 80 percent of the net project cost, or the net project cost as adjusted under paragraph (2). The amounts made available under paragraphs (3) and (5) shall not be treated as capital funds for which a refund or reduction of the costs not committed by applicable State and local enabling laws and work with project sponsors to enhance project delivery and reduce overall costs.”.

(10) Government Share of Net Project Cost.—The plan submitted under subparagraph (A) shall contain—

“(i) the Committee on Transportation and Infrastructure of the House of Representatives;

“(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

“(iii) the Subcommittee on the Departments of Transportation, Treasury, Housing and Urban Development, The Judiciary, District of Columbia, and Independent Agencies of the Committee on Appropriations of the House of Representatives; and

“(iv) the Subcommittee on Transportation, Treasury, and General Government of the Committee on Appropriations of the Senate.

“(B) CONTENTS.—The report submitted under subparagraph (A) shall contain—

“(i) the evaluations and ratings determined under subsection (e); and

“(ii) the Committee on Appropriations of the Senate.

“(C) SUBMISSION.—In making grants under paragraphs (1)(C) and (2)(B), the Secretary shall consider the age and condition of buses, bus fleets, related equipment, and bus-related equipment.

“(D) PROJECTS NOT IN URBANIZED AREAS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than 5 percent shall be available in each fiscal year for projects that are in urbanized areas.

“(E) INTERMEDIATE TERMINALS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than $75,000,000 shall be available in each fiscal year for intermediate terminal projects including the intercity bus passenger projects of such projects.

“(F) REPORTS.—Section 5309 is amended by inserting at the end the following:

“(f) ANNUAL REPORT ON FUNDING RECOMMENDATIONS.—

“(1) IN GENERAL.—Not later than the first Monday of February of each year, the Secretary shall submit a report on funding recommendations to—

“(i) the Committee on Transportation and Infrastructure of the House of Representatives;

“(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

“(iii) the Subcommittee on the Departments of Transportation, Treasury, Housing and Urban Development, The Judiciary, District of Columbia, and Independent Agencies of the Committee on Appropriations of the House of Representatives; and

“(iv) the Subcommittee on Transportation, Treasury, and General Government of the Committee on Appropriations of the Senate.

“(2) CONTENTS.—The report submitted under subparagraph (A) shall contain—

“(i) a summary of the ratings of all capital investment projects among grant applicants;

“(ii) a recommendation of projects to be funded based on the evaluations and ratings determined under subsection (e); and

“(ii) the Committee on Appropriations of the Senate.

“(3) DETAILED RATINGS AND EVALUATIONS.—In making grants under paragraphs (1)(C) and (2)(B), the Secretary shall consider the age and condition of buses, bus fleets, related equipment, and bus-related equipment.

“(4) BEFORE AND AFTER STUDY REPORTS.—Not later than the first Monday of August of each...
year, the Secretary shall submit a report containing a summary of the results of the studies conducted under subsection (g)(2) to—

(A) the Committee on Transportation and Infrastructure of the House of Representatives;

(B) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(C) the Subcommittee on the Departments of Transportation, Housing and Urban Development, The Judiciary, District of Columbia, and Independent Agencies of the Committee on Appropriations of the House of Representatives;

(D) the Subcommittee on Transportation, Treasury, and General Government of the Committee on Appropriations of the Senate.

(4) CONTRACTOR PERFORMANCE ASSESSMENT REPORT.—

(A) IN GENERAL.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2005, and each year thereafter, the Secretary shall submit a report analyzing the consistency and accuracy of cost and ridership estimates made by each contractor to public transportation agencies developing major investment projects to the committees and subcommittees listed under paragraph (3).

(B) CONTENTS.—The report submitted under subparagraph (A) shall compare the cost and ridership estimates made at the time projects are approved for entrance into preliminary engineering with—

(i) estimates made at the time projects are approved for entrance into final design;

(ii) costs and ridership when the project commences revenue operation; and

(iii) costs and ridership when the project has been in operation for 2 years.

(5) ANNUAL GOVERNMENT ACCOUNTABILITY OFFICE REVIEW.

(A) REVIEW.—The Comptroller General of the United States shall conduct an annual review of the processes and procedures for evaluating and rating projects and recommending projects and the Secretary’s implementation of such processes and procedures.

(B) REPORT.—Not later than 90 days after the submission of each report required under paragraph (4), the Comptroller General shall submit a report to Congress that summarizes the results of the review conducted under subparagraph (A).

(6) CONTRACTOR PERFORMANCE INCENTIVE REPORT.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2005, the Secretary shall submit a report to the committees and subcommittees listed under paragraph (3) on the suitability of allowing contractors to public transportation agencies that undertake major investment projects under this section to receive performance incentive awards if a project is completed for less than the original estimated cost.

(i) RESTRICTIONS ON USE OF BUS CATEGORY FUNDS FOR FIXED GUIDEWAY PROJECTS.—Funds provided to grantees under the bus and bus facility category for fixed guideway ferry and gondola projects in the Department of Transportation Appropriations Acts for any fiscal years 2004 through 2005, or accompanying committee reports, that remain available and unobligated may be used for fixed guideway projects under this section.

(m) MIAMI METROMORAL.—The Secretary may credit funds provided by the Florida Department of Transportation for the extension of the Miami Metromonor System from Earoing Heights to the Miami Intermodal Center to satisfy the matching requirements of section 5309(h)(4) of title 49, United States Code, for the Miami Metromonor System and Miami East-West Corridor projects.

SEC. 6012. NEW FREEDOM FOR ELDERLY PERSONS AND PERSONS WITH DISABILITIES.

(a) IN GENERAL.—Section 5310 is amended to read as follows:

§5310. New freedom for elderly persons and persons with disabilities.

(1) GENERAL AUTHORITY.—

(A) AUTHORIZATION.—The Secretary may award grants to a State for capital public transportation projects that are planned, designed, and carried out to meet the needs of elderly individuals and individuals with disabilities, with priority given to the needs of these individuals to access necessary health care.

(B) ACQUISITION OF PUBLIC TRANSPORTATION SERVICES.—A capital public transportation project under this section may include acquiring public transportation services as an eligible capital expense.

(C) ADMINISTRATIVE COSTS.—A State may use not more than 15 percent of the amounts awarded under subsection (a) to pay administrative costs.

(2) TRANSFER OF FUNDS.—Any funds allotted to a State under this section may be transferred by the State to the apportionments made under sections 5311(c) and 5336 if such funds are only used for eligible projects selected under this section.

(3) REALLOCATION OF FUNDS.—A State receiving a grant under this section may reallocate such grant funds to—

(A) a private nonprofit organization; or

(B) a public transportation agency or authority; or

(C) a governmental authority that—

(i) has been approved by the State to coordinate services for elderly individuals and individuals with disabilities; and

(ii) certifies that nonprofit organizations are not readily available in the area that can provide the services described under this subsection; or

(iii) will provide services to persons with disabilities that exceed those services required by the Americans with Disabilities Act.

(4) GOVERNMENT SHARE.—

(A) IN GENERAL.—A grant for a capital project under this section may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

(B) EXCEPTION.—A State described in section 120(d) of title 23 shall receive an increased Government share in accordance with the formula under that section.

(5) REMAINING COSTS.—The costs of a capital project under this section that are not funded through a grant under this section—

(A) may be funded from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service agency, or new capital; and

(B) may be derived from amounts appropriated to or made available to any Federal agency (other than the Department of Transportation) for formula or block grants that are eligible to be expended for transportation services.

(6) EXCEPTION.—For purposes of paragraph (2), the prohibition on the use of funds for matching requirements of section 5309(h)(4) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vi)) shall not apply to Federal-aid highway or surface transportation funds that are received by the Secretary.

(7) GRANT REQUIREMENTS.—

(A) IN GENERAL.—A grant recipient under this section to receive funds under section 5307 to the extent the Secretary determines to be appropriate.

(B) CERTIFICATION REQUIREMENTS.—

(A) FUND TRANSFERS.—A grant recipient under this section that transfers funds to a project funded under section 5336 in accordance with subsection (b)(2) shall certify that the project for which the funds are requested has been coordinated with private nonprofit providers of services under this section.

(B) PROJECT SELECTION AND PLAN DEVELOPMENT.—Each grant recipient under this section shall certify that—

(i) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and

(ii) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

(2) ALLOCATIONS TO SUBRECIPIENTS.—Each grant recipient under this section shall certify that allocations of the grants to subrecipients, if any, are distributed on a fair and equitable basis.

(3) STATE PROGRAM OF PROJECTS.—

(A) SUBMISSION TO SECRETARY.—Each State shall annually submit a program of transportation projects to the Secretary for approval with an assurance that the program provides for maximum feasible coordination between transportation services funded under this section and transportation services assisted by other Federal programs.

(B) USE OF FUNDS.—Each State may use amounts made available to carry out this section to provide public transportation services for elderly individuals and individuals with disabilities if such services are included in an approved State program of projects.

(8) LEASING VEHICLES.—Vehicles acquired under this section may be leased to local governmental authorities to improve transportation services designed to meet the needs of elderly individuals and individuals with disabilities.

(9) MEAL DELIVERY FOR HOMEBOUND INDIVIDUALS.—Public transportation service providers receiving assistance under this section or section 5311(c) may coordinate and assist in regularly providing meal delivery service for homebound individuals if the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers.

(B) TRANSFERS OF FACILITIES AND EQUIPMENT.—With the consent of the recipient in possession of a facility or equipment under a grant under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment is not required to be used as required under this section.

(10) FARES NOT REQUIRED.—This section does not require that elderly individuals and individuals with disabilities be charged a fare.

(b) CONFORMING AMENDMENT.—The item relating to section 5310 in the table of sections for chapter 53 is amended to read as follows:

“5310. New freedom for elderly persons and persons with disabilities.”

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

(a) DEFINITIONS.—Section 5311(a) is amended to read as follows:

“5311. Suburban and rural transportation service grants.

(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

(1) RECIPIENT.—The term ‘recipient’ means a State or a public transportation agency.

(2) SUBRECIPIENT.—The term ‘subrecipient’ means a State or local governmental authority, a nonprofit organization, or a private operator of public transportation or intercity bus service that receives Federal transit program grants indirectly through a grantee.”

(b) GENERAL AUTHORITY.—Section 5311(b) is amended—
(I) grants authorized.—Except as provided under paragraph (2), the Secretary may award grants under this section to recipients located in areas other than urbanized areas for—

(A) public transportation capital projects;

(B) operating costs of equipment and facilities for nonemergency transportation; and

(C) the acquisition of public transportation services;

(2) by redesigning paragraph (2) as paragraph (3) by inserting after paragraph (1) the following:

(2) SUBMISSION TO SECRETARY.—Each State shall annually submit the program described in subparagraph (A) to the Secretary.

(3) APPROVAL.—The Secretary may not approve the program unless the Secretary determines that—

(i) the program provides a fair distribution of amounts in the State; and

(ii) the program provides the maximum feasible coordination of public transportation services and shall be consistent with the State comprehensive transportation plan or any other Federal plans or programs.

(3) RURAL TRANSPORTATION ASSISTANCE PROGRAM.

(A) ESTABLISHMENT.—The Secretary shall—

(B) by striking “make” and inserting “use” not more than 2 percent of the amount made available to carry out this section to award; and

(C) by adding at the end the following:

(B) DATA COLLECTION.—

(i) REPORT.—Each grantee under this section shall submit an annual report to the Secretary containing information on capital investment, operations, and service provided with funds received under this section, including—

(I) total annual revenue;

(II) sources of revenue;

(III) total annual operating costs;

(IV) total annual capital costs;

(V) per passenger mile, and related facilities;

(VI) revenue vehicle miles; and

(VII) ridership; and

(ii) by adding after paragraph (2) the following:

(D) OF the amount made available to carry out paragraph (3)—

(A) not more than 15 percent may be used to carry out projects of a national scope; and

(B) any amounts not used under subparagraph (A) shall be allocated to the States.

(c) APPOINTMENTS.—Section 5311(c) is amended to read as follows:

(c) APPOINTMENTS.—

(1) PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(F) of section 5338, the following amounts shall be apportioned for grants to Indian tribes for any purpose eligible under this section, under such terms and conditions as may be established by the Secretary:

(2) in subsection (a) by striking “$8,000,000 for fiscal year 2006.” and inserting “$10,000,000 for fiscal year 2007.”

(3) in subsection (a) by striking “$12,000,000 for fiscal year 2008.” and inserting “$15,000,000 for fiscal year 2009.”

(4) in subsection (a) by striking “$15,000,000 for fiscal year 2009.” and inserting “$18,000,000 for fiscal year 2021.”

(5) in subsection (b) by striking “20 percent shall be apportioned to the States in accordance with paragraph (3); and

(6) by amending paragraph (1) to read as follows:

(1) GRANTS AUTHORIZED.—Except as provided under paragraph (2), the Secretary may award grants under this section—

(A) in general.—Subject to subparagraph (B), each State shall receive an amount that is equal to the amount apportioned under paragraph (1)(A) multiplied by the ratio of the land area in areas other than urbanized areas in that State and divided by the land area in all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population; and

(B) maximum apportionment.—No State shall receive more than 5 percent of the amount apportioned under this paragraph.

(2) TABLE OF SECTIONS.

(A) IN GENERAL.—A project eligible for a grant under this section shall be included in a State program for public transportation service projects as shown in graph (3); and

(B) OPERATING ASSISTANCE.

(i) In general.—The amount made available to carry out projects of a national scope; and

(ii) Exception.—For purposes of paragraphs (1)(B), (2)(A), and (2)(B), the Secretary may authorize a grant for or to a Government agency (other than the Department of Transportation, except for Federal Land Highway funds) that are eligible to be expended for transportation purposes.

(3) USE OF GOVERNMENT GRANT.—A State carrying out a program of operating assistance under this section may not limit the level or extent of use of the Government grant for the payment of operating expenses.

(4) EXCEPTION.—For purposes of paragraph (2)(B), the Secretary may authorize a grant for or to a Government agency (other than the Department of Transportation) if the Secretary finds that such a grant or contract will provide a clear and direct financial benefit to the public transportation system and will be carried out in accordance with paragraph (2)(B) of this section.

(b) by striking “‘§” 5311(f) is amended to read as follows:

5311(f) is amended to read as follows:

(B) maximum apportionment under this section, under such terms and conditions as may be established by the Secretary.

(3) Allocation.—Except as provided under section 409(a)(5)(C)(viii) of the Social Security Act (42 U.S.C. 6093(a)(5)(C)(viii)) shall not apply to Federal or State funds to be used for transportation purposes.

(g) WAIVER CONDITION.—Section 5311(h) is amended by striking “but the Secretary of Labor may waive the provisions of section 5330(i)” and inserting “if the Secretary of Labor utilizes a Special Warranty that provides a fair and equitable arrangement to protect the interests of employees”. 

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

(a) IN GENERAL.—Section 5312 is amended—

(1) by amending subsection (a) to read as follows:

(a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS—

(1) IN GENERAL.—The Secretary may make grants, contracts, cooperative agreements, or other transactions (including agreements with Federal, State, and local government entities, or any combination thereof) or other arrangements for purposes that are determined by the Secretary to have significance to public transportation that the Secretary determines will improve public transportation service or help public transportation service meet the total transportation needs at a minimum cost.

(2) INFORMATION.—The Secretary may request and receive appropriate information from any source.

(3) SAVINGS PROVISION.—This subsection does not limit the authority of the Secretary under any other law:

(4) in subsection (b), as redesignated, by striking “other agreements” and inserting “other transactions”;

(5) in subsection (c), as redesignated, by striking “private” and inserting “public or private”;

(6) in subsection (b), as redesignated, by striking “other agreements” and inserting “other transactions”;

(7) in subsection (c), as redesignated, by striking “private” and inserting “public or private”;

(b) CONFORMING AMENDMENTS.—

(1) SECTION TITLE.—The heading of section 5312 is amended to read:

“S5312. Research, development, demonstration, and deployment projects”.

(2) TABLE OF SECTIONS.—The item relating to section 5312 in the table of sections for chapter 53 is amended to read as follows:

“S5312. Research, development, demonstration, and deployment projects.”

SEC. 6015. TRANSIT COOPERATIVE RESEARCH PROGRAM.

(a) IN GENERAL.—Section 5313 is amended—

(1) by striking subsection (b); and

(2) in subsection (a)—

(A) in paragraph (1), by striking “The amount made available under paragraphs (1) and (2)(ii) of section 5338(c) of this title” and inserting “The amounts made available under subsections (a)(5)(C)(iii) and (b)(2)(G)(i) of section 5338(c)” and

(B) in paragraph (2), by striking “(2)” and inserting the following:

(2) GOVERNMENT ASSISTANCE.—

(3) by amending subsection (c) to read as follows:

(c) GOVERNMENT SHARE.—If there would be a clear and direct financial benefit to an entity receiving a grant or contract financed under this section, the Secretary shall establish a Government share consistent with such benefit.”.

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(b) CONFORMING AMENDMENTS.—
(1) SECTION HEADING.—The heading of section 5313 is amended to read as follows: “§5313. Transit cooperative research program.”
(2) TABLE OF SECTIONS.—The item relating to section 5313 in the table of sections for chapter 53 is amended to read as follows: “§5313. Transit cooperative research program.”

SEC. 6016. NATIONAL RESEARCH PROGRAMS.
(a) IN GENERAL.—Section 5314 is amended—
(1) in subsection (a)—
(A) by amending paragraph (1) to read as follows:

“(1) ADMISSIONS.—An eligible entity shall be eligible to receive a grant under this paragraph if the entity—
(i) meets the requirements of paragraph (1) of section 5315;
(ii) is an agency of a State or unit of local government;
(iii) has a transit system in place which—
(I) is in general, a multi-modal, publicly owned, and operated system; or
(II) is a multi-modal, publicly owned, and operated system which provides services at a subsidy rate; and
(iv) has ongoing efforts to increase the number of trips made by citizens using public transportation services; and
(B) by amending paragraph (2) to read as follows:

“(2) TECHNICAL ASSISTANCE.—The Secretary may award grants for the purpose of providing technical assistance to eligible entities.
(C) by amending paragraph (3) to read as follows:

“(3) USE OF FUNDS.—The Secretary shall use the amounts made available under this paragraph to—
(i) provide technical assistance to eligible entities to—
(I) assist in the development of a transit management system; and
(II) help establish and implement a comprehensive system of bus rapid transit; and
(ii) provide additional grants to support the development and implementation of new travel opportunities for senior citizens, including technologies and services which improve the ease of access to public transportation and advocacy and outreach programs for public transportation users;
(D) by amending paragraph (4) to read as follows:

“(4) ALTERNATIVE FUELS STUDY.—The Secretary shall—
(i) conduct a study of the potential use of alternative fuels in public transportation systems and
(ii) issue a report to the Transportation Committees of the Senate and the House of Representatives on the results of the study.
(E) by amending paragraph (5) to read as follows:

“(5) ADMINISTRATION.—The Secretary shall—
(i) provide for the administration of this section, and
(ii) provide grants to eligible entities for the purpose of increasing the use of alternative fuels in public transportation systems; and
(F) by amending paragraph (6) to read as follows:

“(6) REPORT.—The Secretary shall—
(i) prepare a report to the Congress on the results of the study conducted under this section, and
(ii) submit the report to the Transportation Committees of the Senate and the House of Representatives; and
(G) by amending paragraph (7) to read as follows:

“(7) CONDUCTING OF STUDY.—The Secretary shall conduct a study of the impact of the use of alternative fuels in public transportation systems and

(h) REGULATING.—The Secretary shall—
(i) prepare a report to the Congress on the results of the study conducted under this section, and
(ii) submit the report to the Transportation Committees of the Senate and the House of Representatives.

SEC. 6017. NATIONAL TRANSIT INSTITUTE.
(a) Section 5315 is amended—
(1) in subsection (a)—
(A) by amending paragraph (1) to read as follows:

“(1) ADMISSIONS.—An eligible entity shall be eligible to receive a grant under this paragraph if the entity—
(i) meets the requirements of paragraph (1) of section 5315;
(ii) is an agency of a State or unit of local government;
(iii) has a multi-modal, publicly owned, and operated transit system in place which—
(I) is in general, a multi-modal, publicly owned, and operated system; or
(II) is a multi-modal, publicly owned, and operated system which provides services at a subsidy rate; and
(iv) has ongoing efforts to increase the number of trips made by citizens using public transportation services; and
(B) by amending paragraph (2) to read as follows:

“(2) TECHNICAL ASSISTANCE.—The Secretary may award grants for the purpose of providing technical assistance to eligible entities.
(C) by amending paragraph (3) to read as follows:

“(3) USE OF FUNDS.—The Secretary shall use the amounts made available under this paragraph to—
(i) provide technical assistance to eligible entities to—
(I) assist in the development of a transit management system; and
(II) help establish and implement a comprehensive system of bus rapid transit; and
(ii) provide additional grants to support the development and implementation of new travel opportunities for senior citizens, including technologies and services which improve the ease of access to public transportation and advocacy and outreach programs for public transportation users;
(D) by amending paragraph (4) to read as follows:

“(4) ALTERNATIVE FUELS STUDY.—The Secretary shall—
(i) conduct a study of the potential use of alternative fuels in public transportation systems and
(ii) issue a report to the Transportation Committees of the Senate and the House of Representatives on the results of the study.
(E) by amending paragraph (5) to read as follows:

“(5) ADMINISTRATION.—The Secretary shall—
(i) provide for the administration of this section, and
(ii) provide grants to eligible entities for the purpose of increasing the use of alternative fuels in public transportation systems; and
(F) by amending paragraph (6) to read as follows:

“(6) REPORT.—The Secretary shall—
(i) prepare a report to the Congress on the results of the study conducted under this section, and
(ii) submit the report to the Transportation Committees of the Senate and the House of Representatives.

(g) REGULATING.—The Secretary shall—
(i) prepare a report to the Congress on the results of the study conducted under this section, and
(ii) submit the report to the Transportation Committees of the Senate and the House of Representatives.

SEC. 6018. NATIONAL TRANSPORTATION POLICIES.
(a) Section 5316 is amended—
(1) in subsection (a)—
(A) by amending paragraph (1) to read as follows:

“(1) STUDY.—The Secretary shall conduct a study of the impact of the use of alternative fuels in public transportation systems and

(h) REGULATING.—The Secretary shall—
(i) prepare a report to the Congress on the results of the study conducted under this section, and
(ii) submit the report to the Transportation Committees of the Senate and the House of Representatives.
“(D) found that the project is consistent with official plans for developing the urban area."

“(2) CONTENTS OF NOTICE.—Notice of a hearing under this subsection—

“(A) shall be in concise description of the proposed project; and

“(B) shall be published in a newspaper of general circulation in the geographic area the project will serve;”.

“(3) by amending subsection (e) to read as follows—

“(e) NEW TECHNOLOGY.—A grant for financial assistance under this chapter for new technology, including innovative or improved products, techniques, or methods, shall be subject to the requirements of section 5309 to the extent the Secretary determines to be appropriate.”;

“(4) in subsection (f) —

“(A) by striking “(1)” and inserting the following—

“(1) IN GENERAL.—;

“(B) by striking paragraph (2); and

“(C) by striking “This subsection” and inserting the following—

“(2) EXCEPTIONS.—This subsection; and

“(D) by adding at the end the following—

“(3) PENALTY.—If the Secretary determines that an applicant, governmental authority, or publicly owned operator has violated the agreement required under paragraph (1), the Secretary shall determine, at its discretion, that the operator is due to find that the project is consistent with federal law and regulation, and shall issue an order for the operator to cease and desist from violating the agreement."

“(5) in subsection (g), by striking “103(e)(4)” and 142(a) and (c) each place it appears and inserting “133 and 142”;

“(6) by amending subsection (h) to read as follows—

“(h) TRANSFER OF LANDS OR INTERESTS IN LANDS OWNED BY THE UNITED STATES.—

“(1) REQUEST BY SECRETARY.—If the Secretary determines that any part of the lands or interests in lands owned by the United States and made available as a result of a military base closure is necessary for transit purposes eligible under this chapter, including corridor preservation, the Secretary shall submit a request to the head of the Federal agency supervising the administration of such lands or interests in lands. Such request shall include a map showing the portion of such lands or interests in lands, which is desired to be transferred for public transportation purposes.

“(2) TRANSFER OF LAND.—If 4 months after submitting a request under paragraph (1), the Secretary does not receive a response from the Federal agency described in paragraph (1), the Secretary may transfer to the head of the Federal agency described in paragraph (1) the portion of such lands or interests in lands is contrary to the public interest or inconsistent with the purposes for which such land has been reserved, or if the head of such agency agrees to the utilization or transfer under conditions necessary for the adequate protection and utilization of the reserve, such land or interests in land may be utilized or transferred to a State, local governmental authority, or public transportation operator for such purposes and subject to the conditions specified by such agency.

“(3) REIMBURSEMENT.—If the Secretary finds that the project is consistent with federal law and regulation, and shall issue an order for the operator to cease and desist from violating the agreement."

“(4) the property owner can demonstrate

“(A) the property owner can demonstrate

“(B) by amending paragraph (9) to read as follows—

“(9) in subsection (m), by adding at the end the following—

“(p) BOND PROCEEDS ELIGIBLE FOR LOCAL SHARE.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, a recipient of assistance under section 5307 or 5309, may use the proceeds from the issuance of revenue bonds as part of the local matching funds for the project."

“(2) REIMBURSEMENT BY SECRETARY.—The Secretary may reimburse an eligible recipient for deposits of bond proceeds in a bank service required to the recipient pursuant to section 5302(a)(1)(K) from amounts made available to the recipient under section 5307 or 5309."

“(3) PROHIBITED USE OF FUNDS.—Grant funds received under this chapter may not be used to pay ordinary governmental or nonproject operating expenses.”.

“SEC. 6023. SPECIAL PROVISIONS FOR CAPITAL PROJECTS.

“(a) IN GENERAL.—Section 5324 is amended to read as follows:

“$5324. Special provisions for capital projects

“(a) REAL PROPERTY AND RELATION SERVICES.—Whatever real property is acquired or furnished as a required contribution incident to a project, the Secretary shall not approve the application for financial assistance unless the applicant has made all payments and provided all assistance and assurances that are required of a State agency under sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition for Uniformed Services Act of 1991 (42 U.S.C. 4620 and 4625). The Secretary must be advised of specific references to any State law that are believed to be an exception to section 301 or 305 of the Uniform Relocation Assistance and Real Property Acquisition for Uniformed Services Act of 1991 (42 U.S.C. 4620 and 4625).

“(b) ADVANCE REAL PROPERTY ACQUISITIONS.—

“(1) IN GENERAL.—The Secretary may participate in the acquisition of real property for any project that may use the property if the Secretary determines that external market forces are jeopardizing the potential use of the property for the project and if—

“(A) there are offers on the open real estate market to convey that property for a use that is incompatible with the purpose for which the property was acquired; and

“(B) there is an imminent threat of development or redevelopment of the property for a use that is incompatible with the project under study.

“(2) environmental reviews reflect a rapid increase in the fair market value of the property.

“(3) the property, because it is located near an existing transportation facility, is likely to be developed and to be needed for a future transportation improvement; or

“(D) the property owner can demonstrate that, for health, safety, or financial reasons, retaining ownership of the property poses an undue hardship on the owner in comparison to other affected property owners and requests the assistance to allow the transfer of ownership.

“(2) ENVIRONMENTAL REVIEWS.—Property acquired in accordance with this subsection may...
not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

(3) LIMITATION.—The Secretary shall limit the size of any project under this chapter acquired under this subsection as necessary to avoid any prejudice to the Secretary's objective evaluation of project alternatives.

(4) EXEMPTION.—An acquisition under this section shall be considered an exempt project under section 176 of the Clean Air Act (42 U.S.C. 7506).

(a) RAILROAD CORRIDOR PRESERVATION.—

(1) IN GENERAL.—The Secretary may support a railroad right-of-way before it is condemned by the Secretary. In carrying out section 5301(e), the Secretary shall accept indirect cost rates established in accordance with the Federal Acquisition Regulation.

(b) CONFORMING AMENDMENT.—The item relating to section 5324 in the table of sections for chapter 53 is amended to read as follows:—

“5324. Special provisions for capital projects.”

SEC. 6024. CONTRACT REQUIREMENTS.

(a) IN GENERAL.—Section 5325 is amended to read as follows:

“§ 5325. Contract requirements

(1) COMPETITION.—Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.

(b) ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.—

(1) IN GENERAL.—A contract or requirement for program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural engineering, surveying, mapping, or related services for a project for which Federal assistance is provided under this chapter shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under section 106(b)(1) of title 40, or an equivalent qualifications-based requirement of a State. This subsection does not apply to the extent a State has adopted or adopts by law a formal procedure for procuring these services.

(c) ADDITIONAL REQUIREMENTS.—When awarding a contract described in paragraph (1), recipients of assistance under this chapter shall comply with the following:

(1) Any contract or subcontract awarded under this chapter shall be performed and audited in compliance with cost principles contained in Subpart 1 of Part 101 of Title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation).

(2) A recipient of funds under a contract or subcontract described in paragraph (1) shall accept indirect cost rates established in accordance with the Federal Acquisition Regulation for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

(3) A recipient of funds under a contract or subcontract described in paragraph (1) shall accept all data described in subparagraph (4) below, and the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, and shall not be limited by administrative or de facto ceilings.

(4) A recipient requesting or using the cost and rate data described in subparagraph (C) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided by the recipient to any other party or group of persons described in subparagraph (A) of this section.

(5) EFFICIENT PROCUREMENT.—A recipient may award a procurement contract under this chapter to the lowest qualified offeror that meets all applicable minimum qualifications and other technical and price requirements established by the Secretary. The award shall be made in accordance with the Federal Acquisition Regulation.

(6) DESIGN-BUILD PROJECTS.—

(1) DEFINED TERM.—As used in this subsection, the term design-build project has the meaning given the term in section 102 of the Federal Acquisition Regulation.

(2) A recipient entering into a design-build project shall be limited to design-build projects that meet specific performance criteria and may include an option to finance, or operate for a period of time, the system or segment of a public transportation system that meets specific performance criteria and may include an option to finance, or operate for a period of time, the system or segment of a public transportation system that meets specific performance criteria.

(d) CONSIDERATION OF ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.

(1) IN GENERAL.—As used in this subsection, the term consideration of economic, social, and environmental interests has the meaning given the term in section 102 of the Federal Acquisition Regulation.

(e) ROLLING STOCK.

(1) A recipient of financial assistance under this chapter may enter into a contract to expend that assistance to acquire rolling stock—

(A) with a party selected through a competitive procurement process; or

(B) based on—

(i) initial capital costs; or

(ii) performance, standardization, life cycle costs, and other factors.

(2) MULTIYEAR CONTRACTS.—A recipient procuring rolling stock with Federal financial assistance under this chapter may make multiple-year contracts, including options, to buy not more than 5 years of requirements for rolling stock and replacement parts. The Secretary shall make a contract or an agreement by which the recipient agrees to act on a competitive basis to procure rolling stock under this paragraph and in accordance with other Federal procurement requirements.

(f) EXAMINATION OF RECORDS.

(1) IN GENERAL.—The Secretary shall cooperate with the applicant in the review and analysis of data and information for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, and shall not be limited by administrative or de facto ceilings.

(g) A recipient of financial assistance under this chapter may not be used to support a procurement that uses an exclusionary or discriminatory specification.

(h) B US DEALER REQUIREMENTS.

(1) IN GENERAL.—Federal financial assistance under this chapter may not be used to support a procurement that uses an exclusionary or discriminatory specification.

SEC. 6025. PROJECT MANAGEMENT OVERSIGHT AND REVIEW.

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—Section 5327(a) is amended—

(1) in paragraph (1)(A), by striking “and” by inserting “of” at the end; and

(2) in paragraph (12), by striking the period at the end and inserting “last.”

(b) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—Section 5327(c) is amended—

(1) by amending paragraph (1) to read as follows:

“(1) IN GENERAL.—The Secretary may not use more than 1 percent of amounts made available for a fiscal year to carry out any of sections 5307 through 5311, 5316, or 5317, or a project under the National Capital Transportation Act of 1969 (Public Law 91-143) to make a contract to oversee the construction of major projects under any of sections 5307 through 5311, 5316, or 5317; and

(2) in paragraph (2)—

(A) by striking “(b)” and inserting the following:—

“(b) OTHER ALLOWABLE USES.—;” and

(B) by inserting “and security” after “safe-

ty.”

SEC. 6026. PROJECT REVIEW.

Section 5328 is amended—

(a) in subsection (a)—

(A) in paragraph (1) by striking “When the Secretary of Transportation authorizes a new-

(b) in paragraph (2)—

(B) by striking “and” inserting the follow-

(c) in paragraph (3)—

(D) by striking “(i)” and inserting the fol-

SEC. 6027. INVESTIGATIONS OF SAFETY AND SECURITY RISK.

(a) IN GENERAL.—Section 5329 is amended to read as follows:

“§ 5329. Investigation of safety hazards and security risks

(a) IN GENERAL.—The Secretary may conduct investigations into safety hazards and security risks that are associated with a condition in equipment, a facility, or an operation financed under this chapter to establish the nature and extent of the risk and how to eliminate, mitigate, or correct it.

(b) SUBMISSION OF CORRECTIVE PLAN.—If the Secretary determines that due to a condition in equipment, a facility, or an operation financed under this chapter, the Secretary shall require the local government to take corrective action to eliminate or reduce the risk, the Secretary shall require the local government to take corrective action to eliminate or reduce the risk.
this chapter to submit a plan for eliminating, mitigating, or correcting it.

‘‘(c) WITHHOLDING OF FUNDS.—Financial assistance under this chapter, in an amount to be determined by the Secretary, may be withheld until a plan is approved and carried out.

‘‘(d) PUBLIC TRANSPORTATION SECURITY.—

‘‘(1) IN GENERAL.—Not later than 90 days after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall enter into a memorandum of understanding with the Secretary of Homeland Security to define and clarify the respective roles and responsibilities of the Department of Transportation and the Department of Homeland Security relating to public transportation security.

‘‘(2) CONTENTS.—The memorandum of understanding described in paragraph (1) shall—

‘‘(A) establish national security standards for public transportation agencies;

‘‘(B) establish funding priorities for grants from the Department of Homeland Security to public transportation agencies;

‘‘(C) create a mechanism of coordination with public transportation agencies on security matters; and

‘‘(D) address any other issues determined to be appropriate by the Secretary and the Secretary of Homeland Security.’’.

(b) CONFORMING AMENDMENT.—The item relating to the table of sections for chapter 53 is amended to read as follows:

"§ 5329. Investigation of safety hazards and security risks.”.

SEC. 6028. STATE SAFETY OVERSIGHT.

(a) IN GENERAL.—Section 5330 is amended—

(1) by adding the heading to read as follows:

"§ 5330. Withholding amounts for noncompliance with State safety oversight requirements."

(2) by adding subsection (a) to read as follows:

"(a) APPLICATION.—This section shall only apply to public transportation agencies.

(1) States that have rail fixed guideway public transportation systems that are subject to regulation by the Federal Railroad Administration;

(2) States that are designing rail fixed guideway public transportation systems that will not be subject to regulation by the Federal Railroad Administration;

(3) in subsection (d), by striking “affected States” and inserting the following: “affected States”;

(1) shall ensure uniform safety standards and enforcement; or

(2);” and

(4) in subsection (i), by striking “Not later than December 18, 1992, the” and inserting “The”.

(b) CONFORMING AMENDMENT.—The item relating to section 5330 in the tables of sections for chapter 53 is amended to read as follows:

"§ 5330. Withholding amounts for noncompliance with State safety oversight requirements.”.

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

(a) IN GENERAL.—Section 1993 of title 18, United States Code, is amended—

(1) by striking “mass” each place it appears and inserting “public”;

(2) in subsection (a)(5), by inserting “controlling,” after “operating” and;

(3) in subsection (c)(5), by striking “5302(a)(7) of title 49, United States Code,” and inserting “5302(a) of title 49.”

(b) CONFORMING AMENDMENT.—The table of contents for section 97 of title 18, United States Code is amended by adding the item related to section 97 as follows:

“1993. Terrorist attacks and other acts of violence against public transportation systems.”.

SEC. 6030. CONTROLLED SUBSTANCES AND ALCOHOL MISUSE TESTING.

Section 5331 is amended—

(1) in subsection (a)(5), by inserting before the period at the end the following: ‘‘or sections 2309a, 7011(f), and 7032(e) of title 46. The Secretary may also decide that a form of public transportation system is adequately, for employee alcohol and controlled substances testing purposes, under the alcohol and controlled substance statutes or regulations of an agency within the Department of Transportation or other Federal agency;” and

(2) in subsection (f), by striking paragraph (3).

SEC. 6031. EMPLOYEE PROTECTIVE ARRANGE-

ments for Formula Grants.

Section 5335 is amended—

(1) by deleting subsection (d), and

(2) by redesignating subsections (a) through (c) as subsections (b) through (d), respectively;

(3) by redesignating subsection (i) as (i) and (j) respectively;

(4) by adding before subsection (b), as redesignated, the following:

“(a) APPORTIONMENTS.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(vi) and (b)(2)(L) of section 5307—

(1) there shall be apportioned, in fiscal years 2006 and each fiscal year thereafter, $35,000,000 to certain urbanized areas with populations of between 200,000 and 500,000 in accordance with subsection (k); and

(2) any amount not apportioned under paragraph (1) shall be apportioned to urbanized areas in accordance with subsections (b) through (d).”;

(5) in subsection (b), as redesignated—

(A) by striking “Of the amount made available or appropriated under section 5338(a) of this title” and inserting “Of the amount appropriated under subsection (a)(5)”; and

(B) in paragraph (2), by striking “subsections (b) and (c) of this section” and inserting “subsections (c) and (d)”;

(6) in subsection (c)(2), as redesignated, by striking “subsection (a) of this section” and inserting “subsection (b)(2)”;

(7) in subsection (d), as redesignated, by striking “subsection (a)(2) of this section” and inserting “subsection (b)(2)”;

(8) in subsection (e)(1), by striking “subsections (a) and (h)(2) of section 5338 of this title” and inserting “subsections (a) and (b) of section 5338.”;

(9) in subsection (g), by striking “subsection (a)(1) of this section” each place it appears and inserting “subsection (b)(1)”;

and

(10) by adding at the end the following:

“(f) SMALL TRANSIT INTENSIVE CITIES FACTORS.—The amount apportioned under subsection (a)(1) shall be apportioned to urbanized areas in accordance as follows:

(1) The Secretary shall calculate a factor equal to the sum of revenue vehicle hours operated within urbanized areas with a population of between 200,000 and 1,000,000 divided by the sum of the population of all such urbanized areas.

(2) The Secretary shall designate as eligible for an apportionment under paragraph (1) any urbanized areas with a population of under 200,000 for which the number of revenue vehicle hours operated within the urbanized area divided by the population of the urbanized area exceeds the factor calculated under paragraph (1).

(3) For each urbanized area qualifying for an apportionment under paragraph (2), the Secretary shall calculate an amount equal to the difference between the number of revenue vehicle hours within that urbanized area less the amount calculated in paragraph (3).
“(5) Each urbanized area qualifying for an apportionment under paragraph (2) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for that urbanized area under paragraph (4) divided by the sum of the amounts calculated under paragraph (4) for all urbanized areas qualifying for an apportionment under paragraph (2).

“(6) STUDY ON INCENTIVES IN FORMULA PROGRAMS.—

“(1) STUDY.—The Secretary shall conduct a study to assess the feasibility and appropriateness of developing and implementing an incentive funding system under sections 5307 and 5311 for apportionment of public transportation.

“(2) REPORT.—

“(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall submit a report on the results of the study conducted under paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

“(B) CONTENTS.—The report submitted under subparagraph (A) shall include—

“(i) an analysis of the availability of appropriate measures to be used as a basis for the distribution of incentive payments;

“(ii) the optimal number and size of any incentive programs;

“(iii) what incentives systems should compete for various incentives;

“(iv) how incentives should be distributed; and

“(v) the likely effects of the incentive funding system.

SEC. 6035. APPORTIONMENTS FOR FIXED GUIDEWAY MODERNIZATION.

Section 5337 is amended—

(1) in subsection (a), by striking ‘‘for each of fiscal years 1994 through 2003’’ and substituting ‘‘for each of fiscal years 1998 through 2003’’; and

(2) in subsection (c)(2)(A), each place it appears and inserting ‘‘section 5362(c)(3)(A)’’.

SEC. 6036. AUTHORIZATIONS.

Section 5338 is amended to read as follows:

‘‘§5338. Authorizations

‘‘(a) FISCAL YEAR 2005.—

‘‘(1) FORMULA GRANTS.—

‘‘(A) TRUST FUND.—For fiscal year 2005, $3,499,927,776 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5309, 5310, and 5311 of this chapter and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

‘‘(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $15,500,000 for fiscal year 2005 to carry out section 5307 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5309 note).

‘‘(C) CAPITAL PROGRAM GRANTS.—

‘‘(A) TRUST FUND.—For fiscal year 2005, $2,898,100,224 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309.

‘‘(B) GENERAL FUND.—In addition to the amounts made available under paragraph (A), there are authorized to be appropriated $414,014,176 for fiscal year 2005 to carry out section 5309.

‘‘(4) PLANNING.—

‘‘(A) TRUST FUND.—For fiscal year 2005, $63,304,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5308.

‘‘(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $9,052,000 for fiscal year 2005 to carry out section 5308.

‘‘(5) RESEARCH.—

‘‘(A) TRUST FUND.—For fiscal year 2005, $47,740,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

‘‘(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $4,811,150 for fiscal year 2005 to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

‘‘(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

‘‘(i) 82.72 percent shall be allocated for metropolitan planning agencies under section 5306(c); and

‘‘(ii) 11.78 percent shall be allocated for State planning under section 5306(d).

‘‘(6) UNIVERSITY TRANSPORTATION RESEARCH.—

‘‘(A) TRUST FUND.—For fiscal year 2005, $5,208,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

‘‘(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $949,989,824 for fiscal year 2005 to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

‘‘(C) ALLOCATION OF FUNDS.—Of the funds made available or appropriated under this paragraph—

‘‘(i) not less than $3,968,000 shall be available to carry out Programs of the National Transit Institute under section 5315;

‘‘(ii) not less than $2,080,000 shall be available to carry out section 5311(b)(2);

‘‘(iii) not less than $8,184,000 shall be available to carry out section 5312; and

‘‘(iv) the remainder shall be available to carry out national research and technology programs under sections 5312, 5314, and 5322.

‘‘(7) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under paragraph (1) for each fiscal year—

‘‘(A) 0.92 percent shall be available for grants to the Alaska Railroad for improvements to its passenger operations under section 5307.

‘‘(B) 1.75 percent shall be available to carry out section 5308.

‘‘(C) 2.65 percent shall be available to provide financial assistance for job access and reverse commute projects under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note).

‘‘(D) 0.125 percent shall be available to carry out section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

‘‘(E) 0.25 percent shall be available to provide financial assistance for other than urbanized areas under section 5311.

‘‘(F) 0.88 percent shall be available to carry out the grant programs under section 3033, the National Transportation Institute under section 5313, the National Transit Institute under section 5315, university research centers under section 5356, and national research programs under sections 5312, 5313, 5314, and 5322, of which—

‘‘(i) 17.0 percent shall be allocated to carry out transit cooperative research programs under section 5316.

‘‘(ii) 7.5 percent shall be allocated to carry out transit cooperative research programs under the National Transit Institute.
under section 5315, including not more than $1,000,000 to carry out section 5315(a)(16); “(iii) 11.0 percent shall be allocated to carry out the university centers program under section 5355; “(iv) any funds made available under this subparagraph that are not allocated under clauses (i) through (iii) shall be allocated to carry out programs under sections 5312, 5313, 5314, and 5322; “(H) $25,000,000 shall be available for each of the fiscal years 2006 through 2009 to carry out section 5316; “(I) there shall be available to carry out section 5335— “(1) $1,900,000 in fiscal year 2006; “(ii) $2,200,000 in fiscal year 2007; “(iii) $2,500,000 in fiscal year 2008; and “(iv) $2,800,000 in fiscal year 2009; “(J) 6.25 percent shall be allocated in accordance with section 5340 to provide financial assistance for urbanized areas under section 5307 and other than urbanized areas under section 5311; and “(K) 22.0 percent shall be allocated in accordance with section 5327 to provide financial assistance under section 5306(c); and “(L) any amounts not made available under subparagraphs (A) through (K) shall be allocated in accordance with section 5336 to provide financial assistance for urbanized areas under section 5307. “(3) UNIVERSITY CENTERS PROGRAM.— “(A) In addition to the amounts allocated under paragraph (2)(G)(ii), $1,000,000 shall be available in each of the fiscal years 2006 through 2009 for Morgan State University to provide transportation research, training, and curriculum development. “(B) REQUIREMENTS.—The university specified under subparagraph (A) shall be considered a University Transportation Center under section 510 of title 23, and shall be subject to the requirements under subsections (c), (d), (e), and (f) of such section. “(C) REPORT.—In addition to the report required under section 510(e)(3) of title 23, the university specified under subparagraph (A) shall annually submit a report to the Secretary that describes the university’s contribution to public transportation. “(4) BUS GRANTS.—In addition to the amounts made available under paragraph (1), there shall be available from the Mass Transit Account of the Highways Trust Fund to carry out section 5309(h)(2)(B)— “(A) $844,101,000 for fiscal year 2006; “(B) $899,078,000 for fiscal year 2007; “(C) $975,823,000 for fiscal year 2008; and “(D) $1,037,552,000 for fiscal year 2009. “(5) INVESTMENT GRANTS.—“There are authorized to be appropriated to carry out section 5309(h)(2)(A)— “(1) $1,503,299,000 for fiscal year 2006; “(2) $1,565,307,000 for fiscal year 2007; “(3) $1,697,661,000 for fiscal year 2008; and “(4) $1,805,057,000 for fiscal year 2009. “(6) ADMINISTRATION.—“There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334— “(1) $89,000,000 for fiscal year 2006; “(2) $95,000,000 for fiscal year 2007; “(3) $100,507,000 for fiscal year 2008; and “(4) $106,865,000 for fiscal year 2009. “(7) ELIGIBLE AMOUNTS.—“Grants as contractual obligations. “(8) DUTIES AND RESPONSIBILITIES.—“(A) MASS TRANSIT ACCOUNT FUNDS.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (b) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project. “(B) APPROPRIATED FUNDS.—A grant or contract entered into after January 1, 1999, that is financed with amounts made available under subsection (c) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project to the extent that amounts are appropriated in advance for such purpose by an Act of Congress. “(9) AVAILABILITY OF AMOUNTS.—“Amounts made available by or appropriated under subsection (b) and (c) shall remain available until expended.” SEC. 6037. APPORTIONMENTS BASED ON GROWING STATES FORMULA FACTORS. (a) IN GENERAL.—Chapter 53 is amended by adding at the end the following: “§5340. Appointments based on growing States and high density State formula factors— “(a) DEFINITION.—In this section, the term ‘State’ shall mean each of the 50 States of the United States. “(b) ALLOCATION.—Of the amounts made available for each fiscal year section 5338(b)(2)(I), the Secretary shall apportion— “(1) an amount equal to the difference between the total population of the State less the amount calculated in paragraph (2); “(2) STATE APPORTIONMENT FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the difference between the total population of the State less the amount calculated in paragraph (2); “(3) STATE APPORTIONMENT.—Each State qualifying for an apportionment under paragraph (1) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for the State under paragraph (3) divided by the sum of the amounts calculated under paragraph (3) for all States qualifying for an apportionment under paragraph (1). “(4) APPOINTMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.— “(a) IN GENERAL.—The Secretary shall apportion amounts apportioned to each State under paragraph (4) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the population of all urbanized areas in that State divided by the total population of all urbanized areas in that State; “(b) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (a) shall be apportioned to that State and added to the amount made available for grants under section 6038. “(5) APPOINTMENTS AMONG URBANIZED AREAS IN EACH STATE.—“The Secretary shall apportion amounts made available to urbanized areas in each State under section 5336, and made available for grants under section 5307.”. “(b) CONFORMING AMENDMENT.—The table of sections for chapter 53 is amended by adding at the end the following: “5340. Appointments based on growing States and high density State formula factors.”. SEC. 6038. JOB ACCESS AND REVERSE COMMUTE GRANTS. Section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note) is amended— (1) in subsection (h)— “(A) in paragraph (1)— “(i) by striking ‘means an individual’ and inserting the following: ‘means—’; “(ii) by striking ‘an individual’ and inserting ‘an individual’; and “(iii) by striking the period at the end and inserting ‘;’; “(B) an individual who is eligible for assistance under the State program of Temporary Assistance to Needy Families funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) in the State in which the recipient of a grant under this section is located. ‘; and “(C) in paragraph (2), by striking ‘development’ of each place it appears and inserting ‘development and provision’ of”; (2) in subsection (i), by amending paragraph (2) to read as follows: “(2) COORDINATION.— “(A) IN GENERAL.—The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies. “(B) CERTIFICATION.—A recipient of funds under this section shall certify that— “(i) the project has been derived from a locally developed, coordinated public transit human services transportation plan; and “(ii) the plan was developed through a process that included representatives of public, private, for-profit and nonprofit transportation and human services providers and participation by the public.”.
(b) FUNDING.—Section 3038(g) of the Federal Transit Act of 1998 (49 U.S.C. 5310 note) is amended to read as follows:

"SEC. 3038. OVER-THE-Road BUS ACCESSIBILITY PROGRAM.

(a) SECTION HEADING.—The section heading for section 3038 of the Federal Transit Act of 1998 (49 U.S.C. 5310 note) is amended to read as follows:

"SEC. 3038. Over-the-road bus accessibility program.

(b) FUNDING.—Section 3038(g) of the Federal Transit Act of 1998 (49 U.S.C. 5310 note) is amended to read as follows:

"(g) FUNDING.—Of the amounts made available for each fiscal year under subsections (1) and (2) of section 5306 of title 49, United States Code, there shall be available—

(1) 75 percent shall be available, and shall remain available until expended, for operators of over-the-road buses, used substantially or exclusively in intercity bus service, to finance the incremental capital and training costs of the Department of Transportation’s final rule regarding accessibility of over-the-road buses; and

(2) 25 percent shall be available, and shall remain available until expended, for operators of over-the-road buses used in the delivery of public transportation services to people with disabilities or elderly people, in accordance with this section.

(c) ALTERNATIVE TRANSPORTATION.—The term ‘alternative transportation’ means transportation, including sightseeing service, that is open to the general public, including—

(A) a unit of the National Park System;

(B) a unit of the National Wildlife Refuge System;

(C) a recreational area managed by the Bureau of Land Management; and

(D) a recreation area managed by the Bureau of Reclamation.

(d) FUNDING.—The funds provided under subsection (b) and (c) shall be available for each fiscal year under sections 3038 and 3039 of the Federal Transit Act of 1998 (49 U.S.C. 5310, 5319 note) and shall be subject to all of the terms and conditions to which a grant awarded under section 5307 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

(e) LIMITATION ON USE OF AVAILABLE AMOUNTS.—In general.—The Secretary, in consultation with the Secretary of the Interior, may use not more than 10 percent of the amount made available for a fiscal year under section 5338(b)(2)(H) to carry out planning, research, technical assistance, and evaluation of this section, including the development of technology appropriate for use in a qualified project.

(f) PLANNING PROCESS.—In undertaking a qualified project under this section—

(A) the qualified participant is a Federal land management agency; or

(B) the qualified participant is a State, local governmental authority, or more than one State or local governmental authority.

(g) PLANNING PROCESS.—In the case of a qualified project that is at a unit of the National Park System, the planning process shall be consistent with the general management plans of the unit of the National Park System.

(h) COST SHARING.—The Secretary, in cooperation with the Secretary of the Interior, shall establish the agency share of net cost project to be provided under this section to a qualified participant.
“(A) visitation levels and the revenue derived from user fees in the eligible area in which the qualified project is carried out; 

(B) the extent to which the qualified participant and any other public or governmental authority or private entity engaged in public transportation;

(C) private investment in the qualified project, including the provision of contract services, joint development activities, and the use of innovative financing mechanisms;

(D) the clear and direct benefit to the qualified participant; and

(E) any other matters that the Secretary considers appropriate to carry out this section.

(3) Any other provision of law, Federal funds appropriated to any Federal land management agency may be counted toward the non-agency share of the net project cost of a qualified project.

(g) SELECTION OF QUALIFIED PROJECTS.—

“(1) The Secretary of the Interior, after consultation with and in cooperation with the Secretary, shall determine the final selection and funding of an annual program of qualified projects in accordance with this section.

(2) In determining whether to include a project in a program of qualified projects, the Secretary of the Interior shall consider—

(A) the justification for the qualified project, including, but not limited to, to what extent the qualified project would conserve resources, prevent or mitigate adverse impact, and enhance the environment;

(B) the location of the qualified project, to ensure that the selected qualified projects—

(i) are geographically diverse nationwide; and

(ii) include qualified projects in eligible areas located in both urban areas and rural areas;

(C) the size of the qualified project, to ensure that there is a balanced distribution;

(D) plans and specifications in the same manner as other provision of law; and

(E) any other matters that the Secretary considers appropriate, to carry out this section, including—

(i) visitation levels;

(ii) benefits of innovative financing or joint development strategies; and

(iii) coordination with gateway communities.

(h) QUALIFIED PROJECTS CARRIED OUT IN ADVANCE.—

(1) When a qualified participant carries out any part of a qualified project without assistance under this section in accordance with all applicable procedures and requirements, the Secretary, in consultation with the Secretary of the Interior, may pay the share of the net capital project cost of a qualified project if—

(A) the qualified participant applies for the payment;

(B) the Secretary approves the payment; and

(C) before carrying out that part of the qualified project, the Secretary approves the plans and specifications in the same manner as plans and specifications are approved for other projects assisted under this section.

(2) The cost of carrying out part of a qualified project under paragraph (1) includes the amount of interest earned and payable on bonds issued by a public or local governmental authority, to the extent that proceeds of the bond are expended in carrying out that part.

(B) the rate of interest under this paragraph may not exceed the most favorable rate reasonably available for the qualified project at the time of borrowing.

(C) The qualified participant shall certify, in a manner satisfactory to the Secretary, that the qualified participant has exercised reasonable diligence in seeking the most favorable interest rate.

(1) RELATIONSHIP TO OTHER LAWS.—

(1) SECTION 5307.—A qualified participant under this section is subject to the requirements of sections 5307 and 5333(a) to the extent the Secretary determines to be appropriate.

(2) OTHER REQUIREMENTS.—A qualified participant under this section is subject to any other terms, conditions, requirements, and provisions that the Secretary determines to be appropriate, including the requirements for the distribution of proceeds on disposition of real property and equipment resulting from a qualified project assisted under this section.

(2) PROJECT MANAGEMENT PLAN.—If the amount of assistance anticipated to be required for a qualified project under this section is not less than $25,000,000—

(A) the qualified participant shall, to the extent the Secretary considers appropriate, be carried out through a full funding grant agreement, in accordance with section 5306(a); and

(B) the qualified participant shall prepare a project management plan in accordance with section 5307(a).

(i) ASSET MANAGEMENT.—The Secretary, in consultation with the Secretary of the Interior, may transfer the interest of the Department of Transportation or other term, condition, or requirement associated with the qualified participant for use and disposition in accordance with any property management regulations that the Secretary determines to be appropriate.

(ii) COORDINATION OF RESEARCH AND DEPLOYMENT OF NEW TECHNOLOGIES—

(A) The Secretary, in cooperation with the Secretary of the Interior, may undertake, or make grants, cooperative agreements, contracts (including agreements with departments, agencies, and instrumentalities of the Federal Government) or other transactions for research, development, and deployment of new technologies in eligible areas.

(B) the Secretary may request and receive appropriate information from any source.

(3) The Secretary, in cooperation with the Secretary of the Interior, may enter into contracts or other transactions under paragraph (1) shall be awarded from amounts allocated under subsection (c)(1).

(i) INNOVATIVE FINANCING.—A qualified project receiving financial assistance under this section shall be eligible for funding through a state infrastructure bank or other innovative financing mechanism available to finance an eligible project under this chapter.

(3) REPORTS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, shall annually submit a report on the allocation of amounts made available to assist qualified projects under this section to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Transportation and Infrastructure of the House of Representatives.

(2) ANNUAL AND SUPPLEMENTAL REPORTS.—The report required under paragraph (1) shall be included in the report submitted under section 5306(m).

(3) CONFORMING AMENDMENTS—The table of contents for chapter 53 is amended as follows:

SEC. 6041. OBLIGATION CEILING.

Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Mass Transit Account of the Highway Trust Fund Fund by, and amounts appropriated under subsections (a) through (c) of section 5338 of title 49, United States Code, shall not exceed—

(1) $7,864,328,000 for fiscal year 2005;

(2) $8,900,000,000 for fiscal year 2006; and

(3) $9,267,464,000 for fiscal year 2007;

(4) $10,050,700,000 for fiscal year 2008; and

(5) $10,686,500,000 for fiscal year 2009.


(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall reduce the total apportionments and allocations made for fiscal year 2005 to each grant recipient under section 5338 of title 49, United States Code, by the amount apportioned to that recipient pursuant to section 8 of the Surface Transportation Extension Act of 2004 for fiscal year 2005.

(b) FIXED GUIDeway MODERNIZATION ADJUSTMENT.—In making the apportionments described in subsection (a), the Secretary shall adjust the amounts apportioned for each urbanized area for fixed guideway modernization to reflect the apportionment method set forth in section 5337(a) of title 49, United States Code.

SEC. 6043. DISADVANTAGED BUSINESS ENTERPRISE.

Section 1821(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 shall apply to all funds authorized or otherwise made available under this title.

SEC. 6044. TRANSIT PASS TRANSPORTATION FRINGE BENEFITS.

(a) TRANSIT PASS TRANSPORTATION FRINGE BENEFITS STUDY.—

(1) STUDY.—The Secretary of Transportation shall conduct a study on tax-free transit benefits and ways to promote increased use of transit and increased usage of such benefits, at Federal agencies in the National Capital Region, including agencies not currently offering the benefit.

(2) CONTENT.—The study under this subsection shall include—

(A) an examination of how agencies offering the benefit make it available to their employees, including examples of best practices; and

(B) an analysis of the impact of Federal employees’ use of transit on traffic congestion and pollution in the National Capital Region.

(3) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit a report to Congress on the results of the study under this subsection.

(b) AUTHORITY TO USE GOVERNMENT VEHICLES TO TRANSPORT FEDERAL EMPLOYEES BETWEEN THEIR PLACE OF EMPLOYMENT AND MASS TRANSIT FACILITIES.—

(1) IN GENERAL.—Section 1344 of title 31, United States Code, is amended—

(A) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(B) by inserting after subsection (f) the following:

“(i) A passenger carrier may be used to transport an officer or employee of a Federal agency between the employee’s place of employment and a mass transit facility (whether or not publicly owned) in accordance with succeeding provisions of this subsection.

(2) (A) Notwithstanding any provision of law, a Federal agency that provides transportation services under this subsection (including passenger carrier) shall absorb the costs of such services using any funds available to such agency, whether by appropriation or otherwise.

(B) In carrying out this subsection, a Federal agency shall—

(i) to the maximum extent practicable, use alternative fuel vehicles to provide transportation services;
TITLE VII—SURFACE TRANSPORTATION SAFETY IMPROVEMENT

SEC. 7001. SHORT TITLE.
This title may be cited as the “Surface Transportation Safety Improvement Act of 2005”.

SEC. 7002. AMENDMENT OF UNITED STATES CODE.
(a) AMENDMENT OF TITLE 49—Except as otherwise specifically provided, whenever in this title (other than chapter 1 of subchapter II) an amendment is expressed in terms of an amendment to a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.
(b) AMENDMENT OF TITLE 23—Except as otherwise expressly provided, whenever in chapter 1 of subchapter III an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 23, United States Code.

Subtitle A—Motor Carrier Safety

CHAPTER 1—MOTOR CARRIERS

SEC. 7101. SHORT TITLE.
This chapter may be cited as the “Motor Carrier Safety Reauthorization Act of 2005”.

SEC. 7102. CONTRACT AUTHORITY.
The authority to provide transportation services under section 1344(g) of title 49, United States Code, is amended by adding at the end the following:

"(2) For purposes of any determination under chapter 81 of title 49, an individual shall not be considered to be in the ‘performance of duty’ by virtue of the fact that such individual is receiving transportation services under this subsection.

(3) The amounts made available under subsection (b) are available for obligations incurred on or after the date of enactment of this Act.

SEC. 7103. AUTHORIZATION OF APPROPRIATIONS.
(a) ADMINISTRATIVE EXPENSES.—Section 5309(i)(5) of title 49, United States Code, is amended by adding at the end the following:

"(A) The Administrator of General Services, after consultation with the National Capital Planning Commission and other appropriate agencies, shall prescribe any regulations necessary to carry out this subsection.

(b) TRANSPORTATION SERVICES UNDER THIS SUBSECTION—Section 307(e) of the Denali Commission Act of 1998, the Denali Commission under the terms of section 307(e) of the Alaska Native Village Grant Act of 1984, and voluntary private group transportation services under the Last Frontier Development Projects, and related transportation infrastructure, shall remain available until expended.

SEC. 7104. FUNDING FOR FERRY BOATS.
Section 5309(i)(5) of title 49, United States Code, as amended by section 6011(i) of this Act, is amended to read as follows:

"(5) FUNDING FOR FERRY BOATS.—Of the amount described in paragraphs (1)(A) and (2)(A)—

"(A) $10,400,000 shall be available in fiscal year 2005 for capital projects in Alaska and Hawaii from the Federal Highway Trust Fund;

"(B) $15,000,000 shall be available in each of fiscal years 2006 through 2009 for ferry boat projects in Alaska and Hawaii for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals;

"(C) $5,000,000 shall be available in each of fiscal years 2006 through 2009 for payments to the Denali Commission under the terms of section 307(e) of the Denali Commission Act of 1998, as amended (42 U.S.C. 3121 note), for docks, waterfront development projects, and related transportation infrastructure;.

SEC. 7105. OVERDUE REPORTS, STUDIES, AND RULEMAKING.
(a) REQUIREMENT FOR COMPLETION.—Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, a schedule for the completion of the following reports, studies, and rulemaking proceedings:


(D) Final Rule Required.—Unless specified otherwise by rule, rulemaking proceedings shall be considered completed for purposes of this section only when the Secretary has issued a final rule and the docket for the rulemaking proceeding is withdrawn or terminated and the docket closed without further action.
(c) SCHEDULE FOR COMPLETION.—The Secretary shall transmit a revised schedule, indicating progress made in completing the reports, studies, and rulemaking proceedings reported under subsection (a) made 6 months after the first such report under subsection (a) until they are completed. The Inspector General of the Department of Transportation shall monitor whether the schedule is being met and report periodically to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure a report on the status of the following projects:

1. Rescinding the current regulation which prohibits truck and bus drivers from viewing television and movie screens while operating commercial vehicles.


3. Revision of the safety fitness rating system of motor carriers.


5. Providing commercial drivers to have a sufficient functional speaking and reading comprehension of the English language.

SEC. 7106. AMENDMENTS TO THE LISTED RE-PASSAGE OF COMMERCIAL MOTOR VEHICLES, AND RULEMAKING PROCEEDINGS.

In addition to completing the reports, studies, and rulemaking proceedings listed in section 7105(a), the Secretary of Transportation shall—

1. cause the Interim Final Rule addressing New Motor Carrier Entrant Requirements to be amended so as to require that a safety audit be immediately converted to a compliance review and appropriate enforcement actions be taken if the safety audit discloses acute safety violations by the entrant; and

2. ensure that Federal motor carrier safety regulations that apply to interstate operations of commercial motor vehicles designed to transport between 9 and 15 passengers (including the driver) apply to all interstate operations of such carriers regardless of the distance traveled.

SEC. 7107. MOTOR CARRIER SAFETY GRANTS.

(a) MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.

(1) Section 3102 is amended—

(A) by striking “activities by fiscal year 2000;” in subsection (b)(1)(A) and inserting “activities for commercial motor vehicles of passengers and freight;”;

(B) by striking “years before December 18, 1991;” in subsection (b)(1)(E) and inserting “years;”;

(C) by striking “and” after the semicolon in subsection (b)(1)(S);

(D) by striking “personnel:” in subsection (b)(1)(T) and inserting “personnel:”;

(E) adding at the end of subsection (b)(1) the following:

(1) ensures that inspections of motor carriers of passengers are conducted at stations, terminals, border crossings, or maintenance facilities, except in the case of an imminent or obvious safety hazard;

(2) authorizes that the State will include in the training manual for the licensing examination to drive a non-commercial motor vehicle and a commercial motor vehicle, information on best practices for driving safely in the vicinity of commercial motor vehicles and in the vicinity of non-commercial vehicles, respectively; and

(3) provides that the State will enforce the registration requirements of section 13902 by suspending the operation of any vehicle discovered to be operating without registration or beyond the scope of its registration.

(F) by striking subsection (c) and inserting the following:

(C) USE OF GRANTS TO ENFORCE OTHER LAWS.—A State may use amounts received under a grant under subsection (a) of this section for the following activities:

1. If the audits are carried out in conjunction with an appropriate inspection of the commercial motor vehicle to enforce Government or State commercial motor vehicle safety regulations;

2. Enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at specific locations where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States;

3. (A) detection of the unlawful presence of a controlled substance (as defined under section 102 of the Controlled Substances Act, of 1970 (21 U.S.C. 802)) in a commercial motor vehicle or on the person of any occupant (including the operator) of the vehicle;

4. Documented enforcement of state traffic laws and regulations designed to promote the safe operation of commercial motor vehicles, including documented enforcement of such laws and regulations against non-commercial motor vehicles when necessary to promote the safe operation of commercial motor vehicles;”.

(2) Section 3104 is amended by adding after “(1)” after “activities;”—

and

(b) by adding at the end the following:

(2) NEW ENTRANT MOTOR CARRIER AUDIT FUNDS.—From the amounts designated under section 3104(1)(A), the Secretary may allocate new entrant motor carrier audit funds to States and local governments without requiring a matching contribution from such States or local governments;”.

(3) Section 3104(a) is amended to read as follows:

“(a) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out section 3104:

1. Not more than $193,620,000 for fiscal year 2006;”.

2. Not more than $197,490,000 for fiscal year 2007;”.

3. Not more than $205,470,000 for fiscal year 2008;”.

4. Not more than $205,470,000 for fiscal year 2009.”.

(b) CDLIS MODERNIZATION.—From the amounts designated under section 7103(b)(1) of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary may make a grant in a fiscal year to a State that shares border and interior ports with a country for carrying out border motor carrier safety programs and related enforcement activities and projects.

(c) USE OF GRANTS TO ENFORCE OTHER LAWS.—The Secretary may use the funds in a fiscal year to carry out other border and interior enforcement activities and projects, and may instead utilize the funds to conduct audits in those jurisdictions.

(4) CDLIS MODERNIZATION.—The Secretary may make a grant to States to carry out border commercial motor vehicle safety programs and related enforcement activities and projects.

SEC. 7108. TECHNICAL CORRECTIONS.

(a) GENERAL AUTHORITY.—From the funds authorized by section 7103(b)(1) of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary may make a grant to a State under this section only if the State agrees that the expenditure of amounts of the State and political subdivisions of the State, exclusive of United States Government amounts, for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 State or Federal fiscal years before October 1, 2003."

(b) CONFORMING AMENDMENTS.—Section 3134 is amended by inserting “in” after “subpart” in subsections (a) and (b).

SEC. 7109. GRANTS TO STATES FOR BORDER ENFORCEMENT.

There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out section 31107, and inserting the following:

“SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS”.

and

(b) by striking the item relating to Subchapter I, and inserting the following:

“SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS”.

SEC. 7110. TECHNICAL CORRECTIONS.

(a) JURISDICTION OF COURT OF APPEALS OVER COMMERCIAL MOTOR VEHICLE SAFETY REGULATION AND OPERATORS AND MOTOR CARRIER SAFETY.—Section 2342(3)(A) of title 28, United States Code, is amended by striking “Subtitle IV” and inserting “subtitle IV, subchapter III of chapter 311, chapter 313, or chapter 315”.

(b) JUDICIAL REVIEW.—Section 351(a) is amended as follows:

“(a) JUDICIAL REVIEW.—An action of the Secretary of Transportation in carrying out a duty or power transferred under the Department of Transportation Act (Public Law 80 to 80 Stat. 931), or an action of the Administrator of the Federal Railroad Administration, Federal Motor
Carrier Safety Administration, or the Federal Aviation Administration in carrying out a duty or power specifically assigned to the Administrator by that Act, may be reviewed judicially to the same extent and in the same way as if the action had been an action by the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer. An action of the Secretary or Administrator in carrying out the duty or power has the same effect as when carried out by the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer.

SEC. 1110. MANDATORY AND PROHIBITIVE PENALTIES

(a) MANDATORY PENALTIES—

(1) Except as provided in paragraphs (2) through (4), a violation of any provision of this subchapter, or any regulation adopted pursuant to such provision, shall be punished by a civil penalty of not more than $10,000.

(2) The Secretary, or an employee designated by the Secretary, shall assess a civil penalty under this subsection against any person who is in violation of this subchapter, or any regulation adopted pursuant to such provision, if the Secretary determines that there was a violation of such provision or regulation.

SEC. 1111. PROHIBITIVE PENALTIES

(a) Prohibitive Penalties—

(1) Except as provided in paragraphs (2) through (5), a violation of any prohibition contained in this subchapter, or any regulation adopted pursuant to such prohibition, shall be punished by a civil penalty of not more than $10,000.

(2) The Secretary, or an employee designated by the Secretary, shall assess a civil penalty under this subsection against any person who is in violation of any prohibition contained in this subchapter, or any regulation adopted pursuant to such prohibition, if the Secretary determines that there was a violation of such prohibition or regulation.

(b) EFFECTIVE DATE—

The amendment made by subsection (a) shall take effect 1 year after the date of enactment of this Act.
The Secretary may require an individual who has diabetes to have insulin in order to qualify to operate a commercial motor vehicle in interstate commerce.

The Secretary shall establish by regulation minimum levels of financial responsibility covering public liability, property damage, and medical payments in an amount not less than that required by this section, and the Secretary may require and make, prepare, or preserve a record in the form and manner prescribed by the Secretary, answer a question, or make, prepare, or preserve that record in the form and manner prescribed by the Secretary, to the extent applicable.

The Secretary may require and make, prepare, or preserve a record in the form and manner prescribed by the Secretary, to the extent applicable.

The Secretary shall prescribe regulations to require minimum levels of financial responsibility covering public liability, property damage, and medical payments in an amount not less than that required by this section, and the Secretary may require and make, prepare, or preserve a record in the form and manner prescribed by the Secretary, answer a question, or make, prepare, or preserve that record in the form and manner prescribed by the Secretary, to the extent applicable.

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The Secretary may require an individual to have used insulin in order to qualify to operate a commercial motor vehicle in interstate commerce.

The Secretary may require and make, prepare, or preserve a record in the form and manner prescribed by the Secretary, answer a question, or make, prepare, or preserve that record in the form and manner prescribed by the Secretary, to the extent applicable.

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The Secretary shall require an individual to have used insulin in order to qualify to operate a commercial motor vehicle in interstate commerce.

The Secretary may require and make, prepare, or preserve a record in the form and manner prescribed by the Secretary, answer a question, or make, prepare, or preserve that record in the form and manner prescribed by the Secretary, to the extent applicable.

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SEC. 7116. REVOCATION OF OPERATING AUTHORITY.

Section 13906(c) is amended—

(1) by striking paragraph (1) and inserting the following:

(1) PROTECTION OF SAFETY.—Notwithstanding
subchapter II of chapter 5 of title 5, the Secretary—

(A) may suspend the registration of a motor carrier, a freight forwarder, or a broker for failure to comply with requirements of the Secretary pursuant to section 13904(c) or 13906 of this title, or an order or regulation of the Secretary prescribed under those sections; and

(B) shall revoke the registration of a motor carrier that has been prohibited from operating in interstate commerce for failure to comply with the safety fitness requirements of section 31144 of this title.

(2) by striking “may suspend a registration” in paragraph (2) and inserting “shall revoke the registration”;

and

(3) by striking paragraph (3) and inserting the following:

(3) NOTICE; PERIOD OF SUSPENSION.—The Secretary may suspend or revoke under this subsection the registration only after giving notice of the suspension or revocation to the registrant. A suspension remains in effect until the registrant complies with the applicable sections or, in the case of a registration under section 13905 of this title, the period for appeal has expired.

SEC. 7117. PATTERN OF VIOLATIONS BY MOTOR CARRIER MANAGEMENT.

(a) In General.—Section 31135 is amended—

(1) by inserting “(a) In GENERAL.—” before “Each”; and

(2) by adding at the end the following:

(b) Pattern of Non-Compliance.—If an officer of a motor carrier engages in a pattern or practice of avoiding compliance, or masking or otherwise concealing non-compliance, with regulations on commercial vehicle safety prescribed under this subchapter, the Secretary may suspend, amend, or revoke any part of the motor carrier’s registration under section 13905 of this title.

(c) Regulations.—Within 1 year after the date of enactment of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary shall by regulation establish standards to implement subsection (b).

(d) Definitions.—In this section:

(1) MOTOR CARRIER.—The term ‘motor carrier’ means an owner, director, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of the title attached to those functions, and any person who has direct control over the operations of the motor carrier.

(2) OFFICER.—The term ‘officer’ means an owner, director, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of the title attached to those functions, and any person who has direct control over the operations of the motor carrier.

SEC. 7118. MOTOR CARRIER RESEARCH AND TECHNOLOGY PROGRAM.

(a) In General.—Section 31106 is amended to read as follows:

“§31106. Motor carrier research and technology program.

(a) RESEARCH, TECHNOLOGY, AND TECHNOLOGY TRANSFER ACTIVITIES.—

(1) The Secretary of Transportation shall establish a program to conduct research and technology development and transfer activities with respect to—

(A) the causes of accidents, injuries and fatalities involving commercial motor vehicles; and

(B) means of reducing the number and severity of accidents, injuries and fatalities involving commercial motor vehicles.

(2) The Secretary may test, develop, or assist in testing and developing any material, invention, patented article, or process related to the research and technology program.

(3) The Secretary may use the funds appropriated to carry out this section for training or education of vehicle safety personnel, including, but not limited to, training in accident reconstruction and detection of controlled substances or other contraband, and stolen cargo or vehicles.

(b) THE SECRETARY MAY NOT USE FUNDS.-The Secretary may not use funds made available under section 31161(c) of the Motor Carrier Safety Reauthorization Act of 2005 to carry out this section except as follows:

(1) for training or education of vehicle safety personnel, including, but not limited to, training in accident reconstruction and detection of controlled substances or other contraband, and stolen cargo or vehicles;

(2) for the conduct of research or technology development activities related to the purposes of this section.

(c) The Secretary may use the funds appropriated under this section for the conduct of research or technology development activities related to the purposes of this section.

(d) FEDERAL SHARING.—The Federal share of costs incurred in carrying out the objectives of the grant shall be shared by the Federal Government and the States.

SEC. 7119. INTERNATIONAL COOPERATION.

(a) In General.—Section 31161 is amended by inserting at the end the following:

“SUBCHAPTER IV—MISCELLANEOUS

Sec. 31161. International cooperation.

The Secretary is authorized to use funds appropriated under section 31144 of this title to participate and cooperate in international activities to enhance motor carrier, commercial motor vehicle, driver, and enforcement safety by means such as exchanging information, conducting research, and examining best practices, and new technology.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 311 is amended by inserting the item relating to section 31106, and inserting the following:

“3116. Motor carrier research and technology program.”.

SEC. 7120. PERFORMANCE AND REGISTRATION INFORMATION SYSTEM MANAGEMENT.

(a) In General.—Section 31106(b) is amended—

(1) by striking paragraphs (2) and (3) and inserting the following:

(2) DESIGN.—The program shall link Federal motor carrier safety information systems with State commercial vehicle registration and licensing systems and shall be designed to enable a State to—

(A) determine the safety fitness of a motor carrier or registrant when licensing or registering the registrant or motor carrier while the license or registration is in effect; and

(B) deny, suspend, or revoke the commercial motor vehicle registrations of a motor carrier or registrant that has been found liable under section 31310(i)(2)(C) of this title for knowingly allowing or requiring an employee to operate a commercial motor vehicle in violation of an out-of-service order by the Secretary.

(2) CONDITIONS FOR PARTICIPATION.—The Secretary shall require States, as a condition of participation in the program, to—

(A) comply with the uniform policies, procedures, and technical and operational standards prescribed by the Secretary under subsection (a)(4); and

(B) possess the authority to impose sanctions relating to commercial motor vehicle registration on the basis of a Federal safety fitness determination;

and

(C) cancel the motor vehicle registration and seize the registration plates of an employer liable under section 31201(i)(2) of this title for knowingly allowing or requiring an employee to operate a commercial motor vehicle in violation of an out-of-service order.”;

(2) by striking paragraph (4) and inserting the following:

(b) PERFORMANCE AND REGISTRATION INFORMATION SYSTEM MANAGEMENT GRANTS.—
(1) Subchapter I of chapter 311, as amended by section 7110 of this chapter, is further amended by adding at the end the following:

"§31109. Performance and Registration Information System Management

"(a) From the funds authorized by section 7103(b)(2) of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary may make a grant in a fiscal year to a State to implement a performance and registration information system management system under section 31106(b).

"(b) AVAILABILITY OF AMOUNTS.—Amounts made available to a State under section 7103(b)(2) of the Motor Carrier Safety Reauthorization Act of 2005 to carry out this section shall remain available until expended.

"(c) APPROVAL.—Approval by the Secretary of a grant to a State under section 7103(b)(2) of the Motor Carrier Safety Reauthorization Act of 2005 to carry out this section is a contractual obligation of the Government for payment of the amount of the grant.

"(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 311 is amended by inserting after the item relating to section 31108 the following:

"§31109. Performance and Registration Information System Management.

SEC. 7121. COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS DEPLOYMENT.

(a) IN GENERAL.—Subtitle III of chapter 311, as amended by section 7110, is amended by adding at the end the following:

"§31151. Commercial vehicle information systems and networks

"(a) IN GENERAL.—The Secretary shall carry out a comprehensive vehicle information systems and networks program to—

"(1) improve the safety and productivity of commercial vehicles; and

"(2) reduce costs associated with commercial vehicle operations and Federal and State commercial vehicle regulatory requirements.

"(b) PURPOSE.—The program shall advance the technological capability and promote the deployment of intelligent transportation system applications for commercial vehicle operations, including commercial vehicle, commercial driver, and carrier-specific information systems and networks.

"(c) CORE DEPLOYMENT GRANTS.—

"(1) IN GENERAL.—The Secretary shall make grants to eligible States for the core deployment of commercial vehicle information systems and networks.

"(2) ELIGIBILITY.—To be eligible for a core deployment grant under this section, a State—

"(A) shall have a commercial vehicle information systems and networks program plan and a system design approved by the Secretary;

"(B) shall certify to the Secretary that its commercial vehicle information systems and networks deployment activities, including hardware procurement, software and system development, and infrastructure modifications, are consistent with the national intelligent transportation system program plan for commercial vehicle information systems and networks and architectures and available standards, and promote interoperability and efficiency to the extent practicable; and

"(C) shall agree to execute interoperability tests developed by the Federal Motor Carrier Safety Administration to verify that its systems conform with the national intelligent transportation systems architecture, applicable standards, and protocols for commercial vehicle information systems and networks.

"(3) TECHNICAL STANDARDS.—The maximum aggregate amount a State may receive under this section for the core deployment of commercial vehicle information systems and networks may not exceed $2,500,000.

"(4) USE OF FUNDS.—Funds from a grant under this subsection may only be used for the core deployment of commercial vehicle information systems and networks. Eligible States that have either completed the core deployment of commercial vehicle information systems and networks or are implementing a deployment before core deployment grants are funded may use the remaining core deployment grant funds for the expanded deployment of commercial vehicle information systems and networks in their State.

"(d) EXPANDED DEPLOYMENT GRANTS.—

"(1) IN GENERAL.—For each fiscal year, from the fund referred to in subsection (c) of this section, the Secretary may make core deployment grants under subsection (c) of this section, the Secretary may make grants to each eligible State, upon request, for the expanded deployment of commercial vehicle information systems and networks.

"(2) ELIGIBILITY.—Each State that has completed the core deployment of commercial vehicle information systems and networks is eligible for an expanded deployment grant.

"(3) AMOUNT OF GRANTS.—Each fiscal year, the Secretary may distribute funds available for expanded deployment grants equally among the eligible States, but not to exceed $1,000,000 per State.

"(f) USE OF FUNDS.—A State may use funds from a grant under this subsection only for the expanded deployment grants solely among the eligible States, but not to exceed $1,000,000 per State.

"(g) AVAILABILITY OF FUNDS.—Funds authorized to be appropriated under section 7103(b)(4) of the Motor Carrier Safety Reauthorization Act of 2005 shall be available for obligation in the same manner and to the same extent as if such funds were appropriated under chapter 31 of title 23, United States Code, except that such funds shall remain available until expended.

"(h) DEFINITIONS.—In this section:

"(1) COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS.—The term ‘commercial vehicle information systems and networks’ means the information systems and communications networks that provide the capability to—

"(A) improve the safety of commercial vehicle operations;

"(B) increase the efficiency of regulatory inspections of commercial vehicles and their operators;

"(C) achieve electronic processing of registration information, driver licensing information, fuel tax information, inspection and crash data, and other safety information; and

"(D) enhance the safe passage of commercial vehicles across the United States and across international borders; and

"(E) promote the communication of information among the States and encourage multistate cooperation and corridor development.

"(2) COMMERCIAL VEHICLE OPERATIONS.—The term ‘commercial vehicle operations’ means—

"(A) commercial motor vehicle operations and motor vehicle regulatory activities associated with the commercial movement of goods, including hazardous materials, and passengers; and

"(B) with respect to the public sector, includes the issuance of operating credentials, the administration of motor vehicle and fuel taxes, and roadside safety and border crossing inspection and regulatory compliance operations.

"(3) CORE DEPLOYMENT.—The term ‘core deployment’ means the deployment of systems in a State that meet the requirements of an expanded deployment of commercial vehicle information systems and networks, improve safety and the productivity of commercial vehicle operations, and enhance transportation security.

"(4) EXPANDED DEPLOYMENT.—The term ‘expanded deployment’ means the deployment of systems in a State that meet the requirements of an expanded deployment of commercial vehicle information systems and networks, improve safety and the productivity of commercial vehicle operations, and enhance transportation security.

"(i) connect to the Safety and Fitness Electronic Records system for access to interstate carrier and commercial vehicle data, summaries of past safety performance, and commercial vehicle hazards and incidents information before core deployment grant funds are funded may use the remaining core deployment grant funds for the expanded deployment of commercial vehicle information systems and networks in their State.

"(k) SECURITY.—The motor carrier and its employees shall comply with all applicable security requirements established by the Secretary as a condition of receiving these funds.

"(l) CONNECTIVITY.—The Secretary shall ensure that information from any informational databases is accessible to the commercial vehicle operators and employees for any purpose that is authorized by law.

"(m) USE OF FUNDS.—Funds from a grant under this subsection may only be used for the core deployment of commercial vehicle information systems and networks.

"(n) TECHNOLOGY TRANSFER.—The Secretary shall provide assistance to eligible States for the deployment of technologies that are available in the commercial marketplace and for the training of personnel.

"(o) REVIEW.—The Secretary shall annually review the deployment of the information systems and networks to ensure that there is continued support for the program.

"(p) REPORT.—The Secretary shall make available to Congress an updated evaluation to Congress no later than June 30, 2006.

"(q) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each fiscal years 2006 through 2009 to carry out this section—

"(1) $1,000,000 for the Federal Motor Carrier Safety Administration; and

"(2) $3,000,000 for the National Highway Traffic Safety Administration.

SEC. 7122. FOREIGN COMMERCIAL MOTOR VEHICLES.

(a) OPERATING AUTHORITY ENFORCEMENT ASSISTANCE FOR STATES.—Within 180 days after the date of enactment of this Act, the Federal Motor Carrier Safety Administration shall conduct research and provide training to each State to ensure that the operating authority of motor carriers, including buses, and to ensure proper enforcement when
motor carriers are found to be in violation of operating authority requirements. The Inspector General of the Department of Transportation may periodically assess the implementation and effectiveness of the training and outreach program.

(b) STUDY OF FOREIGN COMMERCIAL MOTOR VEHICLES

(1) VIEW.—Within 1 year after the date of enactment of this Act, the Federal Motor Carrier Safety Administration shall conduct a review to determine the degree to which Canadian and Mexican commercial motor vehicles, including buses, currently operating or expected to operate, in the United States comply with the Federal Motor Vehicle Safety Standards. (2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Administrator shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure containing the findings and conclusions of the review. Within 4 months after the report is transmitted to the Committees, the Inspector General of the Department of Transportation shall provide comments and observations to the Committees on the scope and methodology of the review.

SEC. 7124. PRE-EMPLOYMENT SAFETY SCREENING.

(a) IN GENERAL.—Subchapter III of chapter 311, as amended by section 7121, is amended by adding at the end the following:

"§31152. Pre-employment safety screening

"(a) IN GENERAL.—The Secretary of Transportation shall provide companies conducting pre-employment screening services for the motor carrier industry electronic access to—

(1) commercial motor vehicle accident report information contained in the Motor Carrier Management Information System; and

(2) all driver safety violations contained in the Motor Carrier Management Information System.

(b) ESTABLISHMENT.—Prior to making information available to such companies under subsection (a), the Secretary shall—

(1) ensure that any information released is done in compliance with the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and all applicable Federal laws;

(2) require the driver applicant’s written consent as a condition of releasing the information;

(3) ensure that the information made available to companies providing pre-employment screening services for the motor carrier industry shall utilize a screening process—

(1) that is designed to assist the motor carrier industry in assessing an individual’s crash and safety violation history as a pre-employment condition;

(2) the use of which is not mandatory; and

(3) that is consistent with the methodology of the pre-employment assessment of a driver-applicant."

(c) DESIGN.—To be eligible to have access to information under subsection (a), a company conducting pre-employment screening services for the motor carrier industry shall utilize a screening process—

(1) that is designed to assist the motor carrier industry in assessing an individual’s crash and safety violation history as a pre-employment condition;

(2) the use of which is not mandatory; and

(3) that is consistent with the methodology of the pre-employment assessment of a driver-applicant.

(d) CONFORMING AMENDMENT.—The chapter analysis for chapter 311, as amended by section 7121, is amended by inserting after the item relating to section 31151 the following:

"§31152. Pre-employment safety screening."

SEC. 7125. CLASS OR CATEGORY EXEMPTIONS.

(a) IN GENERAL.—The Secretary of Transportation may grant exemptions for categories or classes of drivers of commercial motor vehicles not required to hold a commercial driver’s license under section 31301(f) of title 49, United States Code, in accordance with the requirements in subsections (b) through (d) and part with a regulation issued under chapter 325 of title 49, United States Code, or with regulations issued under section 31502 of that title governing hours of service if the Secretary determines that it is in the public interest to grant the exemption and that the exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption subject to such conditions as the Secretary may impose.

(b) AUTHORITY TO REVOKE EXEMPTION.—The Secretary shall immediately revoke an exemption if—

(1) the exemption has resulted in a lower level of safety than maintained before the exemption was granted; or

(2) continuation of the exemption would not be consistent with the goals and objectives of that chapter or section 31136, as the case may be.

(c) REQUESTS FOR EXEMPTION.—

(1) INTERIM FINAL RULE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall specify by interim final rule the procedures by which an exemption for a category or class of drivers is requested under this section. The rule shall, at a minimum, require the motor carrier or other entity requesting the exemption to provide the following information:

(A) The provisions from which the motor carrier or other entity requests exemption.

(B) The reason for which the exemption is requested.

(C) The time period during which the requested exemption would apply.

(D) An analysis of the safety impacts the requested exemption may cause.

(2) FINAL RULE.—Not later than 2 years after the date of enactment of this Act, and after notice and an opportunity for comment, the Secretary shall promulgate a final rule specifying the procedures by which an exemption for a category or class of drivers may be requested under this section.

(d) NOTICE AND COMMENT.—

(1) UPON RECEIPT OF A REQUEST.—Upon receipt of an exemption request, the Secretary shall publish in the Federal Register a notice explaining the request that has been filed and shall give the public an opportunity to inspect the safety analysis and any other relevant information known to the Secretary and to comment on the request. This subparagraph does not require the release of information protected by law from public disclosure.

(2) UPON GRANTING A REQUEST.—Upon granting a request for exemption, the Secretary shall publish in the Federal Register the name of the motor carrier or other entity granted the exemption, the provisions from which the category or class of vehicles will be exempt, the effective period, and all terms and conditions of the exemption.

(3) AFTER DENYING A REQUEST.—After denying a request for exemption, the Secretary shall publish in the Federal Register the name of the motor carrier or other entity denied the exemption, the category or class of vehicles for which the exemption was requested, and the reasons for such denial. The Secretary may meet the requirement of this subparagraph by periodically publishing in the Federal Register the names of motor carriers or other entities denied exemptions, the categories or classes of vehicles for which the exemption was requested, and the reasons for such denial.

(e) APPLICATIONS TO BE DEALT WITH PROMPTLY.—The Secretary shall grant or deny an exemption request after a thorough review of its safety implications, but in no case later than 90 days after the filing date of such request.

(f) TERMS AND CONDITIONS.—The Secretary shall establish terms and conditions for each exemption to ensure that it will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent the exemption. The Secretary may also require the implementation of the exemption to ensure compliance with its terms and conditions.

(g) NOTIFICATION OF STATE COMPLIANCE AND ENFORCEMENT PERSONNEL.—Before granting a request for exemption, the Secretary shall notify State safety compliance and enforcement personnel including requesting the public that a motor carrier or other entity will be operating pursuant to an exemption and any terms and conditions that will apply to the exemption.

(h) PREEMPTION OF STATE RULES.—During the time period that an exemption is in effect under this section, no State shall enforce any law or regulation that conflicts with or is inconsistent with the exemption with respect to the category or class of vehicles to which the exemption applies.

SEC. 7126. DECALS.

The Commercial Vehicle Safety Alliance may not restrict the sale of any inspection decal to the Federal Motor Carrier Safety Administration, the Administrator of the Commercial Vehicle Safety Board, or any other entity that meets its responsibilities under its memorandum of understanding with the Alliance (other than a failure due to the Administration’s compliance with Federal law).

SEC. 7127. ROADABILITY.

(a) INSPECTION, REPAIR AND MAINTENANCE OF INTERMODAL EQUIPMENT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, after providing notice and opportunity for comment, shall issue regulations establishing a program to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained.

(b) REQUIREMENTS.—The regulations issued under this section as a part of the regulations of the Federal Motor Carrier Safety Administration of the Department of Transportation shall include, at a minimum—

(A) a requirement to identify intermodal equipment providers responsible for inspecting and maintaining intermodal equipment that is interchanged or intended for interchange to motor carriers in intermodal transportation;

(B) a requirement to match intermodal equipment readily to an intermodal equipment provider through a unique identifying number;

(C) a requirement that an intermodal equipment provider identified under the requirement of subparagraph (A) systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, intermodal equipment described in subparagraph (A) that is intended for interchange with a motor carrier;

(D) a requirement to ensure that each intermodal equipment provider identified under the requirement of subparagraph (A) maintains a system of measurement and repair records for such equipment; and

(E) requirements that—

(i) a specific list of intermodal equipment components or items be identified for the visual or audible inspection of which a driver is responsible before operating the equipment over the road; and

(ii) such inspections be conducted as part of the Federal requirement in effect on the date of enactment of this Act that a driver be satisfied that the components are in good working order before operating the equipment over the road; and

(F) a requirement that a facility at which an intermodal equipment provider regularly makes
equipment available for interchange have an operational process and space readily available for a motor carrier to have an equipment defect identified pursuant to subparagraph (E) repaired or the equipment replaced prior to departure;

(G) a provision that establishes a program for the issuance of operator credentials to intermodal equipment providers with applicable Federal Motor Carrier Safety Administration regulations;

(H) a provision that—

(i) establishes a civil penalty structure consistent with section 321(h) of title 49, United States Code, for intermodal equipment providers that fail to comply with the requirements of the regulations promulgated by the Secretary for the maintenance of the intermodal equipment;

(ii) prohibits intermodal equipment providers from placing equipment in service on the public highways to the extent such providers or their equipment are found to pose an imminent hazard;

(iii) establishes a process by which motor carriers and agents of motor carriers may request the Federal Motor Carrier Safety Administration to undertake an investigation of a motor carrier that is alleged to be in violation of applicable Federal motor carrier safety regulations;

(K) a provision that establishes a process by which drivers or motor carriers are required to report any actual damage or defect in the intermodal equipment that is determined under the time the intermodal equipment is returned to the equipment provider;

(L) a provision that requires any actual damage or defect identified in the process established under subparagraph (K) be repaired before the equipment is made available for interchange to a motor carrier, and that repairs of equipment made pursuant to the requirements of this subparagraph and reports made pursuant to subparagraph (N) be covered on the maintenance records for such equipment; and

(M) a procedure under which motor carriers, drivers and intermodal equipment providers may seek compensation for the cost of replacing or repairing equipment if the deletion from those records of violations of safety regulations attributable to deficiencies in the intermodal chassis or trailer for which they should be held responsible.

(4) DEADLINE FOR RULEMAKING PROCEEDING.—

Within 120 days after the date of enactment of this Act, the Secretary shall institute a rulemaking proceeding for regulations under this section.

(b) JURISDICTION OF DEPARTMENT OF TRANSPORTATION.—Section 31136 is amended by adding at the end the following:

“(g) INSPECTION, REPAIR, AND MAINTENANCE OF INTERMODAL EQUIPMENT.—The Secretary or an employee of the Department of Transportation designated by the Secretary may inspect intermodal equipment, and copy related maintenance and repair records for such equipment, on demand and display of proper credentials.

“(h) OUT-OF-SERVICE UNTIL REPAIR.—Any intermodal equipment that is determined under this section to fail to comply with applicable safety regulations shall be placed out of service and may not be used on a public highway until the repairs necessary to bring such equipment into compliance have been completed. Repairs of equipment in service shall be documented in the maintenance records for such equipment.”

(c) EXISTING PROVISION OF STATE LAWS.—

(1) IN GENERAL.—Section 31414 is amended by adding at the end the following:

“(h) PREEMPTION GENERALLY.—Except as otherwise authorized by law and as provided in subsection (i), a law, regulation, order, or other requirement of a State, a political subdivision of a State, an interstate agency, or any other provision of law, the maximum daily hours of service for an operator of a commercial motor vehicle providing transportation of property or passengers to or from a theatrical or television motion picture production site located within a 100 air mile radius of the work reporting location of such operator shall be those in effect under the regulations in effect under the subsection of section 31532 of title 49, United States Code, as amended by section 31532(b) of title 49, United States Code.

“(i) PROHIBITION ON STATE REGULATIONS.—The term ‘prohibition on state regulations’ has the same meaning as the term ‘prohibition on state regulations’ as defined in section 31136 of title 49, United States Code, including that term as defined by section 31149 of title 49, United States Code.

“(j) FARM SUPPLIES FOR AGRICULTURAL PURPOSES.—The term ‘farm supplies for agricultural purposes’ means products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons within each State, as determined by the State, and feed and livestock feed at any time of the year.

“(k) REGULATIONS FOR MOVIE PRODUCTION SITES.—Notwithstanding sections 31136 and 31522 of title 49, United States Code, and any other provision of law, the maximum daily hours of service for a driver of a utility service vehicle that are similar to those requirements contained in such regulation shall be those in effect under the regulations in effect under section 31532 of title 49, United States Code.

“(l) UTILITY SERVICE VEHICLES.—

“(A) IN GENERAL.—Nothing in this section shall apply to a driver of a utility service vehicle.

“(B) PROHIBITION ON STATE REGULATIONS.—A State, a political subdivision of a State, an interstate agency, or any other provision of law, the maximum daily hours of service for a driver of a utility service vehicle that are similar to those requirements contained in such regulation shall be those in effect under the regulations in effect under section 31532 of title 49, United States Code.

“(m) OPERATORS OF UTILITY SERVICE VEHICLES.—

“(A) IN GENERAL.—Nothing in this section shall apply to a driver of a utility service vehicle.

“(B) PROHIBITION ON STATE REGULATIONS.—A State, a political subdivision of a State, an interstate agency, or any other provision of law, the maximum daily hours of service for a driver of a utility service vehicle that are similar to those requirements contained in such regulation shall be those in effect under the regulations in effect under section 31532 of title 49, United States Code.

“(c) CONFORMING AMENDMENT.—

Section 31532(c) is amended by striking ‘The Secretary’ the first place it appears and inserting ‘Except as provided by subsection (h), the Secretary’.

(2) INTERMODAL EQUIPMENT INTERCHANGE AGREEMENT.—

(A) INTERMODAL EQUIPMENT INTERCHANGE AGREEMENT.—The term ‘intermodal equipment interchange agreement’ means the Uniform Intermodal Interchange and Facilities Access Agreement or any other written document executed by an intermodal equipment provider or its agent and a motor carrier or its agent, the primary purpose of which is to establish the responsibilities and liabilities of both parties with respect to the interchange of the intermodal equipment.

(B) INTERMODAL EQUIPMENT PROVIDER.—The term ‘intermodal equipment provider’ means any person that exchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment.

(C) INTERCHANGE.—The term ‘interchange’—

(A) means the act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of loading or unloading equipment for the benefit of the equipment provider; or

(B) includes the leasing of equipment to a motor carrier for primary use in the motor carrier’s freight hauling operations.

SEC. 7128. MOTOR CARRIER REGULATIONS.

(a) IN GENERAL.—Section 31149, as amended by section 7108(d), is further amended—

(1) by striking paragraph (1) of subsection (a) and inserting the following:

“(1) TRANSPORTATION OF AGRICULTURAL COMMODITIES AND FARM SUPPLIES.—Regulations prescribed by the Secretary under sections 31136 and 31366 of title 49, United States Code, of this title, and any other provision of law, the maximum daily hours of service for an operator of a commercial motor vehicle providing transportation of property or passengers to or from a theatrical or television motion picture production site located within a 100 air mile radius of the work reporting location of such operator shall be those in effect under the regulations in effect under the subsection of section 31532 of title 49, United States Code, as amended by section 31532(b) of title 49, United States Code.

“(2) NON-PREEMPTION DETERMINATIONS.—

(A) IN GENERAL.—The term ‘non-preemption determination’ has the same meaning as the term ‘non-preemption determination’ as defined in section 31136 of title 49, United States Code, including that term as defined by section 31149 of title 49, United States Code.

(b) REGULATIONS FOR MOVIE PRODUCTION SITES.—Notwithstanding sections 31136 and 31522 of title 49, United States Code, and any other provision of law, the maximum daily hours of service for a driver of a commercial motor vehicle providing transportation of property or passengers to or from a theatrical or television motion picture production site located within a 100 air mile radius of the work reporting location of such operator shall be those in effect under the regulations in effect under the subsection of section 31532 of title 49, United States Code.

(c) UTILITY SERVICE VEHICLES.—

“(A) IN GENERAL.—Nothing in this section shall apply to a driver of a utility service vehicle.

“(B) PROHIBITION ON STATE REGULATIONS.—A State, a political subdivision of a State, an interstate agency, or any other provision of law, the maximum daily hours of service for a driver of a utility service vehicle that are similar to those requirements contained in such regulation shall be those in effect under the regulations in effect under section 31532 of title 49, United States Code.

“(c) Conforming Amendment.—

Section 31532(c) is amended by striking ‘The Secretary’ the first place it appears and inserting ‘Except as provided by subsection (h), the Secretary’.

(2) INTERMODAL EQUIPMENT INTERCHANGE AGREEMENT.—

(A) INTERMODAL EQUIPMENT INTERCHANGE AGREEMENT.—The term ‘intermodal equipment interchange agreement’ means the Uniform Intermodal Interchange and Facilities Access Agreement or any other written document executed by an intermodal equipment provider or its agent and a motor carrier or its agent, the primary purpose of which is to establish the responsibilities and liabilities of both parties with respect to the interchange of the intermodal equipment.

(B) INTERMODAL EQUIPMENT PROVIDER.—The term ‘intermodal equipment provider’ means any person that exchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment.

(C) INTERCHANGE.—The term ‘interchange’—

(A) means the act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of loading or unloading equipment for the benefit of the equipment provider; or

(B) includes the leasing of equipment to a motor carrier for primary use in the motor carrier’s freight hauling operations.

SEC. 7129. TRUCK VEHICLE TOWING.

(a) STATE LAWS RELATING TO VEHICLE TOWING.—Section 14501(c) is amended by adding at the end the following:

“(5) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent a State from requiring that, in the case of vehicles tosed from private property without the consent of the owner or operator of the vehicle, towing operators—(A) have prior written authorization from the property owner or lessee (or an employee or agent thereof), or that such owner or lessee (or an employee or agent thereof) be present at the time the vehicle is towed from the property, or both; 

(b) PREDATORY TOW TRUCK OPERATIONS.—Within 2 years after the date of enactment of this Act, the Secretary of Transportation, in consultation with other appropriate Federal agencies, shall—

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[45x168]nance and repair records for such equipment, on demand and display of proper credentials.

“(h) OUT-OF-SERVICE UNTIL REPAIR.—Any intermodal equipment that is determined under this section to fail to comply with applicable safety regulations shall be placed out of service and may not be used on a public highway until the repairs necessary to bring such equipment into compliance have been completed. Repairs of equipment in service shall be documented in the maintenance records for such equipment.”

(2) EXISTING PROVISION OF STATE LAWS.—

(1) IN GENERAL.—Section 31414 is amended by adding at the end the following:
(1) conduct a review of Federal, State and local regulation of the tow truck industry before the date of enactment of the ICC Termination Act of 1995; and
(2) conduct a study to identify issues related to the protection of the rights of consumers who are towed, to establish the scope and geographic reach of any such issues identified, and to identify potential issues.

SEC. 7130. CERTIFICATION OF VEHICLE EMISSION PERFORMANCE STANDARDS.

(a) Registration of Motor Carriers.—Section 13902(a)(1) of title 49, United States Code (as amended by section 7131(b)), is amended—
(1) by redesignating paragraphs (b) and (C) as subparagraphs (C) and (D), respectively; and
(2) by inserting after subparagraph (A) the following:

“(B) a requirement that a motor carrier certify that, beginning on January 1, 2007, any vehicle operated by the motor carrier will comply with the heavy duty vehicle and engine emissions performance standards established by the Administrator of the Environmental Protection Agency under section 7521(a)(3));

(b) Security Requirement.—Paragraphs (3) and (4), respectively; and

(2) by redesigning subparagraph (c) as subsection (c), and inserting after subsection (c) the following:

“(f) MODIFICATION OF CARRIER REGISTRATION.—

“(1) IN GENERAL.—On and after the transition termination date, the Secretary

“(C) shall register applicants under this section as motor carriers; and

(1) redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (f), respectively; and
(2) inserting after subsection (a) the following:

“(B) a requirement that a motor carrier certify that, beginning on January 1, 2007, any vehicle operated by the motor carrier will comply with the heavy duty vehicle and engine emissions performance standards established by the Administrator of the Environmental Protection Agency under section 7521(a)(3));

(c) TERMINATION OF TRANSITION RULE.—Section 13902 is amended—

(1) by adding at the end of subsection (d) the following:

“(2) TERMINATION.—This subsection shall cease to be in effect on the transition termination date.”;

(2) by redesigning subsection (f) as subsection (g), and inserting after subsection (e) the following:

“(f) MODIFICATION OF CARRIER REGISTRATION.—

“(1) IN GENERAL.—On and after the transition termination date, the Secretary

“(A) shall register applicants under this section as motor carriers; and

(1) redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(1) redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and
(2) by inserting after paragraph (2) the following:

“(2) SECURITY REQUIREMENT.—Not later than 120 days after the date of enactment of the Unified Carrier Registration Act of 2005, any person, other than a motor private carrier, registered with the Secretary to provide transportation or service as a motor carrier under section 13908 of this title shall file with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than required by sections 31138 and 31139 of title 49.

(2) TERMINATION OF TRANSITION RULE.—Section 13902 is amended—

(1) by adding at the end of subsection (d) the following:

“(2) TERMINATION.—This subsection shall cease to be in effect on the transition termination date.”;

(c) TERMINATION OF TRANSITION RULE.—Section 13902 is amended—

(1) by adding at the end of subsection (d) the following:

“(2) TERMINATION.—This subsection shall cease to be in effect on the transition termination date.”;

(d) CONFORMING AMENDMENTS.—

“(a) Section 13908 is amended to read as follows:

“§13908. Registration and other reforms

“(a) Establishment of Unified Carrier Registration System.—The Secretary, in cooperation with the States, representatives of the transportation industry, forwarder and broker industries, and after notice and opportunity for public comment, shall issue

within 1 year after the date of enactment of the Unified Carrier Registration Act of 2005 regulations to establish, an online, Federal registration system to be named the Unified Carrier Registration System to replace 49 CFR part 380.

“(1) the current Department of Transportation identification number system, the Single State Registration System under section 15404 of the

“(2) the registration system contained in this chapter and the financial responsibility information system under section 15906; and

“(3) the service of process agents systems under sections 501 and 13304 of this title.

“(b) ROLE AS CLEANSING HOUSE AND DEPOSITORY OF INFORMATION.—The Unified Carrier Registration System shall serve as a clearinghouse and depository of information on, and identification of, all motor carriers, motor private carriers, brokers, and freight forwarders, and others required to register with the Department, including information with respect to a carrier’s safety rating, compliance with required levels of financial responsibility, and compliance with the provisions of section 14504a of this title. The Secretary shall file for publication statements, or representatives of the motor carrier industry, and the public have access to the Unified Carrier Registration System, including the records and information contained in the System.

“(c) PROCEDURES FOR CORRECTING INFORMATION.—Not later than 60 days after the effective date of this section, the Secretary shall prescribe regulations establishing procedures that enable a motor carrier to correct erroneous information contained in any part of the Unified Carrier Registration System.

“(d) FEES SYSTEM.—The Secretary shall establish, under section 9701 of title 31, a fee system for the Unified Carrier Registration System according to the following guidelines:

“(e) REGISTRATION AND FILING EVIDENCE OF FINANCIAL RESPONSIBILITY.—The fee for new registrants shall be as nearly as possible cover the costs of processing the registration and conducting the safety audit or examination, if required, but shall not exceed $200.

“(f) EVIDENCE OF FINANCIAL RESPONSIBILITY.—The fee for filing evidence of financial responsibility pursuant to this section shall not exceed $10 per filing. No fee shall be charged for a service of process or the filing of other information relating to financial responsibility.

“(g) ACCESS AND RETRIEVAL FEES.—

“(i) To any agency of the Federal Government or a State government or any political subdivision of any such government for the access to or retrieval of information and data from the Unified Carrier Registration System for its own use; or

“(ii) to any representative of a motor carrier, motor private carrier, broker, freight forwarder, or freight forwarder (as each is defined in section 14504a of this title) for access to or retrieval of the individual information related to such carrier from the Unified Carrier Registration System for the individual use of such entity.”.

“(h) APPLICATION TO CERTAIN INTRASTATE OPERATIONS.—

“(1) Any motor carrier holding a motor contract carrier certificate of registration issued before or after the transition termination date, any person holding a motor carrier certificate of registration desig-
SEC. 7135. REGISTRATION OF MOTOR CARRIERS BY STATES.

(a) TERMINATION OF REGISTRATION PROVISIONS.—Section 14504 is amended by adding at the end the following:

"(d) TERMINATION OF PROVISIONS.—Subsections (b) and (c) shall cease to be effective on the first January 1st occurring more than 12 months after the date of enactment of the Unified Carrier Registration Act of 2005.

(b) UNIFIED CARRIER REGISTRATION SYSTEM PLAN.—Chapter 145 is amended by inserting after section 14504 the following:

"§14504a. Unified carrier registration system plan and agreement

"(a) DEFINITIONS.—In this section and section 14506 of this title:

"(1) COMMERCIAL MOTOR VEHICLE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘commercial motor vehicle’ has the meaning given the term in section 31101 of this title.

"(B) EXCEPTION.—With respect to motor carriers required to make any filing or pay any fee to a State with respect to the motor carrier’s authority or insurance related to operation within such State, the term ‘commercial motor vehicle’ means any self-propelled vehicle used on the highway in commerce to transport passengers or property not for compensation or hire except where the gross vehicle weight rating of the vehicle or the number of passengers transported by such vehicle exceeds such rating.

"(2) BASE-STATE.—

"(A) IN GENERAL.—The term ‘Base-State’ means, with respect to the Unified Carrier Registration Agreement, a State in which:

"(i) that is in compliance with the requirements of subsection (e); and

"(ii) in which the motor carrier, motor private carrier, broker, freight forwarder or leasing company maintains its principal place of business.

"(B) DESIGNATION OF BASE-STATE.—A motor carrier, motor private carrier, broker, freight forwarder, or leasing company may designate another State in which it maintains an office or operating facility as its Base-State in the event that—

"(i) the State in which the motor carrier, motor private carrier, broker, freight forwarder or leasing company maintains its principal place of business is not in compliance with the requirements of subsection (e); or

"(ii) the motor carrier, motor private carrier, broker, freight forwarder or leasing company does not have a principal place of business in the United States.

"(3) INTRASTATE FEE.—The term ‘intrastate fee’ means any fee, tax, or other type of assessment, including per vehicle fees and gross receipts fees, paid by a motor carrier, motor private carrier, or a freight forwarder or leasing company for the renewal of the intrastate authority or insurance filings of such carrier with a State.

"(4) LEASING COMPANY.—The term ‘leasing company’ means a lessor that is engaged in the business of leasing or renting for compensation motor vehicles without drivers to a motor carrier, motor private carrier, or freight forwarder.

"(5) MOTOR CARRIER.—The term ‘motor carrier’ has the meaning given the term in section 1302(2) of this title, but shall include all carriers that are otherwise exempt from the provisions of part B of this title pursuant to the provisions of chapter 135 of this title or exemption actions by the former Interstate Commerce Commission.

"(6) PARTICIPATING STATE.—The term ‘participating state’ means a State that has complied with the requirements of subsection (e) of this section.

"(7) SSRS.—The term ‘SSRS’ means the Single State Registration System in effect on the date of enactment of the Unified Carrier Registration Act of 2005.

"(8) UNIFIED CARRIER REGISTRATION AGREEMENT.—The terms ‘Unified Carrier Registration Agreement’ and ‘UCR Agreement’ mean the interstate agreement developed under the Unified Carrier Registration Plan governing the collection and distribution of registration and fees paid by motor carriers, motor private carriers, brokers, freight forwarders and leasing companies pursuant to this section.

"(9) UNIFIED CARRIER REGISTRATION PLAN.—The terms ‘Unified Carrier Registration Plan’ and ‘UCR Plan’ mean the organization of State, Federal and industry representatives responsible for developing, implementing and administering the Unified Carrier Registration Agreement.

"(10) VEHICLE REGISTRATION.—The term ‘vehicule registration’ means the registration of any commercial motor vehicle or any other registration law or regulation of a jurisdiction.

"(B) APPLICABILITY TO FREIGHT FORWARDERS.—A freight forwarder that operates commercial motor vehicles and is not required to register as a carrier pursuant to section 1983(b) of this title shall be subject to the provisions of this section as if a motor carrier.

"(c) UNREASONABLE BURDEN.—For purposes of this section, there shall be considered an unreasonable burden upon interstate commerce for any State or any political subdivision of a State, or any political authority of 2 or more States—

"(1) to enact, impose, or enforce any requirement or standard, or levy any fee or charge on any interstate motor carrier or motor private carrier in connection with—

"(I) the requirements of the State of the interstate operations of a motor carrier or motor private carrier;

"(II) the filing by the State with the information relating to the financial responsibility of a motor carrier or motor private carrier pursuant to sections 31133 or 31139 of this title;

"(C) the filing of the name of the local agent for service of process of a motor carrier or motor private carrier pursuant to sections 593 or 13304 of this title; or

"(D) the annual renewal of the intrastate authority, or the insurance filings, of a motor carrier or motor private carrier, or other intrastate filing requirement necessary to operate within the State, if the motor carrier or motor private carrier is—

"(i) registered in compliance with section 13902 or section 13905(b) of this title; and

"(ii) in compliance with any insurer filing procedures of the State.

"(1) intrastate service provided by motor carriers of passengers that is subject to the preemptive provisions of section 14501(a) of this title.

"(2) motor carriers of property, motor private carriers, brokers, or freight forwarders, or their services or operations, that are described in subparagraph (C) or (D) of section 14501(c)(2) and section 14506(c)(3) or permitted pursuant to section 14506(b) of this title, and

"(III) the intrastate transportation of waste or recyclable materials;

"(2) to require any interstate motor carrier or motor private carrier to pay any fee or tax, not prescribed by paragraph (1)(D) of this subsection, that causes a motor private carrier that pays a fee which is prescribed by that paragraph not to be required to pay.

"(a) GOVERNANCE OF PLAN.—The Unified Carrier Registration Plan shall be governed by a Board of Directors consisting of representatives of the Department of Transportation, Participating States, and the motor carrier industry.

"(B) NUMBER.—The Board shall consist of 15 directors.

"(C) COMPOSITION.—The Board shall be composed of directors appointed as follows:

"(1) FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION.—The Secretary shall appoint 1 director from each of the Federal Motor Carrier Safety Administration’s 4 Service Areas (as those areas are defined by the Federal Motor Carrier Safety Administration on January 1, 2005), from among the chief administrative officers of the State agencies responsible for overseeing the administration of the UCR Agreement in their respective States. Nominations for these 5 directorships shall be submitted to the Secretary by the national association of professional employees of the State agencies responsible for overseeing the administration of the UCR Agreement in their respective States.

"(2) STATE AGENCIES.—The Secretary shall appoint 5 directors from the professional staffs of State agencies responsible for overseeing the administration of the UCR Agreement in their respective States.

"(3) MOTOR CARRIER INDUSTRY.—The Secretary shall appoint 5 directors from the motor carrier industry. At least 1 of the appointees shall be an employee of the national trade association representing the general motor carrier of property industry.

"(4) DEPARTMENT OF TRANSPORTATION.—The Secretary shall appoint the Deputy Administrator of the Federal Motor Carrier Safety Administration, or such other individual designated by the Secretary, to serve as a director.

"(5) CHAIRPERSON AND VICE-CHAIRPERSON.—The Secretary shall designate 1 director as Chairperson and 1 director as Vice-Chairperson of the Board. The Chairperson and Vice-Chairperson shall serve in such capacity for the term of their appointment as directors.

"(E) TERM.—In appointing the initial Board, the Secretary shall designate 5 of the appointed directors for initial terms of 3 years, 5 of the appointed directors for initial terms of 2 years, and 5 of the appointed directors for initial terms of 1 year. Thereafter, all directors shall be appointed for terms of 3 years, except that the term of the Deputy Administrator or other individual designated by the Secretary under subparagraph (C)(iv) shall be at the discretion of the Secretary. A director may be appointed to succeed himself or herself. A director may continue to serve on the Board until his or her successor is appointed.

"(F) RULES AND REGULATIONS GOVERNING THE UCR AGREEMENT.—The Board of Directors shall issue rules and regulations to govern the UCR Agreement. The rules and regulations shall—

"(i) prescribe uniform forms and formats, for—

"(I) the annual submission of the information required by a Base-State of a motor carrier, motor private carrier, lessor company, broker, or freight forwarder;

"(ii) the transmission of information by a Participating State to the Unified Carrier Registration System;

"(iii) the payment of excess fees by a State to the designated depository and the distribution of fees by the depository to those States entitled thereto;

"(iv) the providing of notice by a motor carrier, motor private carrier, broker, freight forwarder, or leasing company to the Board of the intent of such entity to change its Base-State, and the procedures for a State to object to such a change under subparagraph (C) of this paragraph;

"(G) PROVISIONS OF THE UCR AGREEMENT.—The Board provide for the administration of the Unified Carrier Registration Agreement, including procedures for amending the Agreement and obtaining clarification of any provision of the Agreement.

"(H) the providing of notice by a motor carrier, motor private carrier, broker, freight forwarder, or leasing company to the Board of the intent of such entity to change its Base-State, and the procedures for a State to object to such a change under subparagraph (C) of this paragraph;

"(I) the providing of notice by a motor carrier, motor private carrier, broker, freight forwarder, or leasing company to the Board of the intent of such entity to change its Base-State, and the procedures for a State to object to such a change under subparagraph (C) of this paragraph;

"(J) the providing of notice by a motor carrier, motor private carrier, broker, freight forwarder, or leasing company to the Board of the intent of such entity to change its Base-State, and the procedures for a State to object to such a change under subparagraph (C) of this paragraph;
Transportation appointed pursuant to paragraph (1)(D), no director shall receive any compensation or other benefits from the Federal Government for serving on the Board or be considered a Federal employee. The Board shall provide service. All Directors shall be reimbursed for expenses they incur attending duly called meetings of the Board. In addition, the Board may appropriate an amount of expenses incurred by members of any subcommittee or task force appointed pursuant to paragraph (5). The reimbursement of expenses to directors and subcommittee members shall be based on the then applicable rules of the General Services Administration governing reimbursement of expenses for travel by Federal employees.

Meetings—

(A) In general.—The Board shall meet at least once per year. Additional meetings may be called, as needed, by the Chairperson of the Board, a majority of the directors, or the Secretary.

(B) Quorum.—A majority of directors shall be present at any meeting of the Board. The Chairperson shall appoint an Industry Advisory Subcommittee. The Industry Advisory Subcommittee shall consist of representatives of entities subject to the fee requirements of subsection (f) of this section, including representatives of the public, non-profit entities or any agency of a State to participate in the Unified Carrier Registration Plan or its committees.

Members of any subcommittee or task force may be directors or non-directors.

(D) Representation on subcommittees.—Except for the Industry Advisory Subcommittee (the membership of which shall consist solely of representatives of entities subject to the fee requirements of subsection (f) of this section), each subcommittee or task force shall include representatives of the Participating States and the motor carrier industry.

(6) Determination of Fees.—

(A) Recommendation by Board.—The Board shall recommend to the Secretary the initial annual fees to be assessed carriers, leasing companies, brokers, and freight forwarders pursuant to the Unified Carrier Registration Agreement. In making its recommendation to the Secretary for the level of fees to be assessed in any Agreement year, the Board and the Secretary shall consider—

(i) the administrative costs associated with the Unified Carrier Registration Plan and the Agreement;

(ii) whether the revenues generated in the previous year and any surplus or shortage from that or prior years enable the Participating States to achieve the revenue levels set by the Board; and

(iii) the parameters for fees set forth in subsection (g).

(B) Setting fees.—The Secretary shall set the initial annual fees for the next Agreement year and any subsequent adjustment of those fees—

(i) within 90 days after receiving the Board’s recommendation under subparagraph (A); and

(ii) after notice and opportunity for public comment.

(8) Liability Protections for Directors.—

No individual appointed to serve on the Board shall be held liable for or to any other party for harm, either economic or non-economic, caused by an act or omission of the individual arising from the individual’s service on the Board.

(A) the individual was acting within the scope of his or her responsibilities as a director; and

(B) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the party harmed by the individual.

(9) Inapplicability of Federal Advisory Committee Act.—The Federal Advisory Committee Act does not apply to the Unified Carrier Registration Plan or its committees.

(C) Fees Not Affected.—This section does not limit the amount of money a State may charge for vehicle registration or the amount of any fuel use tax a State may impose pursuant to the International Fuel Tax Agreement.

(D) Open Meetings.—

(1) State Plan.—No State shall be eligible to participate in the Unified Carrier Registration Plan or to receive any revenues derived under the Agreement, unless the State submits to the Secretary, not later than 3 years after the date of enactment of the Unified Carrier Registration Act of 2005, a plan that describes the State’s system for maintaining accurate records of motor carriers and those comercial motor vehicles they own or operate.

(A) Identifying the State agency that has or will have the legal authority, resources, and qualified personnel necessary to administer the Unified Carrier Registration Agreement in accordance with the rules and regulations promulgated by the Board of Directors of the Unified Carrier Registration Plan; and

(B) continuing assurances that an amount at least equal to the revenue derived by the State from the Unified Carrier Registration Agreement shall be used for motor carrier safety programs, enforcement, and financial responsibility, or the administration of the UCR Plan and UCR Agreement.

(2) Amended plans.—A State may change the agency designated in the plan submitted under this subsection by filing an amended plan with the Secretary and the Chairperson of the Unified Carrier Registration Plan. The fee scale shall be progressive and use different vehicle ratio for each bracket of carrier fleet size.

(E) The Board may ask the Secretary to adjust the fees within a reasonable range on an annual basis if the revenues derived from the fees—

(i) are insufficient to provide the revenues to which the States are entitled under this section; or

(ii) exceed those revenues.

(2) Determination of ownership or operation.—Commercial motor vehicles owned or operated by a motor carrier, motor private carrier, or freight forwarder shall mean those commercial motor vehicles registered in the name of the motor carrier, motor private carrier, or freight forwarder or controlled by the motor carrier, motor private carrier, or freight forwarder under a long term lease during a vehicle registration year.

(3) Calculation of Number of Commercial Motor Vehicles Owned or Operated.—The number of commercial motor vehicles owned or operated by a motor carrier, motor private carrier, or freight forwarder for purposes of paragraph (1) of this subsection shall be based either on—

(A) the number of commercial motor vehicles owned or operated by the motor carrier, motor private carrier, or freight forwarder as of the date 12-month period ending on June 30 of the year immediately prior to the end of the Agreement registration year; or

(B) the number of commercial motor vehicles owned or operated by the motor carrier, motor private carrier, or freight forwarder as of the date 12-month period ending on June 30 of the year immediately prior to the end of the Agreement registration year.

(4) Payment of Fees.—Revenues derived under the UCR Agreement shall be allocated to Participating States as follows:

(A) A State that participated in the Single State Registration System in the last SSRS registration year ending before the date of enactment of the Unified Carrier Registration Act of 2005 and complies with the requirements of subsection (e) of this section is entitled to receive a portion of the UCR Agreement revenues generated under the Agreement equivalent to the revenues it received from such interstate carriers in the last calendar year ending before the date of enactment of the Unified Carrier Registration Act of 2005, as long as the State continues to comply with the provisions of subsection (e).

(B) A State that gathered interstate registration fees from interstate motor carriers, interstate motor private carriers, interstate leasing companies, and brokers and complies with the requirements of subsection (e) of this section is entitled to receive an additional portion of the UCR Agreement revenues generated under the Agreement equivalent to the revenues it received from such interstate carriers in the last calendar year ending before the date of enactment of the Unified Carrier Registration Act of 2005, as long as the State continues to comply with the provisions of subsection (e).

(C) States that comply with the requirements of subsection (e) of this section and participate in SSRS during the last SSRS registration year ending before the date of enactment of
the Unified Carrier Registration Act of 2005 shall be entitled to an annual allotment not to exceed $500,000 from the UCR Agreement revenues generated under the Agreement as long as the State’s contribution continues to comply with the provisions of subsection (e).

(4) The amount of UCR Agreement revenues to which a State is entitled under this section shall be calculated by the Board and approved by the Secretary.

(3) DISTRIBUTION OF UCR AGREEMENT REVENUES.—

(1) ELIGIBILITY.—Each State that is in compliance with the provisions of subsection (e) shall be entitled to a portion of the revenues derived from UCR Agreement in accordance with subsection (g).

(2) ENTITLEMENT TO REVENUES.—A State that is in compliance with the provisions of subsection (e) may retain an amount of the gross revenues it collects from motor carriers, motor private carriers, brokers, freight forwarders and leasing companies under the UCR Agreement equivalent to the portion of revenues to which the State is entitled under subsection (g). All revenues a Participating State collects in excess of the amount to which the State is so entitled shall be deposited into the depository designated by the Board under subsection (d)(2)(D).

(4) REQUIREMENTS FOR USE OF FUNDS.—

(1) under the International Registration Plan under section 31704 of this title;

(2) in connection with the Federal Fuel Tax Agreement under section 31705 of this title;

(3) in connection with the Federal materials transportation registration plan under section 3103 of this title; and

(4) in connection with the Federal vehicle inspection standards under section 31316 of this title.

(b) EXCEPTION.—Notwithstanding paragraph (a), a State may continue to require display of credentials to verify identification of the holder of a commercial driver’s license, (or the renewal, transfer or upgrading of such license), to comply with reasonable procedures for operating an identification-based identity authentication program before issuing, renewing, transferring, or upgrading a commercial driver’s license.

(5) LAW ENFORCEMENT. — The Secretary may provide assistance to any State department of motor vehicles to implement and enforce laws, including laws governing the use of information-based identity authentication to determine the identity of an applicant for a commercial driver’s license, or the renewal, transfer or upgrading, of a commercial driver’s license.

SEC. 7136. IDENTIFICATION OF VEHICLES.

(a) IN GENERAL.—Chapter 145 is amended by adding at the end the following:

§14506. Identification of vehicles

(1) REQUIREMENTS FOR USE OF FUNDS.—No State, political subdivision of a State, interstate agency, or other political agency of 2 or more States may enact or enforce any law, rule, regulation standard, or other provision having the force and effect of law that requires a motor carrier, private carrier, freight forwarder, or leasing company to display any form of identification on or in a commercial vehicle, other than forms of identification required by the Secretary under section 390.21 of title 49, Code of Federal Regulations.

(b) EXCEPTION.—Notwithstanding paragraph (a), a State may continue to require display of credentials to verify identification of the holder of a commercial driver’s license, (or the renewal, transfer or upgrading of such license), to comply with reasonable procedures for operating an identification-based identity authentication program before issuing, renewing, transferring, or upgrading a commercial driver’s license.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 145 is amended by inserting after the item relating to section 14504 the following:

§14506. Identification of vehicles

SEC. 7137. USE OF UCR AGREEMENT REVENUES AS MATCHING FUNDS.

Section 31130(a) is amended by inserting “Amounts generated by the Unified Carrier Registration System fees and the UCR Agreement fees for motor carriers, motor private carriers, leasing companies, freight forwarders, and brokers for the next fiscal year shall be reduced by the Secretary accordingly.”

(1) ENFORCEMENT.—

(1) CIVIL ACTIONS.—Upon request by the Secretary of Transportation, the Attorney General may bring, in a court of appropriate jurisdiction, an action against any person who violates this section and the terms of the Unified Carrier Registration Agreement.

(2) VIENUE.—An action under this section may be brought only in the Federal court sitting in the State in which an order is required to enforce such compliance.

(3) SUBJECT MATTER.—Subject to title 28, chapter 145, section 1301 of title 49, this section may be enforced by any administrative or trade agency having authority to do so.

(4) ENFORCEMENT BY STATES.—Nothing in this section—

(A) prohibits a Participating State from issuing citations and imposing reasonable fines and penalties related to the deposit of diesel and gasoline taxes, and regulations on any motor carrier, motor private carrier, freight forwarder, broker, or leasing company for failure to—

(i) file documents as required under subsection (d)(2); or

(ii) pay the fees required under subsection (f); or

(B) authorizes a State to require a motor carrier, motor private carrier, or freight forwarder to display as evidence of compliance any form of identification in excess of those permitted under section 14506 of this title or in a commercial motor vehicle.

SEC. 7138. FACILITATION OF INTERNATIONAL REGISTRATION PLANS AND INTERNATIONAL FUEL TAX AGREEMENTS.

(a) IN GENERAL.—Chapter 317 is amended by adding at the end the following:

§31708. Facilitation of international registration plans and international fuel tax agreements

“The Secretary may provide assistance to any State that is participating in the International Registration Plan and International Fuel Tax Agreement, as provided in sections 31704 and 31705, respectively, and that serves as a base jurisdiction for motor carriers that are domiciled in Mexico, to assist the State with administrative costs resulting from serving as a base jurisdiction for motor carriers from Mexico.”

(b) CONFORMING AMENDMENT.—The analysis for chapter 317 of title 49, United States Code, is amended by adding at the end the following:

“317. Facilitation of international registration plans and international fuel tax agreements.”

SEC. 7139. IDENTITY AUTHENTICATION STANDARDS—MERCIAL VEHICLES.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1824(a)), is amended by adding at the end the following:

“179. Identity authentication standards

(1) DEFINITION OF INFORMATION-BASED IDENTIT AUTHENTICATION.—In this section, the term ‘information-based identity authentication’ means the determination of the identity of an individual, through the comparison of information provided by a person, with other information previously verified as accurate pertaining to that individual.

(b) STANDARDS.—Not later than 180 days after the enactment of this Act, the Secretary, in consultation with the Secretary of Homeland Security and the Federal Motor Carrier Safety Administration, shall promulgate regulations establishing uniform minimum standards for State departments of motor vehicles regarding the use of information-based identity authentication to determine the identity of an applicant for a commercial driver’s license, or the renewal, transfer or upgrading, of a commercial driver’s license.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 1824 is amended by inserting at the end the following:

§1824. Identity authentication standards

(1) DEFINITION OF INFORMATION-BASED IDENTIT AUTHENTICATION.—In this section, the term ‘information-based identity authentication’ means the determination of the identity of an individual, through the comparison of information provided by a person, with other information previously verified as accurate pertaining to that individual.

(2) STANDARDS.—Not later than 180 days after the enactment of this Act, the Secretary, in consultation with the Secretary of Homeland Security and the Federal Motor Carrier Safety Administration, shall promulgate regulations establishing minimum standards for State departments of motor vehicles regarding the use of information-based identity authentication to determine the identity of an applicant for a commercial driver’s license, or the renewal, transfer or upgrading, of a commercial driver’s license.

(d) KEY FACTORS.—Notwithstanding regulations under this section, the Secretary shall require that an information-based identity authentication program carried out under this section establish processes that—

(1) incorporate a comprehensive program ensuring administrative, technical, and physical safeguards to protect the privacy and security of means of identification (as defined in section 1082(d) of title 18, United States Code), against unauthorized access or use; (2) impose limitations on use of any information containing means of identification transferred or shared with third-party vendors for purposes other than the information-based identity authentication described in this section is only used by the third-party vendors for the specific purposes authorized under this section; (3) include procedures to ensure accuracy and enable applicants for commercial driver’s licenses who are denied licenses as a result of the information-based identity authentication described in this section, to appeal the determination and correct information upon which the comparison described in subsection (a) is based; (4) ensure that the information-based identity authentication described in this section—

(A) can accurately assess and authenticate identities; and

(B) will not produce a large number of false positives or unjustified adverse consequences;

(5) create penalties for knowing use of inaccurate information as a basis for comparison in authenticating identity; and

(6) adopt policies and procedures establishing effective oversight of the information-based identity authentication systems of State departments of motor vehicles.”

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

“179. Identity authentication standards.”

SEC. 7140. OFF-DUTY TIME FOR DRIVERS OF COMMERCIAL VEHICLES.

Paragraph (2) of section 31109(a), as transferred by section 7108, is amended by adding at
the end the following: ‘‘No additional off-duty time for a driver of such a vehicle shall be re-
quired in order for the driver to operate the ve-
hicle.’’

CHAPTER 3—COMMERCIAL DRIVER’S LICENSES

SEC. 7151. CDL TASK FORCE.

(a) In General.—The Secretary of Transpor-
tation shall convene a task force to study and
address current impediments and foreseeable challenges in the commercial driver’s license program’s effectiveness and measures needed to
realize the full safety potential of the commer-
cial driver’s license program. The task force shall
address such issues as State enforcement prac-
tices, operational procedures to detect and
deter fraud, needed improvements for seamless
information sharing between States, effective
methods for sharing electronic data between States, adequate proof of citizenship,
updated technology, and timely notification
from judicial bodies concerning traffic and
criminal convictions of commercial driver’s li-
cense holders.

(b) Membership.—Members of the task force
shall include State motor vehicle administra-
tors, representatives of law enforcement agencies or officials, members of the Judicial
Conference, representatives of the trucking in-
dustry, representatives of labor organizations, safety advocates, and other significant stake-
holders.

(c) Report.—Within 2 years after the date of
enactment, the Secretary shall submit to the
Senate Committee on Commerce, Science, and Transportation and the House of Repre-
sentatives Committee on Transportation and
Infrastructure.

(d) Funding.—From the funds authorized by
section 7103(b)(3) of this subtitle, $200,000 shall
be made available for each of fiscal years 2006
and 2007 to carry out this section.

SEC. 7152. CDL LEARNER’S PERMIT PROGRAM.

Chapter 313 is amended—

(1) by striking ‘‘time.’’ in section 31302 and
inserting ‘‘license, and may have only 1 learner’s
permit at any time.’’;

(2) by inserting ‘‘learners’ permits’’ after
‘‘licenses’’ the first place it appears in section
31308;

(3) by striking ‘‘licenses.’’ in section 31308 and
inserting ‘‘licenses and permits.’’;

(4) by redesignating paragraphs (2) and (3) of
section 31308 as paragraphs (3) and (4), re-
spectively, and inserting after paragraph (1) the
following:

‘‘(2) before a commercial driver’s license learner’s
permit can be issued to an individual, the
individual must pass a written test on the oper-
ation of a commercial motor vehicle that complies
with the minimum standards prescribed by the
Secretary under section 31305(a) of this title.’’;

(5) by inserting ‘‘or learner’s permit’’ after ‘‘li-
cense’’ each place it appears in paragraphs (5)
and (4), as redesignated, of section 31308; and

(6) by inserting ‘‘or learner’s permit’’ after ‘‘li-
cense’’ each place it appears in section 31309(b).

SEC. 7153. GRANTS TO STATES FOR COMMERCIAL
DRIVER’S LICENSE IMPROVEMENTS.

(a) In General.—Chapter 313 is amended by
adding at the end the following:

‘‘§31318. Grants for commercial driver’s li-
cense improvements.

(a) General Authority.—From the funds
authorized by section 3103(b)(3) of the Motor
Carrier Safety Reauthorization Act of 2005, the
Secretary may make a grant to a State, except as otherwise provided in subsection (e), in any fiscal
year to improve its implementation of the commercial driver’s license program, providing
the State is making a good faith effort toward
substantial compliance with the requirements of
section 31311 and this section. The Secretary shall establish criteria for the distribution of
grants and notify the States annually of such
criteria.

(b) Conditions.—Except as otherwise pro-
vided in subsection (e), a State may use a grant
under this section only if the State agrees that
its commercial driver’s license program, includ-
ing, but not limited to, computer hardware and
software, publications, testing, personnel, train-
ing, and equipment, or any materials that will
be used to rent, lease, or buy land or buildings.
The Secretary shall give priority to grants that
will be used to achieve compliance with the re-
quirments of the Modernized Information
System Modernization Act of 1999. The Secretary may allocate the
funds appropriated for such grants in a fiscal
year among the eligible States whose applica-
tions for grants have been approved, under cri-
eria established by the Secretary.

(c) Maintenance of Expenditures.—Except
as otherwise provided in subsection (e), the Sec-
retary may make a grant to a State under this
section only if the State agrees that the total ex-
penditure of amounts of the State and political
subdivisions of the State, exclusive of United
States Government and the States Government
shares, for the modernized information system
defined by section 31309 of title 49, United States
Code, is further amended by—

(1) E INFORMATION SYSTEM MODERNIZATION

SEC. 7154. MODERNIZATION OF CDL INFOR-
MATION SYSTEM.

(a) Information System Modernization Ac-
nount.—Section 31309 of title 49, United States
Code, is amended—

(1) by striking ‘‘The Secretary’’ in the last sentence and inserting ‘‘Except as provided in
subsection (e), the Secretary’’;

(2) by adding at the end the following:

‘‘(e) Information System Modernization
Account.—

‘‘(1) Establishment.—The Secretary of Transpor-
tation shall establish an account to be known as
the Information System Modernization
Account within the Department of Transpor-
tation.

‘‘(2) Use of Funds.—Amounts credited to the
Information System Modernization Account
shall be available exclusively for the purpose of
modernizing the information system under sub-
section (f). At the end of fiscal year 2008, the In-
spector General of the Department of Transpor-
tation shall complete a report to the Senate
Committee on Commerce, Science, and Transpor-
tation and the House of Representatives
Committee on Transportation and Infrastruc-
ture.

(b) Modernization Plan.—Section 31309 of
title 49, United States Code, is further amended by
adding at the end the following:

‘‘(f) Modernization Plan.—

‘‘(1) In General.—The Secretary shall develop
a comprehensive plan for modernization of the
information system that—

(A) complies with applicable Federal infor-
mation technology security standards;

(B) provides for the electronic exchange of
all information including the posting of convic-
tions;

(C) contains self auditing features to ensure
that data is being posted correctly and consist-
ently by the States;

(D) integrates the commercial driver’s license
and the medical certificate; and

(E) provides a schedule for modernization of
the system.

‘‘(2) Competitive Contracting.—The Sec-
retary may use non-Federal entities selected by
competitive bidding for this system to develop
and implement the modernization plan.

‘‘(3) State Participation.—

‘‘(A) Deadline.—The Secretary shall establish
a date by which each State must convert to the
new information system.

‘‘(B) Funding.—A State may use funds made
available under section 31318 of this title to de-
velop or modify its system to be compatible with
the modernized information system developed by
the Secretary under this subsection.’’

(c) Baseline Audit.—Within 1 year after the
date of enactment of this Act, the Secretary of
Transportation, in consultation with the Inspec-
tor General of the Department of Transpor-
tation, shall perform an audit of the information
system maintained under section 31309 of title 49, United States Code. The audit shall include—

(1) an assessment of the validity of data in the
information system on a State-by-State basis;

(2) an assessment of the extent to which convic-
tions are validly posted in the driver’s record;

(3) recommendations to the Secretary of
Transportation on how to update the baseline
audit annually to ensure that any shortcomings in
the information system are addressed, and a
methodology for conducting the update; and

(4) identification, on a State-by-State basis, of
any actions that the Inspector General finds
necessary to improve the information system data
collected by the system and to ensure the proper
posting of convictions. 
SEC. 7111. PROGRAMS TO BE INCLUDED.—(a) PROGRAMS TO BE INCLUDED.—(1) MOTOR VEHICLE AIRBAGS PUBLIC AWARENESS.—Section 402(a)(2) is amended by striking “and inserting ‘vehicles’,”.

(b) AGGRESSIVE DRIVING.—Section 402(a) is further amended by—

(A) by redesignating clause (6) as clause (8); and

(B) by inserting “involving school buses,” at the end of clause (5) the following: “(6) to reduce aggressive driving and to educate drivers about defensive driving, (7) to reduce accidents resulting from fatigued and distracted drivers, including distractions arising from the use of electronic devices in vehicles,”; and

(C) by inserting “safety belts, including for drivers about defensive driving,” after “school bus accidents,”.

(2) ADMINISTRATION OF STATE PROGRAMS.—Section 402(b)(1) is amended by—

(A) by striking “and inserting ‘State’,”; and

(B) by striking “the State; and”.

(3) ADMISSION OF STATE PROGRAMS.—Section 402(b)(1) is amended by—

(A) by striking “and inserting ‘State’,”; and

(B) by striking “the Secretary is authorized to use funds appropriated to carry out this section to pay for the development, administration of the National Highway Traffic Safety Administration; and agencies, States, private sector persons, highway safety personnel, and law enforcement personnel”.

(4) conduct research on, and evaluate the effectiveness of, traffic safety countermeasures, including seat belts and impaired driving initiatives.

(5) conduct research, on, evaluate, and develop best practices related to driver education programs, including driver education curricula, instructor training and certification, program administration and delivery mechanisms, and make recommendations for harmonizing driver education and multistage graduated licensing systems.

(6) conduct research, training, and education programs related to older drivers; and

(7) conduct demonstration projects.

(8) NATIONAL WIDE TRAFFIC SAFETY CAMPAIGNS.—

(1) REQUIREMENT FOR CAMPAIGNS.—The Administrator of the National Highway Traffic Safety Administration shall establish and administer a program under which at least 2 high-visibility traffic safety law enforcement campaigns will be carried out for the purposes specified in paragraph (2) in each of years 2006 through 2009.

(2) PURPOSE.—The purpose of each law enforcement campaign is to achieve either or both of the following objectives:

(A) Reduce alcohol-impaired or drug-impaired operation of motor vehicles.

(B) Increase use of seat belts by occupants of motor vehicles.

(3) ADVERTISING.—The Administrator may use, or authorize the use of, funds available under this section to carry out the development, print advertising in carrying out traffic safety law enforcement campaigns under this subsection.

(4) COORDINATION WITH STATES.—The Administrator shall coordinate with the States in carrying out the traffic safety law enforcement campaigns under this subsection, including advertising funded under paragraph (3), with a view to

(A) relying on States to provide the law enforcement resources for the campaigns out of

Highway Trust Fund increases above the amounts for such fiscal year assumed in the fiscal year 2006 joint budget resolution, then the amounts made available in such fiscal year for the purposes specified in paragraphs 402(a)(2), 403, 405, and 410 shall increase by the same percentage. If revenue to the Highway Trust Fund for a fiscal year is lower than the amounts for such fiscal year assumed in the fiscal year 2006 joint budget resolution, then the amounts authorized to be made available in such fiscal year for those programs shall not decrease.

Highway Safety Grant Program Reauthorization Act of 2009.

2009.

States Code, $4,000,000 for each of fiscal years each of fiscal years 2006 through 2009.

fiscal year 2008, and $147,615,000 in fiscal year 2009.


(8) To carry out the Impaired Driving Program under section 403 of title 23, United States Code, $141,852,000 in fiscal year 2006, $147,615,000 in fiscal year 2007, $141,360,000 in fiscal year 2008, and $147,312,000 in fiscal year 2009.

(9) To pay administrative and related operating expenses under section 402, section 403, section 404, section 403A, section 410, section 412, section 413, and section 414 of title 23, United States Code, and section 223 of the Highway Safety Grant Program Reauthorization Act of 2005, $7,400,000 in each of fiscal years 2006 through 2009.

(10) To carry out the Demonstration Programs related to older drivers, law enforcement, and motorcycle training under section 406 of title 23, United States Code, $4,000,000 in each of fiscal years 2006 through 2009.

(11) To carry out the Emergency Medical Services Programs under section 407A of title 23, United States Code, $149,667,000 in fiscal year 2006, $142,323,000 in fiscal year 2007, $134,819,000 in fiscal year 2008, and $142,866,000 in fiscal year 2009.

(12) To carry out the State Traffic Safety Information System Improvements under section 407A of title 23, United States Code, $10,905,000 in each of fiscal years 2006 through 2009.

(13) To carry out chapter 303 of title 49, United States Code, $4,000,000 for each of fiscal years 2006 through 2009, to be available for obligation in the manner as if such funds were appropriated under chapter 1 of title 23, United States Code.

(14) To carry out the Highway Safety Grant Program Reauthorization Act of 2005, $17,868,000 for fiscal year 2006, $18,150,000 for fiscal year 2007, $18,837,000 for fiscal year 2008, and $19,873,000 for fiscal year 2009.

(15) To carry out the Impaired Driving Program under section 403 of title 23, United States Code, $115,721,000 in fiscal year 2006, $129,065,000 in fiscal year 2007, $134,819,000 in fiscal year 2008, and $147,615,000 in fiscal year 2009.

(16) To carry out the State Traffic Safety Information System Improvements under section 407A of title 23, United States Code, $4,570,000 in each of fiscal years 2006 through 2009.

(17) To carry out the National Highway Traffic Safety Administration; and agencies, States, private sector persons, highway safety personnel, and law enforcement personnel.

(18) To carry out the Highway Safety Research and Development section 405 of title 23, United States Code, $149,667,000 in fiscal year 2006, $142,323,000 in fiscal year 2007, $134,819,000 in fiscal year 2008, and $142,866,000 in fiscal year 2009.

(19) To carry out the Demonstration Programs related to older drivers, law enforcement, and motorcycle training under section 406 of title 23, United States Code, $4,000,000 in each of fiscal years 2006 through 2009.

(20) To carry out the Demonstration Programs related to older drivers, law enforcement, and motorcycle training under section 406 of title 23, United States Code, $4,000,000 in each of fiscal years 2006 through 2009, to be available for obligation in the manner as if such funds were appropriated under chapter 1 of title 23, United States Code.

(21) To carry out the Impaired Driving Program under section 403 of title 23, United States Code, $141,852,000 in fiscal year 2006, $147,615,000 in fiscal year 2007, $141,360,000 in fiscal year 2008, and $147,312,000 in fiscal year 2009.

(22) To carry out chapter 303 of title 49, United States Code, $4,000,000 for each of fiscal years 2006 through 2009, to be available for obligation in the manner as if such funds were appropriated under chapter 1 of title 23, United States Code.

(23) To carry out the Impaired Driving Program under section 403 of title 23, United States Code, $141,852,000 in fiscal year 2006, $147,615,000 in fiscal year 2007, $141,360,000 in fiscal year 2008, and $147,312,000 in fiscal year 2009.
funding available under this section and sections 402, 405, and 410 of this title: and

“(B) providing out of National Highway Traffic Safety Administration resources most of the means for imposing on Federal educational initiatives and education efforts associated with the law enforcement campaigns.

“(5) ANNUAL EVALUATION.—The Secretary shall conduct an annual evaluation of the effectiveness of such initiatives.

“(6) FUNDING.—The Secretary shall use $24,000,000 in each of fiscal years 2006 through 2009 for national educational initiatives to be carried out nationwide in support of the campaigns under this section.

(c) INTERNATIONAL COOPERATION.—

“(1) AUTHORITY.—The Administrator of the National Highway Traffic Safety Administration may participate and cooperate in international endeavors concerning highway safety.

“(2) AMOUNT FOR PROGRAM.—Of the amount available for a fiscal year to carry out this section, $200,000 may be used for activities authorized under paragraph (1).”

(b) SPECIFIC RESEARCH PROGRAMS.—

(1) REQUIRED PROGRAMS.—The Secretary shall conduct research under section 403 of title 23, United States Code, for the following:

(A) EFFECTS OF USE OF CONTROLLED SUBSTANCES.—A study on the effects of the use of controlled substances on driver behavior to determine:

(i) methodologies for measuring driver impairment resulting from use of the most common controlled substances (including the use of such substances for medical purposes);

(ii) effective and efficient methods for training law enforcement personnel to detect or measure the level of impairment of a driver who is under the influence of a controlled substance by the use of technology or otherwise.

(b) ON-SCENE MOTOR VEHICLE COLLISION CAUSATION.—A nationally representative study to conduct on-scene motor vehicle collision data, and to determine crash causation, for which the Secretary shall enter into a contract with the National Academy of Sciences to conduct a research of the motor vehicle crashes, methodology, and implementation of the study.

(c) TOLL FACILITIES WORKPLACE SAFETY.—A study on the safety of highway toll collection facilities, including toll booths, conducted in cooperation with State and local highway safety organizations to determine the safety of highway toll collection facilities for the toll collectors and all such facilities and to develop best practices that would be of benefit to State and local highway safety organizations. The study shall consider:

(i) any problems resulting from design or construction of facilities that contribute to the occurrence of vehicle collisions with the facilities;

(ii) the safety of crosswalks used by toll collectors in the crosswalk from toll booths;

(iii) the extent of the enforcement of speed limits at and in the vicinity of toll facilities;

(iv) the use of warning devices, such as vibration or rumble strips, to alert drivers approaching toll facilities;

(v) the use of cameras to record traffic violations in the vicinity of toll facilities;

(vi) the use of traffic control arms in the vicinity of toll facilities;

(vii) law enforcement practices and jurisdictional issues that affect the safety at and in the vicinity of toll facilities; and

(viii) data (which shall be collected in conducting the research) regarding the incidence of accidents and injuries at and around toll booth facilities.

(2) TIME FOR COMPLETION OF STUDIES.—The studies conducted in subparagraphs (A), (B), and (C) may be conducted in concert with other Federal departments and agencies with relevant expertise. The Secretary shall submit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the progress of each study conducted under this subsection.

(3) REPORTS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit a report on the studies the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure:

(A) RESEARCH ON DISTRACTED, INATTENTIVE, AND FATIGUED DRIVERS.—In conducting research under section 403(a)(3) of title 23, United States Code, the Secretary shall submit not less than 2 demonstration projects to evaluate new and innovative means of combating traffic system problems caused by distracted, inattentive, or fatigued drivers. The demonstration projects shall be in addition to any other research carried out under this subsection.

(B) PEDESTRIAN SAFETY.—

(1) IN GENERAL.—The Secretary of Transportation shall:

(i) conduct a comprehensive report on pedestrian safety that builds on the current level of knowledge of pedestrian safety countermeasures by identifying new advanced technology and intelligent transportation systems, such as automated pedestrian detection and warning systems (infrastructure-based and vehicle-based), and real-time vehicle structural design that could potentially mitigate the crash forces on pedestrians in the event of a crash; and

(ii) include in the report recommendations on how new technological developments could be incorporated into educational and enforcement efforts and how they could be integrated into national design guidelines developed by the American Association of State Highway and Transportation Officials.

(C) DUE DATE.—The Secretary shall complete the report not less than 2 years after the date of enactment of this Act and transmit a copy of the report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(d) STUDY ON REFUSAL OF INTOXICATION TESTING.—

(1) REQUIREMENT FOR STUDY.—In addition to studies under title 23, United States Code, the Secretary of Transportation shall carry out a study of the frequency with which persons arrested for the offense of operating a motor vehicle while under the influence of alcohol and persons arrested for the offense of operating a motor vehicle while intoxicated refuse to take a test to determine blood alcohol concentration levels and the effect such refusals have on the ability of States to prosecute such persons for those offenses.

(2) CONSULTATION.—In carrying out the study under the paragraph, the Secretary shall consult with the Governors of the States, the States’ Attorneys General, and the United States Sentencing Commission.

(C) REPORT.—

(i) REQUIREMENT FOR REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report on the results of the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(ii) CONTENT.—The report shall include any recommendation for legislation, including any recommended model State legislation, and any other recommendations that the Secretary considers appropriate for implementing a program designed to reduce refusals by arrested persons to submit to a test to determine blood alcohol concentration levels.

SEC. 7215. NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE TECHNICAL CORRECTION.

Section 404(d) is amended by striking “Commerce” and inserting “Transportation”.

SEC. 7216. OCCUPANT PROTECTION GRANTS.

(a) IN GENERAL.—Section 405 is amended to read as follows:

“§ 405. Safety belt performance grants

“(a) IN GENERAL.—The Secretary of Transportation shall make grants to States in accordance with the provisions of this section to encourage the enactment and enforcement of laws requiring the use of safety belts in passenger motor vehicles.

(b) GRANTS FOR ENACTING PRIMARY SAFETY BELT LAWS.

“(1) IN GENERAL.—The Secretary shall make a single grant to each State that either—

(A) enacts for the first time after December 31, 2002, a law requiring every person in a State using a State safety belt use rate for each of the 2 calendar years immediately preceding the fiscal year of a grant of 90 percent or more, as measured under criteria determined by the Secretary.

“(2) AMOUNT.—The amount of a grant available to a State in fiscal year 2006 or in a subsequent fiscal year using the results of this subsection is equal to 500 percent of the amount apportioned to the State for fiscal year 2003 under section 402(c) of this title.

(c).grants provided by this subsection for a fiscal year exceed the amount of funds available for such grants for that fiscal year, then the Secretary shall make grants under this subsection to States in the order in which—

(1) the primary safety belt use law came into effect; or

(2) the State’s safety belt use rate was 90 percent or more for 2 consecutive calendar years (as measured by criteria determined by the Secretary, whichever first occurs).

(d) CATCH-UP GRANTS.—The Secretary shall make a grant to any State eligible for a grant under this subsection that did not receive a grant for a fiscal year because of the application of paragraph (a), in the next fiscal year if the State’s primary safety belt use law remains in effect or its safety belt use rate is 90 percent or more for the 2 consecutive calendar years preceding such next fiscal year (subject to paragraph (4)).

(e) GRANTS FOR PRE-2003 LAWS.—To the extent that amounts made available to a State under section 402(c) of this title for fiscal year 2003. The amount of a grant available to a State under this subsection shall be equal to 250 percent of the amount of funds appropriated to the State under subsection (b)(5) of this title for fiscal year 2003. The Secretary may award the grant in up to 4 installments over a period of 4 fiscal years beginning with fiscal year 2003.

(f) ALLOCATION OF UNUSED GRANT FUNDS.—The Secretary shall make additional grants

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under this section of any amounts available for grants under this section that, on July 1, 2009, are neither obligated nor expended. The additional grants made under this subsection shall be allocated by the Secretary of Commerce, Science, and Transportation within 1 year after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005.

(a) Law Enforcement Training.—

(1) REQUIREMENT FOR PROGRAM.—The Administrator of the National Highway Traffic Safety Administration shall conduct training to make available for law enforcement personnel in each State and local government traffic safety personnel, family, licensing agencies, enforcement officers, and various public and private agencies in enhancing the safety of older drivers;

(2) improve the scientific basis of medical standards, through the evaluation of the licensing of all drivers in a non-discriminatory manner;

(3) conduct field tests to assess the safety potential of driver retraining courses of particular benefit to older drivers; and

(4) conduct other activities to accomplish the objectives of this program.

(b) FORMULATION OF PLAN.—After consultation with affected parties, the Secretary shall formulate an older driver traffic safety plan to guide the design and implementation of this program. The plan shall be submitted to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation within 1 year after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005.

SEC. 7218. EMERGENCY MEDICAL SERVICES.

(a) Federal Coordination and Enhanced Support of Emergency Medical Services.—

(1) IN GENERAL.—For emergency medical services, the purposes of the Interagency Committee on Emergency Medical Services, based on identified needs, shall be to advise, consult, and make recommendations on matters relating to the implementation of the coordinated State emergency medical services programs.

(b) ADMINISTRATION.—The Administrator of the National Highway Traffic Safety Administration, in cooperation with the Secretary of Homeland Security, through the Under Secretary for Emergency Preparedness and Response, shall coordinate with Federal agencies support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

(5) LEADERSHIP.—The members of the Interagency Committee shall select a chairperson of the Committee annually.

SEC. 7217. OLDER DRIVER SAFETY; LAW ENFORCEMENT TRAINING.

(a) In General.—Section 406 is amended to read as follows:

§ 406. Older driver safety; law enforcement training.

(1) IMPROVING OLDER DRIVER SAFETY.—

(1) In General.—Of the funds made available under this section, the Secretary shall allocate $2,000,000 to each of fiscal years 2006 through 2009 to conduct a comprehensive research and demonstration program to improve transportation safety pertaining to older drivers. The program shall—

(A) improve information and guidelines to assist physicians and other related medical personnel, families, licensing agencies, enforcement officers, and various public and private agencies in enhancing the safety of older drivers;

(B) improve the scientific basis of medical standards, through the evaluation of the licensing of all drivers in a non-discriminatory manner;

(C) conduct field tests to assess the safety potential of driver retraining courses of particular benefit to older drivers; and

(D) conduct other activities to accomplish the objectives of this program.

(b) FORMULATION OF PLAN.—After consultation with affected parties, the Secretary shall formulate an older driver traffic safety plan to guide the design and implementation of this program. The plan shall be submitted to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation within 1 year after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005.

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(B) improve the scientific basis of medical standards, through the evaluation of the licensing of all drivers in a non-discriminatory manner;

(C) conduct field tests to assess the safety potential of driver retraining courses of particular benefit to older drivers; and

(D) conduct other activities to accomplish the objectives of this program.

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(b) ADMINISTRATION.—The Administrator of the National Highway Traffic Safety Administration, in cooperation with the Secretary of Homeland Security, through the Under Secretary for Emergency Preparedness and Response, shall coordinate with Federal agencies support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

(5) LEADERSHIP.—The members of the Interagency Committee shall select a chairperson of the Committee annually.

SEC. 7217. OLDER DRIVER SAFETY; LAW ENFORCEMENT TRAINING.

(a) In General.—Section 406 is amended to read as follows:

§ 406. Older driver safety; law enforcement training.

(1) IMPROVING OLDER DRIVER SAFETY.—

(1) In General.—Of the funds made available under this section, the Secretary shall allocate $2,000,000 to each of fiscal years 2006 through 2009 to conduct a comprehensive research and demonstration program to improve transportation safety pertaining to older drivers. The program shall—

(A) improve information and guidelines to assist physicians and other related medical personnel, families, licensing agencies, enforcement officers, and various public and private agencies in enhancing the safety of older drivers;

(B) improve the scientific basis of medical standards, through the evaluation of the licensing of all drivers in a non-discriminatory manner;

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(b) FORMULATION OF PLAN.—After consultation with affected parties, the Secretary shall formulate an older driver traffic safety plan to guide the design and implementation of this program. The plan shall be submitted to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation within 1 year after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005.

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(1) IN GENERAL.—For emergency medical services, the purposes of the Interagency Committee on Emergency Medical Services, based on identified needs, shall be to advise, consult, and make recommendations on matters relating to the implementation of the coordinated State emergency medical services programs.

(b) ADMINISTRATION.—The Administrator of the National Highway Traffic Safety Administration, in cooperation with the Secretary of Homeland Security, through the Under Secretary for Emergency Preparedness and Response, shall coordinate with Federal agencies support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

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§ 406. Older driver safety; law enforcement training.

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(A) improve information and guidelines to assist physicians and other related medical personnel, families, licensing agencies, enforcement officers, and various public and private agencies in enhancing the safety of older drivers;

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SEC. 7218. EMERGENCY MEDICAL SERVICES.
“(C) implementation of quality assurance programs; and

“(D) incorporation of data collection and analysis programs that facilitate system development and sustainment with other systems and programs useful to emergency medical services.

“(3) ADMINISTRATION OF STATE PROGRAMS.—

The Secretary may not approve a coordinated State emergency medical services program under this subsection unless the program—

“(A) provides that the Governor of the State is responsible for its administration through a State office of emergency medical services that has adequate powers and is suitably equipped and organized to receive funds under such program and coordinates such program with the highway safety office of the State; and

“(B) authorizes political subdivisions of the State to participate in and receive funds under such program, consistent with a goal of achieving statewide coordination of emergency medical services and 9–1–1 activities.

“(4) FUNDING.—

“(A) USE OF FUNDS.—Funds authorized to be appropriated to carry out this subsection shall be used to aid the States in conducting coordinated emergency medical services and 9–1–1 programs as described in paragraph (2).

“(B) APPORTIONMENT.—

(i) APPORTIONMENT FORMULA.—The funds shall be apportioned to each State as follows: 75 percent in the ratio that the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 25 percent to the total public road mileage in each State bears to the total public road mileage in all States. For the purpose of this subparagraph, a ‘public road’ means any road and street within the jurisdiction of and maintained by a public authority and open to public travel. Public road mileage as used in this subsection shall be determined as of the end of the calendar year prior to the year in which the funds are apportioned and shall be certified by the Governor of the State and subject to approval by the Secretary.

(ii) MINIMUM APPORTIONMENT.—The annual apportionment to each State shall not be less than 1/4 of 1 percent of the total apportionment, except that the apportionment to the Secretary of the Interior on behalf of Indian tribes shall not be less than 1/4 of 1 percent of the total apportionment, and the apportionments to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not be less than 1/4 of 1 percent of the total apportionment.

“(5) APPLICATION OF CHAPTER 1.—Section 402(d) of this title shall apply in the administration of this subsection.

“(6) FEDERAL SHARE.—The Federal share of the cost of a project or program funded under this subsection shall be 80 percent.

“(7) APPLICATION IN INDIAN COUNTRY.—

(A) USE OF TERMS.—For the purpose of application of this subsection in Indian country, the terms ‘State’ and ‘Governor of the State’ include the Secretary of the Interior and the term ‘political subdivisions of the State’ includes an Indian Tribal Organization.

(B) INDIAN COUNTRY DEFINED.—In this subsection, the term ‘Indian country’ means—

(i) all land within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent and including rights-of-way running through such lands;

(ii) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, or within or without the limits of a State; and

(iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

(C) STATE DEFINED.—In this section, the term ‘State’ means each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Secretary of the Interior on behalf of Indian tribes.

“(d) REPEAL.—

Section 407 of title 49, United States Code (the ‘Highway Safety Grant Program Re-authorization Act of 2005’), is repealed.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 4 is amended by inserting the following:

‘‘407A. Federal coordination and enhanced support of emergency medical services.’’

SEC. 7219. REPEAL OF AUTHORITY FOR ALCOHOL TRAFFIC SAFETY PROGRAMS.

(a) REPEAL.—Section 408 is repealed.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 4 is amended by striking the item relating to section 408.

SEC. 7220. IMPAIRED DRIVING PROGRAM.

(a) MAINTENANCE OF EFFORT.—Section 409(a)(2) is amended by striking ‘‘the Transportation Equity Act for the 21st Century’’ and inserting ‘‘the Highway Safety Grant Program Reauthorization Act of 2005’’.

(b) REVISED GRANT AUTHORITY.—Section 410 is amended—

(1) by striking paragraph (3) of subsection (a) and redesignating paragraph (4) as paragraph (3); and

(2) by striking subsections (b) through (f) and inserting the following:

‘‘(b) PROGRAM-RELATED ELIGIBILITY REQUIREMENTS.—To be eligible for a grant under this section, a State shall—

(1) for fiscal year 2006 or 2007, carry out 4 of the programs required under subsection (c);

(2) for fiscal year 2008 or 2009, carry out 5 of the programs required under subsection (c); and

(3) for any such fiscal year—

(A) comply with the additional requirements set forth in subsection (d) with respect to such programs and activities; and

(B) comply with any additional requirements of the Secretary.

(C) STATE PROGRAMS AND ACTIVITIES.—To qualify for a grant under this subsection, a State shall select programs from among the following:

(1) CHECK-POINT, SATURATION PROTOCOL PROGRAM.

‘‘(A) A State program to conduct a series of high-visibility, Statewide law enforcement campaigns in which law enforcement personnel monitor for impaired driving, either through use of sobriety check-points or saturation patrols, on a nondiscriminatory, lawful basis for the purpose of deterring or apprehending the operators of the motor vehicles are driving while under the influence of alcohol or controlled substances that meets the requirements of subparagraphs (B) and (C).

‘‘(B) A program meets the requirements of this subparagraph only if a State organizes the campaign in cooperation with related periodic national campaigns, the National Highway Traffic Safety Administration, but this subparagraph does not preclude a State from initiating sustained high-visibility, Statewide law enforcement campaigns independently of the cooperative efforts.

‘‘(C) A program meets the requirements of this subparagraph only if, for each fiscal year, a State demonstrates to the Secretary that the State and the political subdivisions of the State that receive funds under this section have increased, in the aggregate, the total number of impaired driving enforcement activities at high incident locations, as described in subparagraph (A) (or any other similar activity approved by the Secretary), initiated in such State by the political subdivisions of the State or by the Secretary determines meaningful for the State over the number of such activities initiated in such State during the preceding fiscal year, which shall not be less than 5 percent.

‘‘(D) PROSECUTION AND ADJUDICATION PROGRAM.—A State program and adjudication programs under which—

(A) judges and prosecutors are actively encouraged to prosecute and adjudicate cases of impaired driving offenses that have the potential for successfully improving the prosecution and adjudication of such cases.

‘‘(E) ANNUAL STATEWIDE REPORT.—A State program to—

(A) tracks drivers who are arrested or convicted for violation of laws prohibiting impaired operation of motor vehicles;

(B) includes information about each case of an impaired driver beginning at the time of arrest through case disposition, including information about any similar action, conviction or other disposition, sentencing or other imposition of sanctions, and substance abuse treatment;

(C) includes the following:

(i) accessibility to the information for law enforcement personnel Statewide and for United States law enforcement personnel; and

(ii) linkage for the sharing of the information and of the information in State traffic record systems among jurisdictions and appropriate agencies, court systems and offices of the States;

(D) shares information with the National Highway Traffic Safety Administration for compilation and use for the tracking of impaired operators of motor vehicles who move from State to State;

(E) meets the requirements of subparagraphs (B), (C), and (D) of this paragraph, as applicable.

(F) A program meets the requirements of this subparagraph only if, during fiscal years 2006 and 2007, a State—

(i) assesses the system used by the State for treating drivers who are convicted for violation of laws prohibiting impaired operation of motor vehicles;

(ii) identifies ways to improve the system, as used by the State, to enhance the capability of the system to provide information in coordination with impaired operator information systems of other States; and

(iii) develops a strategic plan that sets forth the actions to be taken and the resources necessary to achieve the identified improvements and to enhance the capability for coordination with the systems of other States.

(G) A program meets the requirements of this subparagraph only if, in each of fiscal years 2008 and 2009, a State—

(i) demonstrates to the Secretary that the State has made substantial and meaningful progress in improving the State’s impaired operator information system, and makes part of each report on the progress of the information system.

‘‘(H) IMPAIRED DRIVING PERFORMANCE.—The percentage of fatally-injured drivers with 0.08 percent or greater blood alcohol concentration in the State has decreased in each of the 2 most recent calendar years for which data are available.

‘‘(I) SELF-SUSTAINING IMPAIRED DRIVING PREVENTION PROGRAM.—A program under which a significant portion of the fines or surcharges collected from individual who were fined for operating a motor vehicle while under the influence of alcohol are returned to communities for
comprehensive programs for the prevention of impaired driving.

"(6) LAWS FOR HIGH RISK DRIVERS.—A law that establishes stronger sanctions or additional penalties for convicted operating a motor vehicle while under the influence of alcohol whose blood alcohol concentration is 0.15 percent or more than for individuals convicted of the violation of a law that with a lower blood alcohol concentration. For purposes of this paragraph, the term ‘additional penalties’ includes—

(A) a 1-year suspension of a driver’s license, but what is a driver’s license suspended becoming eligible after 45 days of such suspension to obtain a provisional driver’s license that would permit the individual to drive—

(i) only to and from the individual’s place of employment or school; and

(ii) only while operating a vehicle equipped with a certified alcohol ignition interlock device;

and

(B) a mandatory assessment by a certified substance abuse official of whether the individual has an alcohol abuse problem that includes the possibility of a referral to counseling if the official determines that such a referral is appropriate.

"(7) PAIRED DRIVING COURTS.—

(A) IN GENERAL.—A program to consolidate and coordinate impaired driving cases into courts that specialize in impaired driving cases, with special docketing and sentencing of offenders of impaired driving laws, (hereinafter referred to as DWI courts) that meets the requirements for this purpose:

(i) only to and from the individual’s place of employment or school; and

(ii) only while operating a vehicle equipped with a certified alcohol ignition interlock device; and

and

(B) a mandatory assessment by a certified substance abuse official of whether the individual has an alcohol abuse problem that includes the possibility of a referral to counseling if the official determines that such a referral is appropriate.

"(8) CHARACTERISTICS.—A DWI Court is a distinct function performed by a court system for the purpose of changing the behavior of alcohol- or drug-dependent offenders arrested for driving while impaired. A DWI Court can be a dedicated court with dedicated personnel, including judges, prosecutors and probation officers. A DWI court may be an existing court system that serves the following essential DWI Court functions:

(i) A DWI Court performs an assessment of high-risk offenders utilizing a team headed by the judge and including all criminal justice stakeholders (prosecutors, defense attorneys, probation officers, law enforcement personnel and others) along with alcohol/drug treatment professionals.

"(ii) The DWI Court team recommends a specific plea agreement or contract for each offender’s incarceration, treatment and close community supervision. The agreement maximizes the probability of rehabilitation and minimizes the likelihood of recidivism.

"(iii) Compliance with the agreement is verified with thorough monitoring and frequent alcohol testing. Periodic status hearings assess offender progress and allow an opportunity for modifying the sentence if necessary.

"(C) ASSESSMENT.—In the first year of operation, the States shall assess the number of court cases handled in their jurisdiction that are consistently performing the DWI Court functions.

"(D) PLAN.—In the second year of operation, the States shall develop a strategic plan for increasing the number of courts performing the DWI function.

"(E) PROGRESS.—In subsequent years of operation, the State shall demonstrate progress in increasing the number of DWI Courts and in increasing the number of high-risk offenders participating in and successfully completing DWI Court agreements.

"(d) USES OF GRANTS.—Grants made under this section may be used for programs and activities described in subsection (c) and to defray the costs of the training of law enforcement personnel and the procurement of technology and equipment, such as and including video equipment and passive alcohol sensors, to counter directly impaired operation of motor vehicles.

"(2) The costs of public awareness, advertising, and educational campaigns that publicize the use of sobriety check points or increased law enforcement efforts to counter impaired operation of motor vehicles (c).

"(4) The costs of public awareness, advertising, and educational campaigns that target impaired operation of motor vehicles by persons under 34 years of age.

"(5) The costs of the development and implementation of a State impaired operator information system design (c).

"(6) The costs of operating programs that result in vehicle forfeiture or impoundment or license plate impoundment.

"(e) ADDITIONAL AUTHORITIES FOR CERTAIN AUTHORIZED USES.—

(1) COMBINATION OF GRANT PROCEEDS.—Grant funds used under subsection (d)(3) may be combined, or expended in coordination, with proceeds of grants under section 402 of this title.

(2) COORDINATION OF USES.—Grant funds used for a campaign under paragraph (3) or (4) of subsection (d) may be expended—

(A) in coordination with employers, schools, entities in the hospitality industry, and non-profit traffic safety groups; and

(B) in coordination with sporting events and entertainment events.

(f) FUNDING.—

(1) IN GENERAL.—Grant funding under this section shall be allocated among States that meet the eligibility criteria in subsection (b) on the basis of the apportionment formula that applies for apportionments under section 402(c) of this title.

(2) HIGH FATALITY-RATE STATES.—A State that is among the 10 States with the highest impaired driving-related fatality rates for the calendar year immediately preceding the fiscal year in which the grant may be made shall be eligible for a grant under this section if the State meets the requirements of subsection (g).

(3) FUNDING.—In this section:

(1) REQUIRED USES.—At least ½ of the amounts allocated to States under subsection (f)(2) shall be used for the program described in subsection (c)(1).

(2) REQUIREMENT FOR PLAN.—A State receiving a grant under this subsection shall, in subsection (f)(2) shall expend those funds only after receiving approval from the Administrator of the National Highway Traffic Safety Administration for a plan regarding such expenditures.

(3) PROHIBITED USES.—Not later than 2 months after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2002, the Administrator of the National Highway Traffic Safety Administration shall prescribe regulations with respect to the use of the funds provided under this section for the purpose of—

(A) improving the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the safety data of the State that is needed to identify priorities for national, State, and local highway and traffic safety programs;

(B) improve the effectiveness of efforts to make such improvements;

and

(C) link the State data systems, including traffic records, with other data systems within the State, such as systems that contain medical, roadway, and economic data; and

(4) IMPROVE THE COMPLIANCE AND INTEROPERABILITY OF THE DATA SYSTEMS OF THE STATES WITH NATIONAL DATA SYSTEMS AND DATA SYSTEMS OF OTHER STATES AND ENHANCE THE ABILITY OF THE SECRETARY TO ANALYZE NATIONWIDE TRENDS IN CRASH OCCURRENCES, RATES, OUTCOMES, AND CONSEQUENCES.

(5) ELIGIBILITY.—To be eligible for a first-year grant under this section for such fiscal year, a State shall demonstrate to the satisfaction of the Secretary that the State has—

(A) established a highway safety data and traffic records coordinating committee with a multidisciplinary membership that includes, among others, managers, collectors, and users of traffic records and public health and injury control data systems.

(B) completed or updated, within the preceding 5 years, an assessment or an audit of the highway safety data and traffic records system of the State.

(C) developed a multiyear highway safety data and traffic records system strategic plan that addresses existing deficiencies in the State’s highway safety data and traffic records system, is approved by the highway safety data and traffic records coordinating committee, and—

(D) specifies how existing deficiencies in the State’s highway safety data and traffic records system were identified;

(E) prioritizes, on the basis of the identified highway safety data and traffic records system deficiencies, the highway safety data and traffic records system needs and goals of the State, including the activities under subsection (a);

(F) specifies performance-based measures by which progress toward those goals will be determined; and

(G) specifies how the grant funds and any other funds of the State are to be used to address those needs and goals identified in the multiyear plan.

(3) GRANT AMOUNT.—Subject to the requirements of subsection (f)(3), the amount of a first-year grant to a State for a fiscal year shall be an amount of—

(A) the amount determined by multiplying—

(i) the amount appropriated to carry out this section for such fiscal year, by the factor determined under the second sentence of subsection (c); and

(B) under the influence of a controlled substance.

(2) IMPAIRED DRIVING-RELATED FATALITY RATE.—The term ‘impaired driving-related fatality rate’ shall be calculated as the number of traffic-related fatalities, as calculated in accordance with regulations which the Administrator of the National Highway Traffic Safety Administration shall prescribe. NHTSA TO ISSUE REGULATIONS.—Not later than 12 months after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2002, the National Highway Traffic Safety Administration shall issue guidelines to the States specifying the types and formats of data that States should collect relating to driving under the influence of alcohol or other substances.

(3) SUCCESSIVE YEAR GRANTS.—

(A) ELIGIBILITY.—A State shall be eligible for a grant under this subsection in a fiscal year if the State meets the requirements of this section for such fiscal year.

(B) CERTIFICATION.—Within 5 years after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2002, the Governor of each State shall certify to the Secretary that the State is making progress toward the goals set forth in this section.

(C) SUCCESSIVE YEAR GRANTS.—

(A) ELIGIBILITY.—A State shall be eligible for a grant under this subsection in a fiscal year if the State meets the requirements of this section for such fiscal year.

(B) CERTIFICATION.—Within 5 years after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2002, the Governor of each State shall certify to the Secretary that the State is making progress toward the goals set forth in this section.
“(B) submits an updated multyear plan that meets the requirements of subsection (b)(1)(C);
“(C) certifies that its highway safety data and traffic records coordinating committee continues to operate under the multyear plan;
“(D) specifies how the grant funds and any other funds of the State are to be used to address needs and goals identified in the multyear plan;
“(E) demonstrates measurable progress toward achieving the goals and objectives identified in the multyear plan; and
“(F) submits an annual report on the progress in implementing the multyear plan.

(2) GRANT AMOUNT.—Subject to subsection (d)(3), each grant made to a State for a fiscal year under this subsection shall equal the higher of—
“(A) the amount determined by multiplying—
“(i) $20,000,000, by the ratio that the funds apportioned to the State under section 402 of this title for fiscal year 2003 bears to the funds apportioned to all the States and Territories under section 402 of this title for fiscal year 2003; or
“(ii) the ratio that the funds apportioned to the State under section 402 of this title for fiscal year 2007 bears to the funds apportioned to all the States under such section for fiscal year 2007; or
“(B) $300,000,000.

(3) ADDITIONAL REQUIREMENTS AND LIMITATIONS.—
“(1) MODEL DATA ELEMENTS.—The Secretary, in consultation with States and other appropriate Federal agencies or entities, shall require the States to report data elements that are useful for the observation and analysis of trends in occurrences, rates, outcomes, and circumstances of motor vehicle traffic accidents. In order to be eligible for apportionment under this subsection, a State shall submit to the Secretary a certification that the State has adopted and uses such model data elements, or if a State does not use grant funds provided under this section toward adopting and using the maximum number of such model data elements as soon as practicable.

(2) DATA ON USE OF ELECTRONIC DEVICES.—The model data elements required under paragraph (1) shall include data elements, as determined appropriate by the Secretary in consultation with the States and with appropriate elements of the law enforcement community, on the impact on traffic safety of the use of electronic devices while driving.

(3) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all other sources for highway safety data programs at or above the amount that is maintained by such State in the 2 fiscal years preceding the date of enactment of the Highway Traffic Safety Grant Program Reauthorization Act of 2005.

(4) FEDERAL SHARE.—The Federal share of the cost of adopting and implementing in a fiscal year a State program described in subsection (a) may not exceed—
“(B) $500,000.

(5) LIMITATION ON USE OF GRANT FUNDS.—A State may use the proceeds of a grant received under this section only to implement the program described in subsection (a) for which the grant is made.

(6) APPLICABILITY OF CHAPTER 1.—Section 402(d)(4) of this title shall apply in the administration of the chapter as follows:
“(a) TRIENNIAL STATE MANAGEMENT REVIEWS.—At least once every 3 years the National Highway Traffic Safety Administration shall conduct a review of each State highway safety program. The review shall include a management evaluation of all grant programs partially or fully funded under this title to ensure that the Administration shall provide review-based recommendations on how each State may improve the management and oversight of its grant activities and may fully fund under this title.

(7) RECOMMENDATIONS BEFORE SUBMISSION.—In order to provide guidance to State highway safety agencies on matters that should be addressed in the State highway safety program goals and initiatives as part of its highway safety program plan before the plan is submitted for review, the Administrator shall provide data-based recommendations to each State at least 90 days before the date on which the plan is to be submitted for approval.

(8) STATE PROGRAM REVIEW.—The Administrator shall—
“(A) conduct a program improvement review of any State that does not make substantial progress over a 3-year period in meeting its priority program goals; and
“(B) provide technical assistance and safety program requirements to be incorporated in a State’s highway safety plan for any goal not achieved.

(9) REGIONAL HARMONIZATION.—The Administration and the Inspector General of the Department of Transportation shall undertake a study of the data and analysis of the practicesthe procedures and the management reviews and program reviews conducted by Administration regional offices and formulate a report of best practices to be completed within 180 days after the date of enactment of the Highway Traffic Grant Program Reauthorization Act of 2005.

(10) SUMMARY REPORT.—The Administrator shall make the following documents available via the Internet upon their completion:
“(A) The Administrator’s management review guidelines and the program review guidelines.
“(B) State highway safety plans.
“(C) State annual accomplishment reports.
“(D) The Administration’s Summary report of findings from Management Reviews and Improvement Plans.

(11) REPORTS TO STATE HIGHWAY SAFETY AGENCIES.—The Administrator may not make a grant, reimbursement, or award under paragraph (2) that is directed to a State highway safety agency until after it has been submitted to that agency.

(12) GENERAL ACCOUNTING OFFICE REVIEW.—The General Accounting Office shall analyze the effectiveness of the National Highway Traffic Safety Administration’s oversight of traffic safety grants by determining the usefulness of the Administration’s advice to the States regarding grants administration and State activities, the extent to which the States incorporate the Administration’s recommendation into their highway safety plans and programs, and improvements that result in a State’s highway safety program that may be attributable to the Administration’s advice. Based on this analysis, the General Accounting Office shall submit a report by not later than the end of fiscal year 2008 to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation.

SEC. 7222. NHTSA ACCOUNTABILITY.

(a) IN GENERAL.—Chapter 4, as amended by section 7221, is amended by adding at the end the following:

“§413. Agency accountability
“(a) TRIENNIAL STATE MANAGEMENT REVIEWS.—At least once every 3 years the National Highway Traffic Safety Administration shall conduct a review of each State highway safety program. The review shall include a management evaluation of all grant programs partially or fully funded under this title to ensure that the Administration shall provide review-based recommendations on how each State may improve the management and oversight of its grant activities and may fully fund under this title.

(b) RECOMMENDATIONS BEFORE SUBMISSION.—In order to provide guidance to State highway safety agencies on matters that should be addressed in the State highway safety program goals and initiatives as part of its highway safety program plan before the plan is submitted for review, the Administrator shall provide data-based recommendations to each State at least 90 days before the date on which the plan is to be submitted for approval.

(c) STATE PROGRAM REVIEW.—The Administrator shall—
“(1) conduct a program improvement review of any State that does not make substantial progress over a 3-year period in meeting its priority program goals; and
“(2) provide technical assistance and safety program requirements to be incorporated in a State’s highway safety plan for any goal not achieved.

(d) REGIONAL HARMONIZATION.—The Administration and the Inspector General of the Department of Transportation shall undertake a study of the data and analysis of the practices and the management reviews and program reviews conducted by Administration regional offices and formulate a report of best practices to be completed within 180 days after the date of enactment of the Highway Traffic Grant Program Reauthorization Act of 2005.

(e) BEST PRACTICES GUIDELINES.—
“(1) UNIFORM GUIDELINES.—The Administrator shall issue uniform management review guidelines and program review guidelines based on the report required by subsection (e). Each regional office shall use the guidelines in exercising its State administrative review duties.

(f) SUMMARY REPORT.—The Administrator shall make the following documents available via the Internet upon their completion:
“(A) The Administrator’s management review guidelines and the program review guidelines.
“(B) State highway safety plans.
“(C) State annual accomplishment reports.
“(D) The Administration’s Summary report of findings from Management Reviews and Improvement Plans.
“(E) REPORTS TO STATE HIGHWAY SAFETY AGENCIES.—The Administrator may not make a grant, reimbursement, or award under paragraph (2) that is directed to a State highway safety agency until after it has been submitted to that agency.

(g) GENERAL ACCOUNTING OFFICE REVIEW.—The General Accounting Office shall analyze the effectiveness of the National Highway Traffic Safety Administration’s oversight of traffic safety grants by determining the usefulness of the Administration’s advice to the States regarding grants administration and State activities, the extent to which the States incorporate the Administration’s recommendation into their highway safety plans and programs, and improvements that result in a State’s highway safety program that may be attributable to the Administration’s advice. Based on this analysis, the General Accounting Office shall submit a report by not later than the end of fiscal year 2008 to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation.

SEC. 7223. GRANTS FOR IMPROVING CHILD PASSENGER SAFETY PROGRAMS.

(a) IN GENERAL.—The Secretary of Transportation shall establish a program to provide grants to States to assist in the enforcement of laws implementing Anton’s Law (49 U.S.C. 30127 note).

(b) ELIGIBILITY REQUIREMENTS.—(1) IN GENERAL.—The Secretary shall make a grant to each State that, as determined by the Secretary, enacts or has enacted, has in effect, and is enforcing a law requiring that children riding in passenger motor vehicles (as defined in section 405(f)(4) of title 23, United States Code, who are too large to be secured in a child safety seat (as defined in section 711 of Anton’s Law (49 U.S.C. 30127 note) that meets requirements prescribed by the Secretary under section 3 of Anton’s Law.

(2) YEAR IN WHICH FIRST ELIGIBLE.—(A) EARLY QUALIFICATION.—A State that has enacted a law described in paragraph (1) that is in effect before October 1, 2005, is first eligible to receive a grant under subsection (a) in fiscal year 2006.

(B) SUBSEQUENT QUALIFICATION.—A State that enacts a law described in paragraph (1) that is in effect after September 30, 2005, is first eligible to receive a grant under subsection (a) in the first fiscal year beginning after the date on which the law is enacted.

(c) GRANT AMOUNT.—Amounts available for grants under this section in any fiscal year shall be apportioned among the eligible States on the basis of population.

(d) USE OF GRANT AMOUNT.—(1) IN GENERAL.—Of the amounts received by a State under this section for any fiscal year—(A) 50 percent shall be used for the enforcement of, and education to promote public awareness of, State child passenger protection laws; and

(B) 50 percent shall be used to fund programs that purchase and distribute child booster seats, child safety seats, and other appropriate passenger motor vehicle child restraints to indigent families without charge.

(2) REPORT.—Within 90 days after the State fiscal year in which a State receives a grant under this section, the State shall transmit to the Secretary a report documenting the manner in which grant amounts obligated or expended are identified and identifying the specific programs supported by grant funds. The report shall be in a form prescribed by the Secretary and may be combined with other State grant reporting requirements under this chapter.

(e) DEFINITION OF CHILD SAFETY SEAT.—The term “child safety seat” means any device (except safety belts (as such term is defined in section 405(f)(6)) of title 23, United States Code, designed for use in a motor vehicle (as such term is defined in section 405(f)(4) of that title) to restrain, seat, or position a child who weighs 50 pounds or less.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation—
“(1) $18,000,000 for fiscal year 2006;
“(2) $20,000,000 for fiscal year 2007;
“(3) $25,000,000 for fiscal year 2008; and
“(4) $30,000,000 for fiscal year 2009.

SEC. 7224. MOTORCYCLIST SAFETY TRAINING AND MOTORIST AWARENESS PROGRAMS.

(a) IN GENERAL.—Chapter 4, as amended by section 7221, is amended by adding at the end the following:

“§414. Motorcyclist safety training and motorist awareness programs
“(a) DEFINITIONS.—In this section:
“1) MOTORCYCLIST SAFETY TRAINING.—The term ‘motorcyclist safety training’ means any formal program of instruction that—
   (A) provides accident avoidance and other safety and educational skills to motorcyclists, including innovative training opportunities to meet unique regional needs; and
   (B) is approved for use in a State by the designation State motorcycle safety agencies or motorcyclist safety issues, which may include the State Motorcycle Safety Administrator or a motorcyclist advisory council appointed by the Governor of each State.

2) MOTORIST AWARENESS.—The term ‘motorist awareness’ means individual or collective motorist awareness of—
   (A) the presence of motorcycles on or near roadways; and
   (B) safe driving practices that avoid injury to motorcyclists, bicyclists, and pedestrians.

3) MOTORIST AWARENESS PROGRAM.—The term ‘motorist awareness program’ means any informational or public awareness program designed to enhance motorist awareness that is developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State Motorcycle Safety Administrator or, in the absence of a State Administrator, a motorcyclist advisory council appointed by a Governor of the State.

4) STATE.—The term ‘State’ means—
   (A) a State;
   (B) the District of Columbia; and
   (C) the Commonwealth of Puerto Rico.

5) ELIGIBILITY.—Not later than 90 days after the date of enactment of this section and on September 1 of each fiscal year thereafter, based on a letter of certification provided by the Governor of each State, the Secretary shall develop and publish a list of States that, as of the date of publication of the list, have established motorcyclist safety training programs and motorist awareness programs, including information that indicates—
   (1) the level of base funding provided for each such program for the applicable fiscal year; and
   (2) whether the level of base funding provided for each such program for the applicable fiscal year was increased, decreased, or maintained from the level of funding provided for the program for the previous fiscal year.

6) ALLOCATION.—Not later than 120 days after the date of enactment of this section and on September 1 of each fiscal year thereafter, the Secretary shall allocate to each State for which the base funding allocated for motorcyclist safety training programs and motorist awareness programs, is less than the amount allocated for the previous year, not less than $100,000, to be used only for motorcyclist safety training and motorist awareness programs, including—
   (1) improvements to motorcyclist safety training curricula;
   (2) improvements in program delivery to both urban and rural areas, including—
      (A) procurement or repair of practice motorcycles;
      (B) instructional aides; and
      (C) mobile training units;
   (3) an increase in the recruitment or retention of motorcyclist training instructors certified by a State Motorcyclist Safety Administrator or motorcycle advisory council appointed by the Governor; and
   (4) public awareness, service announcement, and other outreach programs to enhance motorist awareness, such as the ‘share-the-road’ safety messages developed in subsection (f).

7) CONTRACTS WITH ORGANIZATIONS.—The Secretary may enter into an agreement with an organization that is recommended by and represents the interests of State Motorcycle Safety Administrators, the National Highway Traffic Safety Administration, and chief licensing officers of States, to develop a multisectoral training program to enhance motorcyclist safety awareness, including innovative training opportunities to meet unique regional needs.

8) AUTHORIZATION OF APPROPRIATIONS.—From funds available to commissioners under section 406 of this title, $5,200,000 shall be made available for each of fiscal years 2006 through 2009 to carry out this section.

9) SHARED-THE-ROAD MODEL LANGUAGE.—Not later than 1 year after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005, the Secretary, in consultation with the National Highway Traffic Safety Administration, shall develop and provide to the States model language for use in traffic safety education courses that educate drivers’ training materials instructing the drivers of motor vehicles on the importance of sharing the roads with motorcyclists.

10) CONFORMING AMENDMENT.—The chapter analysis for chapter 4 of title 23, United States Code, as amended by section 7222, is amended by adding at the end the following:

‘414. Motorcyclist safety training and motorist awareness programs.’

CHAPTER 2—SPECIFIC VEHICLE SAFETY-RELATED RULINGS

SEC. 7251. VEHICLE ROLLOVER PREVENTION AND CRASH MITIGATION.

(a) IN GENERAL.—Subchapter II of chapter 301 is amended by inserting after the end the following:

‘§30128. Vehicle rollover prevention and crash mitigation.

(b) ROLLOVER PREVENTION.

(1) IN GENERAL.—The Secretary shall initiate rulemaking proceedings, for the purpose of establishing rules or standards that will reduce vehicle rollover rates and fatalities and injuries associated with such crashes for motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds.

(2) ROLLING CHAIRS.—One of the rulemaking proceedings initiated under subsection (a) shall be to establish performance criteria to reduce the occurrence of rollovers consistent with stability enhancing technologies. The Secretary shall issue a proposed rule in this proceeding by July 1, 2006, and a final rule by April 1, 2009.

(c) OCCUPANT EJECTION PREVENTION.—

(1) IN GENERAL.—The Secretary shall also initiate a rulemaking proceeding to establish performance standards to reduce complete and partial ejections of vehicle occupants from outside the vehicle. During the proceeding the Secretary shall consider various ejection mitigation systems.

(2) DOOR LOCKS AND DOOR RETENTION.—The Secretary shall complete the rulemaking proceeding initiated to upgrade Federal Motor Vehicle Safety Standard No. 206, relating to door locks and door retention, no later than 30 months after the date of enactment of this Act.

(d) PROTECTION OF OCCUPANTS.—One of the rulemaking proceedings initiated under subsection (a) shall be to establish performance criteria to upgrade Federal Motor Vehicle Safety Standard No. 216 relating to roof strength for driver and passenger seats. The Secretary may consider industry and independent dynamic tests that realistically duplicate the actual forces transmitted during a rollover crash. The Secretary shall issue a proposed rule under this paragraph no later than October 1, 2009.

SEC. 7252. SIDE-ImpACT CRASH PROTECTION RULEMAKING.

The Secretary of Transportation shall complete a rulemaking proceeding under chapter 301 of the United States Code, to establish a standard designed to enhance passenger motor vehicle occupant protection, in all seating positions, in side impacts, and the Secretary shall issue a final rule by July 1, 2008.

SEC. 7253. TIRE RESEARCH.

Within 2 years after the date of enactment of this Act, the Secretary shall transmit a report to the appropriate committees of the House of Representatives and the Senate, the National Highway Traffic Safety Administration, the House of Representatives Committee on Energy and Commerce, and the House of Representatives Committee on Science, Space, and Technology and the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce, describing a report of research conducted to address tire aging and recommendations concerning tire aging and recommendations for potential rulemaking regarding tire aging.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 301 is amended by inserting after the item relating to section 30127 the following:

‘30128. Vehicle accident ejection protection’.

SEC. 7254. VEHICLE BACKOVER AVOIDANCE TECHNOLoGY STUDY.

(a) IN GENERAL.—The Administrator of the National Highway Traffic Safety Administration shall conduct a study of effective methods for reducing the incidence of injury and death outside of parked passenger motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds attributable to movement of such vehicles. The Administrator shall complete the study within 1 year after the date of enactment of this Act and report its findings to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce not later than 15 months after the date of enactment of this Act.

(b) SPECIFIC ISSUES TO BE COVERED.—The study required by subsection (a) shall—

(1) include an analysis of backover prevention technology;
   (2) identify, evaluate, and compare the available technologies for detecting people or objects behind a motor vehicle with a gross vehicle weight rating of not more than 10,000 pounds for their accuracy, effectiveness, cost, and feasibility for installation; and
   (3) provide an estimate of cost savings that would result from widespread use of backover prevention devices and technologies in motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds, including savings attributable to the prevention of—
      (A) injuries and fatalities; and
      (B) damage to bumpers and other motor vehicle parts and damage to other objects.

SEC. 7255. NONTRAFFIC INCIDENT DATA COLLECTION.

(a) IN GENERAL.—In conjunction with the study required in section 7254, the National Highway Traffic Safety Administration shall establish a method to collect and maintain data on the number and types of injuries and deaths involving motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds in non-traffic incidents.

(b) DATA COLLECTION AND PUBLICATION.—The Secretary of Transportation shall publish the data collected under subsection (a) no less frequently than biennially.

SEC. 7256. SAFETY BELT USE REMINDERS.

(a) BUZZER LAW.—

(1) IN GENERAL.—Section 30124 is amended—
   (A) by striking ‘‘not the first place it appears’’ and inserting ‘‘not the first place it appears’’; and
   (B) by striking ‘‘except’’ and inserting ‘‘including’’.

(2) CONFORMING AMENDMENT.—Section 30122 is amended by striking ‘‘inclusion’’.

(b) STUDY OF SAFETY BELT USE TECHNOLOGIES.—The Secretary of Transportation...
shall conduct a review of safety belt use technologies to evaluate progress and to consider possible revisions in strategies for achieving further gains in safety belt use. The Secretary shall complete such a review by July 1, 2008.

SEC. 7257. AMENDMENT OF AUTOMOBILE INFORMATION DISCLOSURE ACT.

(a) SAFETY LABELING REQUIREMENT.—Section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232) is amended—

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

(2) by inserting after subsection (d) the following:

‘‘(e) PENALTY.—Section 30165(a) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

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

‘‘(2) SCHOOL BUSES.—

(A) IN GENERAL.—Notwithstanding paragraph (1) of this section, the maximum amount of a civil penalty under this paragraph shall be $10,000 in the case of—

(i) the manufacturer, sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation of a school bus or school bus equipment (as those terms are defined in section 32908(e) of this title) that does not comply with any of the standards prescribed by the Administrator under this section; or

(ii) a violation of section 32912(a)(2) of this title.’’.

(b) REGULATIONS.—Not later than January 1, 2006, the Administrator of the National Highway Traffic Safety Administration shall issue regulations to implement the labeling requirements under subsections (g) and (h) of section 3 of the Automobile Information Disclosure Act, as added by subsection (a).

(c) APPLICABILITY.—The labeling requirements under subsections (g) and (h) of section 3 of such Act (as added by subsection (a)), and the regulations prescribed under subsection (b) shall apply to new automobiles delivered on or after—

(1) September 1, 2006, if the regulations under subsection (b) are prescribed not later than August 31, 2005; or

(2) September 1, 2007, if the regulations under subsection (b) are prescribed after August 31, 2005.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, to implement the labeling requirements, testing processes and increasing the number of vehicles tested under the New Car Assessment Program of the National Highway Traffic Safety Administration—

(1) $14,500,000 for fiscal year 2006;

(2) $13,000,000 for fiscal year 2007;

(3) $12,500,000 for fiscal year 2008;

(4) $12,000,000 for fiscal year 2009; and

(5) $11,500,000 for fiscal year 2010.

SEC. 7258. POWER WINDOW SWITCHES.

The Secretary of Transportation shall up-grade Federal Motor Vehicle Safety Standard 118 to require that power windows in motor vehicles not in excess of 10,000 pounds have switches that raise the window only when the switch is pressed down and switches that lower the window only when the switch is pressed upward. The Secretary shall issue a final rule implementing this section by April 1, 2007.

SEC. 7259. 15-PASSENGER VAN SAFETY.

(a) TESTING.—

(1) IN GENERAL.—The Secretary of Transportation shall require the testing of 15-passenger vans under the New Car Assessment Program of the National Highway Traffic Safety Administration’s new car assessment program.

(2) ANALYSIS.—In this subsection, the term ‘‘15-passenger van’’ means a vehicle that seats 10 to 14 passengers, not including the driver.

(b) PROHIBITION OF PURCHASE, RENTAL, OR LEASE OF NONCOMPLIANT 15-PASSENGER VANS FOR SCHOOL USE.—Section 30112(a) is amended—

(1) by inserting ‘‘(i) before ‘Except as provided’; and

(2) by adding at the end the following:

‘‘(2) Except as provided in this section, section 30113 of this title, and subchapter III of chapter III of this title, a school or school system may not purchase or lease a new 15-passenger van if it will be used significantly, or by on behalf of, the school or school system to transport preprimary, primary, or secondary school students to or from school or an event related to school, unless the 15-passenger van complies with the motor vehicle standards prescribed for school buses and multifunction school activity buses under this title. This paragraph does not apply to the purchase or lease of an existing 15-passenger van authorized by that section before the date of enactment of the Surface Transportation Safety Improvement Act of 2005.’’.

(c) PENALTY.—Section 30165(a) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

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

‘‘(2) PENALTY.—Section 30165(a) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

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

‘‘(2) SCHOOL BUSES.—

(A) IN GENERAL.—Notwithstanding paragraph (1) of this section, the maximum amount of a civil penalty under this paragraph shall be $10,000 in the case of—

(i) the manufacturer, sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation of a school bus or school bus equipment (as those terms are defined in section 32908(e) of this title) that does not comply with any of the standards prescribed by the Administrator under this section; or

(ii) a violation of section 32912(a)(2) of this title.’’.

(b) RELATED SERIES OF VIOLATIONS.—A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by that section. The maximum penalty under this paragraph for a related series of violations is $15,000,000.’’.

SEC. 7260. UPDATED FUEL ECONOMY LABELING FOR NATIVE FUELED VEHICLES.

(a) IN GENERAL.—The Administrator of the Environmental Protection Agency shall, as added by subsection (a), that describe—

(1) the language that shall be set out on the label, including a statement that the vehicle is capable of operating on a mixture of 85 percent ethanol blended with gasoline; and

(2) the appropriate size and color of the font of such language so that it is conspicuous to the individual introducing fuel into the vehicle; and

(3) for the temporary window or wind-shield sticker referred to in paragraph (2) of such section 32906(e), that—

(A) prohibit the label from being removed by any seller prior to the final sale of the vehicle to a consumer; and

(B) describe the specifications of the label, including that the label shall be—

(i) prominently displayed and conspicuous on the vehicle; and

(ii) separate from any other window or wind-shield sticker, decal, or label.

(c) COMPLIANCE.—

(1) IN GENERAL.—A manufacturer shall be required to comply with the requirements of section 32906(e) of title 49, United States Code, as amended by subsection (a), for a vehicle that is manufactured for a model year after model year 2006.

(2) MODEL YEAR DEFINED.—In this subsection, the term ‘model year’ shall have the meaning given such term in section 32901(a) of such title.

(d) VIOLATIONS.—

(1) IN GENERAL.—Section 32906(f) of title 49, United States Code, as redesignated by subsection (a), is amended by inserting ‘‘or (e)’’ after subsection (b).

(2) CONFORMING AMENDMENT.—Section 32911(a) of such title is amended by inserting ‘‘32906(e)’’ after ‘‘32906(f)’’.

SEC. 7262. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Transportation to carry out this
chapter and chapter 301 of title 49, United States Code—
(1) $136,000,000 for fiscal year 2006;
(2) $142,000,000 for fiscal year 2007;
(3) $150,000,000 for fiscal year 2008; and
(4) $157,400,000 for fiscal year 2009.

Subtitle C—Hazardous Materials

SEC. 7301. SHORT TITLE.

This subtitle may be cited as the "Hazardous Materials Response, Safety and Security Reauthorization Act of 2005".

CHAPTER 1—GENERAL AUTHORITIES ON TRANSPORTATION OF HAZARDOUS MATERIALS

SEC. 7302. PURPOSE.

The text of section 5101 is amended to read as follows:

"The purpose of this chapter is to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in interstate, intrastate, and foreign commerce.

SEC. 7303. DEFINITIONS.

Section 5102 is amended as follows:

(A) by redesignating paragraphs (11), (12), and (13), as redesignated, after paragraphs (10) and (11); and

(B) by redesignating clause (iv) of subparagraph (A), as redesignated, after "course of":

(i) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce; and

(ii) applies to a person who

(A) is a United States-registered aircraft;

(B) by inserting "State" or "State" in subparagraph (B) and inserting "State" or "State" in clause (iii) of subparagraph (A), as redesignated, after "course of":

(C) by inserting "all that follows and inserting "that":

(D) by inserting "as qualified for use in transport-

ing hazardous material in commerce in commerce; and

"(E) by inserting paragraph (10) the following:

"(ii) 'Secretary' means the Secretary of Transportation except as otherwise provided.

SEC. 7304. GENERALLY REGULATORY AUTHORITY.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.

Section 5102(a) is amended by striking "(A)

"(b) COVERED HAZARDOUS MATERIALS.

Section 5102(b) is amended by striking "(B) and inserting "(B) and inserting"

"(c) RECOMMENDATIONS ON CHEMICAL AND BIOLOGICAL MATERIALS.

Section 5102(a) is amended by striking paragraph (2) and inserting paragraph (2)

"(d) CONFORMING AMENDMENT.

Section 5102(a)(1) is amended by striking "subsection (b)(2)" and inserting "subsection (b)(1)".

SEC. 7305. BACKGROUND CHECKS FOR DRIVERS Hauling Hazardous Materials

(a) FOREIGN DRIVERS.

(1) In general.

(i) No commercial motor vehicle operator registered to operate in Mexico or Canada may operate a commercial motor vehicle transporting a hazardous material in commerce in the United States until the operator has undergone a background records check similar to the background records check required for commercial motor vehicle operators licensed in the United States to transport hazardous materials in commerce.

(ii) Definitions.

(iii) Section 5103(b)(1)(A) is amended to read as follows:

(1) $136,000,000 for fiscal year 2006;

(2) $142,000,000 for fiscal year 2007;

(3) $150,000,000 for fiscal year 2008; and

(4) $157,400,000 for fiscal year 2009.

Subtitle C—Hazardous Materials

SEC. 7301. SHORT TITLE.

This subtitle may be cited as the "Hazardous Materials Response, Safety and Security Reauthorization Act of 2005".

CHAPTER 1—GENERAL AUTHORITIES ON TRANSPORTATION OF HAZARDOUS MATERIALS

SEC. 7302. PURPOSE.

The text of section 5101 is amended to read as follows:

"The purpose of this chapter is to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in interstate, intrastate, and foreign commerce.

SEC. 7303. DEFINITIONS.

Section 5102 is amended as follows:

(A) by striking or after the semicolon in subparagraph (A); and

(B) by redesignating clause (ii) of subparagraph (A), as redesignated, after "course of":

"(i) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce, and

"(ii) applies to a person who

(a) by redesignating clause (ii) of subparagraph (A), as redesignated, after "course of":

(b) by redesignating subparagraph (C) as subparagraph (B); and

(c) by adding at the end the following:

(D) by striking subparagraph (B) and redesignating subparagraph (B) as subparagraph (C); and

(E) by inserting "(i) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce; and

"(ii) applies to a person who

"(A) is a United States-registered aircraft;

"(B) by inserting "State" or "State" in subparagraph (B) and inserting "State" or "State" in clause (iii) of subparagraph (A), as redesignated, after "course of":

"(C) by inserting "all that follows and inserting "that":

"(D) by inserting "as qualified for use in transport-
SEC. 7326. REPRESENTATION AND TAMPERING.

(a) REPRESENTATION.—Section 510(a) is amended—

(1) by striking “a container,” and all that follows through “package,” component of a package, or packaging for;” and

(2) by striking “the container” and all that follows through “packaging) meets” and inserting “its component, a packaging or packaging meets”;

(b) TAMPERING.—Section 510(b) is amended—

(1) by inserting “component of a package, or packaging,” after “package,” in paragraph (2).

SEC. 7327. TRANSPORTING CERTAIN MATERIAL.

Section 5105 is amended by striking subsection (d).

SEC. 7328. HAZMAT EMPLOYEE TRAINING REQUIREMENTS AND GRANTS.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5101 is amended by striking “of Transportation” each place it appears in subsections (a), (b), (c) (other than in paragraph (1), (d), and (f).

(b) TRAINING GRANTS.—Section 5107(e) is amended—

(1) by striking “section 5127(c)(3) and inserting “section 5128(b)(3) of this title”;

(2) by inserting “determined by the Secretary, grants for such instructors to train hazmat employees” after “employees” in the first sentence thereof.

SEC. 7329. SHIPPING PAPERS AND DISCLOSURE.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5101(a) is amended by striking “Transportation”.

(b) DISCLOSURE CONSIDERATIONS AND REQUIREMENTS.—Section 5110 is amended—

(1) by striking “under subsection (b) of this section,” in subsection (a) and inserting “in regulations”;

(2) by striking subsection (b); and

(3) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively.

(c) CONFORMANCE OF PARTS.—Subsection (d) of section 5110, as redesignated by subsection (b)(3) of this section, is amended as follows:

(c)(4) SHIPPERS.—The person who provides the shipping paper under this section shall retain the paper, or an electronic format of it, for a period of 1 year after the date that the shipping paper is provided to the carrier, with the paper or electronic format to be accessible through the shipper’s principal place of business.

(2) AVAILABILITY TO GOVERNMENT AGENCIES.—Any person required to keep the shipping paper under this section shall retain the paper, or an electronic format of it, for a period of 1 year after the date that the shipping paper is provided to the carrier, with the paper or electronic format to be accessible through the carrier’s principal place of business.

SEC. 7331. RAIL TANK CARS.

(a) REPEAL OF REQUIREMENTS.—Section 5111 is repealed.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 51 is amended by striking the item relating to section 5111.

SEC. 7332. UNSATISFACTORY SAFETY RATINGS.

(a) IN GENERAL.—The text of section 5113 is amended to read as follows:

“A violation of section 5114(c)(3) of this title shall be considered a violation of this chapter, and shall be subject to the penalties in sections 5112 and 5124 of this title.

(b) CONFORMING AMENDMENTS.—The first subsection of section 5114 is amended—

(1) by striking “sections 521(b)(5)(A) and 5111” in paragraph (1) and inserting “section 521(b)(5)(A) of this title”;

(2) by adding at the end of paragraph (3) “A violation of this paragraph by an owner or operator of a transporting hazardous material package shall be considered a violation of paragraph 51 of this title, and shall be subject to the penalties in sections 5123 and 5124 of this title.”;

SEC. 7333. TRAINING CURRICULUM FOR THE PUBLIC SECTOR.

(a) IN GENERAL.—Section 5115(a) is amended to read as follows:

“A violation of section 5114(c)(3) of this title shall be considered a violation of this chapter, and shall be subject to the penalties in sections 5112 and 5124 of this title.”

SEC. 7334. TRAINING CARGO AND GRANTS.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5101 is amended by striking “of Transportation” each place it appears in subsections (a), (b), (c), and (d).

(b) TRAINING GRANTS.—Section 5107(e) is amended—

(1) by striking “section 5127(c)(3)” and inserting “section 5128(b)(3) of this title”; and

(2) by inserting “determined by the Secretary, grants for such instructors to train hazmat employees” after “employees” in the first sentence thereof.

SEC. 7335. REQUIREMENTS AND GRANTS.

(a) REQUIREMENTS.—Section 5105 is amended by striking “of Transportation” each place it appears in subsections (a), (b), (c), and (d).
striking “Association,” and inserting “Association” or by any other voluntary organization establishing consensus-based standards that the Secretary considers appropriate.

Section 5115(a) is amended—
(1) by striking “national response team—” and inserting “National Response Team—”;
(2) by striking “publish a list!” in paragraph (2) and all that follows and inserting “publish and distribute the list of courses maintained under this section, and of any programs utilizing such courses.”

SEC. 7334. PLANNING AND TRAINING GRANTS; EMERGENCY PREPAREDNESS FUND.

(a) Reference to Secretary of Transportation—Section 5116 is amended by striking “Transportation” each place it appears in subsections (a), (b), (c), (d), and (i).
(b) Government Share of Costs—Section 5116(a) is amended by striking the second sentence.
(c) Monitoring and Technical Assistance—Section 5116(f) is amended by striking “national response team” and inserting “National Response Team”.
(d) Deligation of Authority—Section 5116(g) is amended by striking “Government grant programs” and inserting “Federal financial assistance programs”.
(e) Emergency Preparedness Fund—
(1) Name of Fund—Section 5116(h) is amended by inserting after initial printing of “be known as the ‘Emergency Preparedness Fund’”.
(2) Publication of Emergency Response Guide—Section 5116(i) is further amended—
(A) by striking “collects under section 5106(g)(2)(A) of this title” and “;
(B) by striking “and” after the semicolon in paragraph (2); and
(C) by redesignating paragraph (3) as paragraph (4); and
(D) by inserting after paragraph (2) the following—
“(3) to publish and distribute an emergency response guide; and”.
(3) Conforming Amendment—Section 5106(g)(2)(C) is amended by striking “the account of the Secretary of the Treasury establishes” and inserting “the Emergency Response Fund established”.

(f) Reports—Section 5116(k) is amended—
(1) by striking the first sentence and inserting “The Secretary shall make available to the public an annual report on the utilization of and procedures with the planning grants allocated under subsection (a), training grants under subsection (b), and grants under subsection (j) of this section and under subsection (a) of this section.”;
(2) by striking “Such report” in the second sentence and inserting “The information”.

SEC. 7335. SPECIAL PERMITS AND EXCLUSIONS.

(a) Special Permits and Exclusions—
(1) In general—Section 5117(a)(1) is amended by striking “the Secretary of Transportation may issue” and all that follows through “in a way” and inserting “the Secretary may issue, modify, or cancel a special permit authorizing variances from this chapter, or a regulation prescribed under section 5103(b), 5104, 5110, or 5112 of this title, to a person performing a function regulated by the Secretary under section 5103(b)(1) of this title in a way”.
(2) Duration—Section 5117(a)(2) is amended to read as follows:
“(2) The special permit under this subsection—
(A) shall be effective when first issued for not more than 2 years; and
(B) may be renewed for successive periods of not more than 2 years each.

(b) References to Special Permits—Section 5117 is further amended—
(1) by striking “an exemption” each place it appears and inserting “the special permit”; and
(2) by striking “except” in subsection (e) and inserting “granted a variance”.
(c) Conforming and Clerical Amendments—
(1) Conforming Amendment—The heading of section 5117 is amended to read as follows: “§5117. Special permits and exclusions”.
(2) Clerical Amendment—The chapter analysis for chapter 51 is amended by striking the item relating to section 5117 and inserting the following—
“§117. Special permits and exclusions.”.
(3) Subsection Heading—The heading for subsection (a) of this section is amended by striking “Except” and inserting “Special Permits”.
(d) Repeal of Section 5116.
(1) Section 5116 is amended—
(2) The chapter analysis for chapter 51 is amended by striking the item relating to section 5118 and inserting the following—
“§118. Repealed.”.

SEC. 7336. UNIFORM FORMS AND PROCEDURES.

The text of section 5119 is amended to read as follows:
“(a) In General.—The Secretary may prescribe regulations to establish uniform forms and regulations for States on the following:
“(1) To register and issue permits to persons that transport hazardous material by motor vehicles in a State.
“(2) To permit the transportation of hazardous material in a State.
“(b) Uniformity in Forms and Procedures.—In prescribing regulations under subsection (a) of this section, the Secretary shall 
(1) provide procedures by which the regulations among the States in carrying out the activities covered by the regulations.
(2) Limitation.—The regulations prescribed under subsection (a) of this section may not define or limit the amount of any fees imposed or collected by a State for any activities covered by the regulations.
(3) Effective Date.—
“(1) In general.—Except as provided in paragraph (2) of this subsection, the regulations prescribed under subsection (a) of this section shall take effect 1 year after the date on which prescribed.
“(2) Extension.—The Secretary may extend the 1-year period in subsection (a) for an additional year for good cause.
(c) State Regulations.—After the regulations prescribed under subsection (a) of this section take effect under subsection (d) of this section, a State may establish, maintain, or enforce a requirement relating to the same subject matter only if the requirement is consistent with applicable Federal requirements with respect to such activity in the regulations.
(d) Interm State Programs.—Pend the prescription of regulations under subsection (a) of this section, States may participate in the program of uniform forms and procedures recommended by the Alliance for Uniform Hazmat Transportation Procedures.

SEC. 7337. HAZARDOUS MATERIALS TRANSPORTATION SAFETY AND SECURITY.

The text of section 5121 is amended to read as follows:
“(a) General Authority.—
“(1) To carry out this chapter, the Secretary may investigate, conduct research, examine records, issue reports, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities.
“(2) Except as provided in subsections (c) and (d) of this section, the Secretary shall provide notice and an opportunity for a hearing before making a decision regarding any order or rule prescribed by this chapter, a regulation prescribed under this chapter, or an order, special permit, or approval issued under this chapter.
(b) References to Property, and Information.—A person subject to this chapter shall—
“(1) maintain records, make reports, and provide property and information that the Secretary requires by rule or order; and
“(2) make the records, reports, property, and information available to the Secretary when the Secretary undertakes an inspection or investigation.
(c) Inspections and Investigations.—
“(1) A designated officer or employee of the Secretary may—
“(A) inspect and investigate, at a reasonable time and place, and a reasonable period of time, any records and property relating to a function described in section 5103(b)(1) of this title;
“(B) except for packaging immediately adjacent to the hazardous material or its contents, gain access to, open, and examine a package offered for or in transportation when the officer or employee has an objectively reasonable and articulable belief that the package may contain hazardous material;
“(C) remove from transportation a package or require a transportation offer for or in transportation for which—
“(i) such officer or employee has an objectively reasonable and articulable belief that the Secretary shall, in accordance with procedures set forth in regulations prescribed under section 5103(b)(1) of this title;
“(ii) such officer or employee contemporaneously documents such belief in accordance with procedures set forth in regulations prescribed under this chapter; or
“(iii) the Secretary undertakes an inspection or investigation when the officer or employee has an objectively reasonable and articulable belief that the package may contain hazardous material;
“(D) gather information from the offeror, carrier, packaging manufacturer or tester, or other person responsible for a package or packages to have the package or packages transported to an appropriate facility, opened, examined, and analyzed;
“(E) where safety might otherwise be compromised, authorize properly qualified personnel to assist in activities carried out under this paragraph.
“(2) An officer or employee acting under the authority of the Secretary under this subsection shall display proper credentials when requested.
“(3) In instances when, as a result of an inspection or investigation under this subsection, an imminent hazards is not found to exist, the Secretary shall, in accordance with procedures set forth in regulations prescribed under section 5103(b)(1) of this title, issue a safe resumption of transportation of the package, packages, or unit of transportation.
(d) Emergency Orders.—
“(1) If, upon inspection, investigation, testing, or research, the Secretary determines that a violation of a regulation prescribed by this chapter, a regulation prescribed under this chapter, or an unsafe condition or practice, constitutes or is causing an imminent hazard, the Secretary may issue or impose emergency restrictions, prohibitions, re- calls, or out-of-service orders, without notice or an opportunity for a hearing, but only to the extent necessary to abate the imminent hazard.
“(2) The action of the Secretary under paragraph (1) of this subsection shall be in a written emergency order that—
(A) describes the violation, condition, or practice that constitutes or is causing the imminent hazard;
“(B) states the restrictions, prohibitions, recalls, or out-of-service orders issued or imposed; and
“(C) describes the standards and procedures for obtaining relief from the order.
“(3) After taking action under paragraph (1) of this subsection, the Secretary shall provide for review of the action under section 5134 of title 5 of the United States Code within 20 calendar days of the issuance of the order for the action.
“(4) A petition for review of an action is filed under paragraph (3) of this subsection and the review under that paragraph is not completed by the end of the 30-day period beginning
(A) maintain a facility and technical staff sufficient to provide, within the United States Government, the capability of evaluating a risk relating to the transportation of hazardous material and material alleged to be hazardous; and
(B) maintain a central reporting system and information center capable of providing information and advice to law enforcement and fire-fighting personnel, and other interested individuals, and officers and employees of the United States Government and State and local governments concerning any emergency situation relating to the transportation of hazardous material;
(C) conduct a continuous review on all aspects of transporting hazardous material to devise and institute appropriate actions for the safe transportation of hazardous material.

(2) Paragraph (1) of this subsection shall not prevent the Secretary from making a contract with a private entity for use of a supplemental reporting system and information center operated and maintained by the contractor.

(g) REPORTS.—(1) The Secretary shall, once every 2 years, submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a comprehensive report on the status of hazardous materials during the preceding 2 calendar years. Each report shall include, for the period covered by such report—
(A) a statistical compilation of the accidents, incidents, and casualties related to the transportation of hazardous material during such period;
(B) a list and summary of applicable Government regulations, criteria, orders, and special permits issued; and
(C) a summary of the basis for each special permit issued;
(D) an evaluation of the effectiveness of enforcement according to the transportation of hazardous material during such period, and of the degree of voluntary compliance with regulations;
(E) a summary of outstanding problems in carrying out this chapter, set forth in order of priority; and
(F) any recommendations for legislative or administrative action that the Secretary considers appropriate.

(2) Before December 31, 2007, and every 3 years thereafter, the Secretary, through the Bureau of Transportation Statistics and in consultation with other appropriate Federal departments and agencies, shall submit a report to the Committee on Transportation and Infrastructure and the House of Representatives Committee on Transportation and Infrastructure on the transportation of hazardous material during the preceding 3 calendar years. Each report shall include, for the period covered by such report—
(A) a summary of the hazardous material shipments, deliveries, and movements during such period, set forth by hazardous materials type, by tonnage and ton-miles, and by mode, both domestically and across United States borders; and
(B) a summary of shipment estimates during such period as a proxy for risk.

(h) SECURITY SENSITIVE INFORMATION.—(1) If the Secretary determines that particular information may reveal a vulnerability of a hazardous material to attack during transportation in commerce, or may facilitate the diversion of hazardous material during transportation in commerce for use in an attack on people or property, the Secretary may disclose such information, on the condition that such information may not be released to the public without prior authorization by the Secretary, only to the owner, custodian, offeror, or carrier of such hazardous material:
(A) to an officer, employee, or agent of the United States Government, or a State or local government, including volunteer fire department, concerned with carrying out transportation safety laws, protecting hazardous material in the course of transportation in commerce, protecting the public from the dangers of enforcing Federal law designed to protect public health or the environment; or
(B) in an administrative or judicial proceeding brought under this chapter, under other Federal law intended to protect public health or the environment, or under other Federal law intended to address terrorist actions or threats of terrorist actions.

(2) The Secretary may make determinations under paragraph (1) of this subsection with respect to categories of information in accordance with regulations prescribed under this chapter, or an order, special permit, or approval issued under paragraph (1) results in death, serious illness, or severe injury to any person, the Secretary may increase the amount of the civil penalty for such violation to not more than $450,000.

(2) References to SEC. 7304.—(a) In general.—Section 5124 is amended—
(1) by striking “chapter or a regulation prescribed or ordered” and inserting “chapter, a regulation prescribed under this chapter, or an order, special permit, or approval under
(b) Purpose.—Section 5124 is further amended by striking “and” at the end of the following:

(3) AGGRAVATED VIOLATIONS.—A person knowingly violating section 5104(b) of this title or willfully violating this chapter or a regulation prescribed, or an order, special permit, or approval issued, under this chapter, who thereby causes the release of hazardous material shall be fined under title 18, imprisoned for not more than 20 years, or both.

(c) SEPARATE VIOLATIONS.—A separate violation occurs for each day the violation, committed by a person who transports or causes to be transported hazardous material, continues.

(2) PREEMPTION.—Reference to SECRETARY OF TRANSPORTATION.—Section 5125(b) is amended by striking “of Transportation”. 

(3) Traffic.—Reference to SECRETARY OF TRANSPORTATION.—Section 5125(b) is amended by striking “of Transportation.”.

(2) PURPOSES.—Section 5125 is amended—
(1) by redesignating subsections (a), (b), (c), (d), (e), and (f) as subsections (b), (c), (d), (e), (f), and (g), respectively; and
(2) by inserting before subsection (b), as so redesignated, the following:

(a) PURPOSES.—The Secretary shall exercise the authority in this section—
(1) to achieve uniform regulation of the transportation of hazardous material;
(2) to eliminate rules that are inconsistent with the regulations prescribed under this chapter; and
(3) to otherwise promote the safe and efficient movement of hazardous material in commerce.
(3) by striking subsection (a), as redesignated; and
(4) by redesignating subsection (h), as redesignated, as subsection (g).

(c) GENERAL PROVISION.—Section 5125(b), as redesignated by subsection (b)(1) of this section, is further amended by striking “GENERAL—Except as provided in subsection (b), (c), and (e) and noted hereunder,” in the first sentence and inserting “subparagraph (c) of section 5121, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce,”; and
(3) by striking “prescribes after November 16, 1990. However, the” in paragraph (2) and inserting “prescribes The”.

(e) PROCEDURES ON PREEMPTION.—Section 5123(e), as so redesignated, is further amended by striking “subsection (a), (b), (c), or (d) of this section” in the first sentence and inserting “paragraph (1) of section 5121(h), by striking “subsection (c)” and inserting “subsection (d)”; and
(2) by striking and inserting (E) of paragraph (1) and inserting the following:—“(E) the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, or testing to the State, political subdivision of a State, or Indian tribe, or a packaging container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce,”; and
(3) by striking “prescribes after November 16, 1990. However, the” in paragraph (2) and inserting “prescribes The”.

(a) G ENERAL.—In order to carry out this chapter, section 5124 of such title is amended to read as follows:—“§5124. Authorization of appropriations.—

(a) GENERAL.—In order to carry out this chapter (except sections 5107(e), 5108(g), 5112, 5113, 5115, 5116, and 5119 of this title), the following amounts are authorized to be appropriated to the Secretary:

(1) For fiscal year 2005, not more than $34,940,000.

(2) For fiscal year 2006, not more than $29,000,000.

(3) For each of fiscal years 2007 through 2009, not more than $30,000,000.

(b) EMERGENCY PREPAREDNESS FUND.—There shall be available from the Emergency Preparedness Fund under section 5116(e) of this title, amounts as follows:

(1) To carry out section 5107(e) of this title, $4,000,000 for each of fiscal years 2005 through 2009.

(2) To carry out section 5115 of this title, $290,000 for each of fiscal years 2005 through 2009.

(3) To carry out sections 5116(a) and (b) of this title, $21,800,000 for each of fiscal years 2005 through 2009, to be allocated as follows:—

(A) $5,000,000 to carry out section 5116(a).

(B) $7,800,000 to carry out section 5116(b). (C) Of the amount allocated under paragraph (A) for each of fiscal years 2005 through 2009, $500,000 shall be used to carry out sections 5107(e), 5112, 5113, 5115, and 5116 of this title.

(6) To carry out section 5116(j) of this title, $1,000,000 for each of fiscal years 2005 through 2009.

(7) To publish and distribute an emergency response guidebook under section 5116(h)(1) of title 49, United States Code, $750,000 for each of fiscal years 2005 through 2009.

(c) SECTION 5112 REPORTS.—There are authorized to be appropriated to the Secretary of Transportation for the use of the Bureau of Transportation Statistics such sums as may be necessary to carry out section 5121(h) of this title.

(d) CREDIT TO APPROPRIATIONS.—The Secretary may credit any appropriation to carry out this title with amounts received from a State, political subdivision of a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing transportation statistics such sums as may be necessary to carry out this title.

(e) AVAILABILITY OF AMOUNTS.—Amounts available under subsections (a) and (b) of this section shall remain available until expended.

SEC. 7345. ADDITIONAL CIVIL AND CRIMINAL PENALTIES.

(a) TITLE 9 PENALTIES.—Section 46312 is amended—

(1) by striking “part—” in subsection (a) and inserting “part or chapter 51 of this title—”;

(2) by inserting “or chapter 51 of this title” in subsection (b) after “under this part”;

(b) TITLE 18 PENALTIES.—Section 3663(a)(1)(A) of title 18, United States Code, is amended by inserting “—1214,” before “—46311,”.

SEC. 7346. TECHNICAL CORRECTIONS.

(a) HIGHWAY ROUTING OF HAZARDOUS MATERIAL.—The second sentence of section 5121(a) is amended by striking “However, the Secretary of Transportation” and inserting “The Secretary”.

(b) SAFETY ADVISORY FOR TRANSPORTATION OF IONIZING RADIATION MATERIAL.—Section 5114(b) is amended by striking “of Transportation”.

(c) INTERNATIONAL UNIFORMITY OF STANDARDS AND REQUIREMENTS.—Section 5120 is amended by striking “of Transportation” each place it appears in subsections (a), (b), and (c)(1).

CHAPTER 2—OTHER MATTERS

SEC. 7361. ADMINISTRATIVE AUTHORITY FOR PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION.

Section 108 is amended by adding at the end the following:

(b) ADMINISTRATIVE AUTHORITY.—

(1) GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTIONS.—The Administrator may enter into grants, cooperative agreements, and other transactions with Federal agencies, State and local government agencies, other public entities, private organizations, and other persons—

(A) to conduct research into transportation service and infrastructure assurance; and

(B) to carry out other research activities of the Administration.

(2) LIMITATION ON DISCLOSURE OF CERTAIN INFORMATION.—

(c) LIMITATION.—If the Administrator determines that particular information developed in research sponsored by the Administration may reveal a systemic vulnerability of transportation service or infrastructure, such information may be disclosed only to—

(i) a person responsible for the security of the transportation service or infrastructure; or

(ii) a person responsible for protecting public safety; or

(iii) an officer, employee, or agent of the Federal Government, or a State or local government, who, as such officer, has need for such information in the performance of official duties.

(d) TREATMENT OF RELEASE.—The release of information under subparagraph (A) shall not be treated as a release to the public for purposes of section 552 of title 5.”. 
SEC. 7362. MAILABILITY OF HAZARDOUS MATERIALS.

(a) Nonmailability Generally.—Section 3001 of title 39, United States Code, is amended—

(1) by redesignating subsection (n) as subsection (o); and

(2) by inserting after subsection (m) the following:

“(n) Except as otherwise authorized by law or regulations of the Postal Service under section 3018 of this title, hazardous material is nonmailable.

(2) In this subsection, the term ‘hazardous material’ means a substance or material designated by statute or Postal Service regulation as hazardous material under section 3013(a) of title 49.”.

(b) Mailability.—

(1) In General.—Chapter 30 of title 39, United States Code, is amended by adding at the end the following:

“§3018. Hazardous material

(a) In General.—The Postal Service shall prescribe regulations for the safe transportation of hazardous material in the mails.

(b) Prohibitions.—No person may—

(1) mail or cause to be mailed hazardous materials under statute or Postal Service regulation to be nonmailable;

(2) mail, or cause to be mailed hazardous material in the mails, in violation of any statute or regulation of the Postal Service, as such statute or regulation restricts the time, place, or manner in which hazardous material may be mailed; or

(3) manufacture, distribute, or sell any container, packaging kit, or similar device that—

(A) is represented, marked, certified, or sold by such person for use in the mailing of hazardous material;

(B) fails to conform with any statute or Postal Service regulation setting forth standards for a container, packaging kit, or similar device used for the mailing of hazardous material.

(c) Civil Penalty.—

(1) In General.—A person who knowingly violates this section or a regulation prescribed under this section shall be liable to the Postal Service for—

(A) a civil penalty of at least $250, but not more than $2,500, for each violation; and

(B) the costs of any clean-up associated with such violation; and

(d) Damages.—

(1) KNOWING ACTION.—A person acts knowingly for purposes of paragraph (1) when—

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

(B) the person acting in the circumstances and exercising reasonable care would have had that knowledge.

(2) KNOWLEDGE OF STATUTE OR REGULATION NOT ELEMENT OF OFFENSE.—Knowledge of the existence of a statutory provision or Postal Service regulation is not an element of an offense under this subsection.

(4) Separate Violations.—

(A) Violations over Time.—A separate violation under this subsection occurs for each day hazardous material, mailed or cause to be mailed in noncompliance with this section, is in the mail.

(B) Separate Items.—A separate violation under this subsection occurs for each item containing hazardous material that is mailed or cause to be mailed in noncompliance with this section.

(d) Hearings.—The Postal Service may determine that a person has violated this section or a regulation prescribed under this section only after notice and an opportunity for a hearing.

(e) Penalty Considerations.—In determining the amount of a civil penalty for a violation of this section, the Postal Service shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the person who committed the violation, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue in business; and

(3) the impact on Postal Service operations; and

(4) any other matters that justice requires.

(f) Civil Proceeding To Collect.—

(1) In General.—In accordance with section 4409(d) of this title, a civil action may be commenced in an appropriate district court of the United States for clean-up costs, and damages assessed under subsection (c).

(2) Limitation.—In a civil action under paragraph (1), the court may assess punitive damages, if the court determines that such damages are appropriate in accordance with this section.

(2) Construction.—A civil action under this subsection shall be in lieu of civil penalties for the same violation under subsection (c)(1)(A).

(g) Civil Judicial Penalties.—

(1) In General.—At the request of the Postal Service, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this section or a regulation prescribed under this section.

(2) Relief.—The court in a civil action under paragraph (1) may award appropriate relief, including a temporary or permanent injunction, civil penalties as determined in accordance with this section, or punitive damages.

(h) Deposit of Amounts Collected.—

(1) In General.—The Postal Service shall provide funding to the Operation Respond Institute function across multiple transportation modes.

(2) Conforming Amendment.—The chapter analysis for chapter 30 of title 39, United States Code, is amended by adding at the end the following:

“§3018. Hazardous material.

(a) In General.—The Postal Service shall prescribe regulations for the safe transportation of hazardous material in the mails.

(b) Prohibitions.—No person may—

(1) mail or cause to be mailed hazardous materials under statute or Postal Service regulation to be nonmailable;

(2) mail, or cause to be mailed hazardous material in the mails, in violation of any statute or regulation of the Postal Service, as such statute or regulation restricts the time, place, or manner in which hazardous material may be mailed; or

(3) manufacture, distribute, or sell any container, packaging kit, or similar device that—

(A) is represented, marked, certified, or sold by such person for use in the mailing of hazardous material;

(B) fails to conform with any statute or Postal Service regulation setting forth standards for a container, packaging kit, or similar device used for the mailing of hazardous material.

(c) Civil Penalty.—

(1) In General.—A person who knowingly violates this section or a regulation prescribed under this section shall be liable to the Postal Service for—

(A) a civil penalty of at least $250, but not more than $2,500, for each violation; and

(B) the costs of any clean-up associated with such violation; and

(d) Damages.—

(1) KNOWING ACTION.—A person acts knowingly for purposes of paragraph (1) when—

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

(B) the person acting in the circumstances and exercising reasonable care would have had that knowledge.

(2) KNOWLEDGE OF STATUTE OR REGULATION NOT ELEMENT OF OFFENSE.—Knowledge of the existence of a statutory provision or Postal Service regulation is not an element of an offense under this subsection.

(4) Separate Violations.—

(A) Violations over Time.—A separate violation under this subsection occurs for each day hazardous material, mailed or cause to be mailed in noncompliance with this section, is in the mail.

(B) Separate Items.—A separate violation under this subsection occurs for each item containing hazardous material that is mailed or cause to be mailed in noncompliance with this section.

(d) Hearings.—The Postal Service may determine that a person has violated this section or a regulation prescribed under this section only after notice and an opportunity for a hearing.

(e) Penalty Considerations.—In determining the amount of a civil penalty for a violation of this section, the Postal Service shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

SEC. 7363. CRIMINAL MATTRES.

Section 845(a)(1) of title 18, United States Code, is amended by striking “which are regulated” and all that follows and inserting “that is subject to the authority of the Departments of Transportation and Homeland Security.”.

SEC. 7364. CARGO INSPECTION PROGRAM.

(a) In General.—The Secretary of Transportation may establish a program of random inspections of carriers of hazardous materials in commerce.

(b) Inspections.—Under the program under subsection (a)—

(1) an officer of the Department of Transportation who is not located at a point of entry into the United States may select at random cargo shipments at points of entry into the United States for inspection;

(2) an officer of the Department may open and inspect each cargo shipment so selected for the purpose described in subsection (a); and

(c) Coordination.—The Secretary of Transportation shall coordinate any inspections under the program under subsection (a) with the Secretary of Homeland Security.

(d) Disposition of Hazardous Materials.—The Secretary of Transportation shall provide for the appropriate handling and disposition of any hazardous material discovered pursuant to inspections under the program under subsection (a).

SEC. 7365. INFORMATION ON HAZMAT REGISTRATION.

The Administrator of the Department of Transportation’s Research and Special Programs Administration shall—

(1) transmit current hazardous material registration information to the Federal Motor Carrier Safety Administration to cross reference the registrant’s Federal motor carrier registration number; and

(2) notify the Federal Motor Carrier Safety Administration immediately, and provide a registrant’s United States Department of Transportation identification number to the Administrator, whenever a new registrant registers to transport hazardous materials as a motor carrier.

SEC. 7366. REPORT ON APPLYING HAZARDOUS MATERIALS REGULATIONS TO PERSONS WHO REJECT HAZARDOUS MATERIALS.

Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall complete an assessment of the costs and benefits of subjecting persons who reject hazardous material for transportation to the hazardous materials laws and regulations. In completing this assessment, the Secretary shall—

(1) estimate the number of affected employers and employees;

(2) determine what actions would be required by them to comply with such laws and regulations; and

(3) consider whether and to what extent the application of Federal hazardous materials laws and regulations should be limited to—

(A) particular modes of transportation;

(B) certain categories of employers; or

(C) certain classes or categories of hazardous materials.

SEC. 7367. NATIONAL FIRST RESPONDER TRANSPORTATION INCIDENT RESPONSE SYSTEM.

(a) In General.—The Secretary of Transportation shall provide funding to the Operation Respond Institute to design, build, and operate a seamless first responder hazardous materials incident detection, preparedness, and response system.

(b) OREIS EXPANSION.—

(1) In General.—The system designed, built, and operated by the Institute shall include an expansion of the Operation Respond Emergency Information System.

(2) Functionality.—The Secretary may require that the system designed by the Operation Respond Institute function across multiple transportation modes.

(c) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary to carry out this section $5,000,000 for each of fiscal years 2005 through 2009.

SEC. 7368. HAZARDOUS MATERIAL TRANSPORTATION PLAN REQUIREMENT.

(a) In General.—Subpart 1 of part 172 of the Department of Transportation’s regulations (49 C.F.R. 172.800 et seq.), or any subsequent Department of Transportation regulation in pari materia, does not apply to the surface transportation activities of a farmer that are—

(1) in direct support of the farmer’s farming operations; and

(2) conducted within a 150-mile radius of those operations.

(b) Farmer Defined.—In this section, the term “farmer” means a person—

(1) actively engaged in the production or raising of crops, poultry, livestock, or other agricultural commodities; and

(2) whose gross receipts from the sale of such agricultural commodities or products do not exceed $500,000 annually.

SEC. 7369. WELDED RAIL AND TANK CAR SAFETY IMPROVEMENTS.

(a) Track Standards—
the House of Representatives Committee on Commerce, Science, and Transportation and (a) report by the Secretary of Transportation, and (b) instruct Administration track inspectors to obtain copies of the most recent continuous welded rail programs of each railroad within the inspected area; and (c) require that inspectors use those programs when conducting track inspections.

(11) There shall be a program to review continuous welded rail joint bar inspection data from railroads and Administration track inspectors periodically.

(12) Whenever the Administration determines that it is necessary or appropriate the Administration may require railroads to increase the frequency of inspection, or improve the methods of inspection, of joint bars in continuous welded rail.

b. TANK CAR STANDARDS.—The Federal Railroad Administration shall—

(1) validate a predictive model to quantify the relevant dynamic forces acting on railroad tank cars under accident conditions within 1 year after the date of enactment of this Act; and (2) begin development and implement appropriate design standards for pressurized tank cars within 18 months after the date of enactment of this Act.

Within 1 year after the date of enactment of this Act the Federal Railroad Administration shall conduct a comprehensive analysis to determine the impact resistance of the steels in the shells of pressure tank cars constructed before 1989. Within 6 months after completing that analysis the Administration shall—

(1) establish a program to rank those cars according to their risk of catastrophic fracture and separation; and (2) implement measures to eliminate or mitigate this risk; and (3) transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure setting forth the measures implemented.

(1) UNSANITARY TRANSPORT DEEMED ADULTERATION.—The term ‘bulk vehicle’ includes a tank truck, hopper truck, rail tank car, hopper car, cargo tank, portable tank, freight container, or hopper bin, and any other vehicle in which food is shipped in bulk, with the food coming into direct contact with the vehicle.

(2) TRANSPORTATION.—The term ‘transportation’ means any movement in commerce by motor vehicle or rail vehicle.

(3) REGULATIONS.—The Secretary shall by regulation require shippers, carriers by motor vehicle or rail vehicle, and other persons engaged in the transportation of food to use sanitary transportation practices prescribed by the Secretary to ensure that food is not transported under conditions that may render the food adulterated.

(4) CONTENTS.—The regulations shall—

(A) prescribe such practices as the Secretary determines to be appropriate relating to—

(1) sanitation; (B) packaging, isolation, and other protective measures; (C) limitations on the use of vehicles; (D) information to be disclosed—

(ii) to a carrier by a person arranging for the transportation of food; and (ii) to a manufacturer or other person that—

(1) arranges for the transportation of food by a carrier; or

(2) furnishes a tank vehicle or bulk vehicle for the transportation of food; and

(RECORDKEEPING; AND (2) include—

(A) a list of nonfood products that the Secretary determines may, if shipped in a bulk vehicle, render adulterated food that is subsequently transported in the same vehicle.

(b) SANITARY TRANSPORTATION REQUIREMENTS.—Chapter IV of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

SEC. 416. SANITARY TRANSPORTATION PRACTICES.

(a) DEFINITIONS.—In this section—

(1) BULK VEHICLE.—The term ‘bulk vehicle’ includes a tank truck, hopper truck, rail tank car, hopper car, cargo tank, portable tank, freight container, or hopper bin, and any other vehicle in which food is shipped in bulk, with the food coming into direct contact with the vehicle.

(2) PERFORMANCE DATA FOR BULK CONTAINERS.—The purpose of at least one of the studies to be conducted under the research program shall be to provide an analysis of, and recommendations for, the design and funding of a nationwide system capable of collecting and analyzing performance data from bulk containers involved in transportation accidents; and

(3) PACKAGING REQUIREMENTS.—The purpose of at least one of the studies to be conducted under the research program shall be to provide an analysis of recommendations on appropriate packaging requirements for those hazardous materials that are most frequently involved in release incidents.

(4) ROUTING.—The purpose of at least one of the studies to be conducted under the research program shall be to identify the components of a predictive model that can quantify risk and consequence analysis in rail and highway transportation and that can be used to facilitate decisionmaking regarding the routing of hazardous materials shipments and the development of regulations regarding mandatory routing decisions.

(5) RESPONSIBILITY COVERAGE.—The purpose of at least one of the studies to be conducted under the research program shall be to provide an assessment of the quality of response coverage for hazardous materials incidents, including cost-effective strategies for improving response capability and making recommendations on systematic approaches that could be used to allocate government funding to enhance response capability.

(6) IMPLEMENTATION.—The Secretary of Transportation shall make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out activities under this Act.

(f) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the effectiveness of the program in meeting the needs of government and the private sector for cooperative research on hazardous materials transportation.

(2) TRANSPORTATION.—The term ‘transportation’ means any movement in commerce by motor vehicle or rail vehicle.

(SEC. 7381. SHORT TITLE.

This chapter may be cited as the ‘Sanitary Food Transportation Act of 2005’.

(SEC. 7382. RESPONSIBILITIES OF THE SECRETARY OF HEALTH AND HUMAN SERVICES.

(3) transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure setting forth the measures implemented.

(4) There are authorized to be appropriated to the Federal Railroad Administration $1,000,000 for fiscal year 2006 to carry out this section, subject to the conditions and limitations on the use of funds contained in section 103(a) of the Federal Rail Paramount Accident Prevention Act of 2005 (Public Law 109-59).

(5) RESPONSIBILITY COVERAGE.—The purpose of at least one of the studies to be conducted under the research program shall be to provide an assessment of the quality of response coverage for hazardous materials incidents, including cost-effective strategies for improving response capability and making recommendations on systematic approaches that could be used to allocate government funding to enhance response capability.

(6) IMPLEMENTATION.—The Secretary of Transportation shall make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out activities under this Act.

(f) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the effectiveness of the program in meeting the needs of government and the private sector for cooperative research on hazardous materials transportation.

(2) SANITARY TRANSPORTATION REQUIREMENTS.—Chapter IV of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

SEC. 416. SANITARY TRANSPORTATION PRACTICES.

(a) DEFINITIONS.—In this section—

(1) BULK VEHICLE.—The term ‘bulk vehicle’ includes a tank truck, hopper truck, rail tank car, hopper car, cargo tank, portable tank, freight container, or hopper bin, and any other vehicle in which food is shipped in bulk, with the food coming into direct contact with the vehicle.

(2) PERFORMANCE DATA FOR BULK CONTAINERS.—The purpose of at least one of the studies to be conducted under the research program shall be to provide an analysis of, and recommendations for, the design and funding of a nationwide system capable of collecting and analyzing performance data from bulk containers involved in transportation accidents; and

(3) Packagin...
to any class of persons, vehicles, food, or nonfood products, if the Secretary determines that the waiver—
(A) will not result in the transportation of food under conditions that would be unsafe for human or animal health; and
(B) will not be contrary to the public interest.

(2) PUBLICATION.—The Secretary shall publish in the Federal Register any waiver and the reasons for the waiver.

(c) PREEMPTION.—
(1) DEFENSE.—No State or political subdivision of a State may directly or indirectly establish or continue in effect, as to any food in interstate commerce, any authority or requirement that is not identical to an authority or requirement under this section.

(2) APPLICABILITY.—This subsection applies to transportation that occurs on or after the effective date of the regulations promulgated under subsection (b).

(3) INSPECTION OF TRANSPORTATION RECORDS.—
(1) REQUIREMENT.—Section 703 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 373) is amended—
(A) by striking the section heading and all that follows through "For the purpose" and inserting the following:

"SEC. 703. RECORDS. 
(a) In general.—For the purpose of this chapter, the terms "carrier", "household goods carrier", and "household goods motor carrier" mean the motor carrier described in subparagraph (B) that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services:

(ii) Providing a nonbinding estimate.

(b) FOOD TRANSPORTATION RECORDS.—A shipper, carrier, by motor vehicle or rail vehicle, receives, in any place, any person subject to section 416 shall, on request of an officer or employee designated by the Secretary, permit the officer or employee, at reasonable times, to have access to and to copy all records that the Secretary requires to be kept under section 416(e)(1)(E).

(2) CONFORMING AMENDMENT.—Subsection (a) of section 703 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 373) is amended by inserting "(b) "

(3) INSPECTION SCHEDULE For TRANSPORTATION PERSONNEL.—(A) In general.—The Secretary shall apply, at a minimum, to Department of Transportation personnel that perform commercial motor vehicle or railroad safety inspections.

(b) NOTICE TO SECRETARY OF HEALTH AND HUMAN SERVICES.—The Secretary shall publish in the Federal Register any waiver and the reasons for the waiver.

(4) INSPECTION OF TRANSPORTATION PERSONNEL.—The Secretary shall, on request of an officer or employee designated by the Secretary, permit the officer or employee, at reasonable times, to have access to and to copy all records that the Secretary requires to be kept under section 416(e)(1)(E).

(5) NOTICE TO SECRETARY OF HEALTH AND HUMAN SERVICES.—The Secretary shall publish in the Federal Register any waiver and the reasons for the waiver.

(d) PROHIBITED ACTS.—
(1) REQUIREMENT.—
(A) Section 301(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by adding at the end the following:

(B) Section 703(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 373) is amended by inserting "(b) "

(2) UNSAFE FOOD TRANSPORTATION.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by adding "(b) "

(h) NONCOMPLIANCE WITH SANITARY TRANSPORTATION PRACTICES.—The failure by a shipper, carrier by motor vehicle or rail vehicle, receiver, or other person engaged in the transportation of food that is not identical to an authority or requirement under this section.

(iii) Protective packing and unpacking of individual items at personal residences.

(B) REGISTRATION REQUIREMENT.—A motor carrier is described in this subparagraph if its operations require it to register as a household goods motor carrier under—
(i) section 1302 of this title; and
(ii) regulations prescribed by the Secretary consistent with Federal agency determinations and decisions that were in effect on the date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005.

(C) LIMITED SERVICE EXCLUSION.—The term "household goods motor carrier" does not include a motor carrier solely because it provides transportation of household goods that is packed in, and unpacked from, 1 or more containers or trailers by the individual shipper.

SECTION 758. DEPARTMENT OF TRANSPORTATION REQUIREMENTS.

Chapter 57, as amended to read as follows:

"CHAPTER 57—SANITARY FOOD TRANSPORTATION

SEC.

§5701. Food transportation safety inspections.

(a) INSPECTION PROCEDURE.—
(1) IN GENERAL.—The Secretary of Transportation, in consultation with the Department of Health and Human Services and the Secretary of Agriculture, shall—

(2) APPLICABILITY.—The procedures established for transportation safety inspections for the purpose of identifying suspected incidents of contamination or adulteration of—

(i) food in violation of regulations promulgated under section 416 of the Federal Food, Drug, and Cosmetic Act;

(ii) meat subject to detention under section 402 of the Federal Meat Inspection Act (21 U.S.C. 672); and

(iii) poultry products subject to detention under section 401 of the Poultry Products Inspection Act (21 U.S.C. 457a); and

(2) IN GENERAL.—The Secretary shall promptly notify the Secretary of Health and Human Services or the Secretary of Agriculture, as applicable, of any instance of potential food contamination by a food identified during transportation safety inspections.

(3) USE OF STATE EMPLOYEES.—The means by which Section 703 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 373) is amended by adding at the end the following:

(B) PROHIBITED ACTS.—The Secretary shall, on request of an officer or employee designated by the Secretary, permit the officer or employee, at reasonable times, to have access to and to copy all records that the Secretary requires to be kept under section 416(e)(1)(E).

(1) RECORDS INSPECTION.—Section 301(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 373) is amended by inserting "(b) "

(2) EARLY REMOVAL OF CONAINERS.—A motor carrier is described in this subparagraph if its operations require it to register as a household goods motor carrier under—
(i) section 1302 of this title; and
(ii) operation of the household goods motor carrier is described in subparagraph (B) that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services:

(iv) Providing a nonbinding estimate.

(3) Binding and nonbinding estimates.

(iii) Protective packing and unpacking of individual items at personal residences.

(iv) Loading and unloading at personal residences.

(B) REGISTRATION REQUIREMENT.—A motor carrier is described in this subparagraph if its operations require it to register as a household goods motor carrier under—
(i) section 1302 of this title; and
(ii) regulations prescribed by the Secretary consistent with Federal agency determinations and decisions that were in effect on the date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005.

(C) LIMITED EXCLUSION.—The term "household goods motor carrier" does not include a motor carrier solely because it provides transportation of household goods and unpacked from, 1 or more containers or trailers by the individual shipper."
estimate for the transportation and related serv-
ices.

SEC. 7400. LIABILITY OF CARRIERS UNDER RE-
CAPS AND BILLS OF LADING.

Section 14703 is amended—

(1) by inserting the text as a paragraph in-
cluded 2 ems from the left margin and inserting
"(1) IN GENERAL.—" before "A carrier;" and
(2) by adding the following:

"(2) FULL VALUE PROTECTION OBLIGATION.—
Unless the carrier receives a waiver in writing un-
der paragraph (3), a carrier’s maximum liabil-
ity for household goods that are lost, damaged,
deleted, or otherwise not delivered to the final
destination is an amount equal to the replace-
ment value of such goods, subject to a maximum
amount equal to the declared value of the ship-
ment, subject to rules issued by the Surface
Transportation Board and applicable tariffs.

(3) APPLICATION OF RATES.—The released
rates established by the Board under paragraph
(1) (commonly known as ‘‘released rates’’) shall
not apply to the transportation of household
goods by a carrier unless the liability of the car-
rrier for the full value of such household goods
under paragraph (2) is waived in writing by the ship-
er.

SEC. 7406. ARBITRATION REQUIREMENTS.

(a) OFFERING SHIPPERS ARBITRATION.—Sec-
tion 14708(b) is amended by inserting before the
period at the end the following: ‘‘and to de-
determine whether carrier charges, in addition to
those collected at delivery, must be paid by the
shippers and services related to the transpor-
tation of household goods’’.

(b) THRESHOLD FOR BINDING ARBITRA-
TION.—Section 14708(b)(6) is amended by stri-
ing ‘‘$3,000’’ each place it appears and insert-
ing ‘‘$10,000’’.

(c) DEADLINE FOR DECISION.—Section
14708(d)(3)(A) is amended—

(1) by striking ‘‘(a)’’ and; and
(2) by inserting after ‘‘(damages) the fol-
lowing: ‘‘, and an order requiring the payment of addi-
tional fees to shippers.’’

(d) ATTORNEY’S FEES TO SHIPPERS.—Sec-
tion 14708(d)(3)(B) is amended—

(1) by redesignating subparagraphs (A) and
(B) as subparagraphs (B) and (C), respectively;
(2) by inserting before subparagraph (B) (as
so redesignated) the following:

‘‘(A) The shipper was not advised by the
carrier during the claim settlement process that a
dispute settlement program was available to
resolve the dispute;’’

(e) REVIEW AND REPORT ON DISPUTE SETTLE-
MENT PROGRAMS.—

(1) REVIEW AND REPORT.—Not later than 18
months after the date of enactment of this Act, the
Secretary shall conduct a review of the outcomes and the effectiveness
of the programs carried out under title 49, United
States Code, to settle disputes between motor
carriers and shippers and submit a report on the
review to the Senate Committee on Commerce,
Science, and Transportation and the House of
Representatives Committee on Transportation and
Infrastructure. The report shall describe—

(A) the subject of, and amounts at issue in,
the disputes;
(B) patterns in disputes or settlements;
(C) the prevailing party in disputes, if identi-
fiable; and
(D) any other matters the Secretary considers
appropriate.

(2) REQUIREMENT FOR PUBLIC COMMENT.—
The Secretary shall publish notice of the review re-
quired by paragraph (1) and provide an oppor-
tunity for the public to submit comments on the effec-
tiveness of such programs. Notwithstanding
any confidentiality or non-disclosure provision in
a settlement agreement between a motor car-
rrier and a shipper, it shall not be a violation of
that provision or agreement if the motor carrier or shipper
submit a copy of the settlement agreement, or to
provide information included in the agreement,
to the Secretary for use in evaluating dispute
settlement programs under this subsection. Not-
withstanding anything to the contrary in sec-
tion 552 of title 5, United States Code, the Sec-
retary may not post on the Department of Trans-
portation’s electronic docket system, or make
available to any requester in paper or
electronic format, any information submitted to
the Secretary under the provisions of this subsection.

(2) CONSIDERATION.—The Secretary shall
consider the information submitted to the Sec-
retary under this subsection in making regula-
tions or orders of the Secretary.

SEC. 7407. ENFORCEMENT OF REGULATIONS RE-
LATED TO TRANSPORTATION OF HOUSEHOLD
GOODS.

(a) NONPREEMPTION OF INTRASTATE TRANS-
PORT.—Section 14501(c)(2)(B) is amended by adding
the following:

‘‘(2) IN GENERAL.—Chapter 147 is amended
by adding at the end the following:

‘‘§14710. Enforcement of Federal laws and
regulations with respect to transportation of
household goods

‘‘(a) ENFORCEMENT BY STATES.—Notwith-
standing any other provision of this title, a
State authority may enforce the consumer pro-
tection provisions that apply to individual ship-
pers, as determined by the Secretary of Trans-
portation, of this title that are related to the trans-
livery and transportation of household goods in
interstate commerce. Any fine or penalty im-
posed on a carrier in a proceeding under this
subsection shall, notwithstanding any provision
of law to the contrary, be paid to and retained
by the State.

(b) NOTICE.—The State shall serve written
notice to the Secretary or the Board, as the case
may be, of any civil action brought under
section 13902 of this title that is engaged in
household goods transportation that violates
this part or a regulation or order of the Sec-
retary or the Board, as applicable, promulgated
under this part.

(c) NOTICE AND CONSENT.—

(1) IN GENERAL.—The Secretary shall serve
written notice of the review to the Secretary or the Board, as the case
may be, of any civil action brought under
section 13902 of this title that is engaged in
household goods transportation that violates
this part or a regulation or order of the Sec-
retary or the Board, as applicable, promulgated
under this part.

(2) CONDITIONS.—The Secretary or the
Board—

(A) shall review the initiation of the action by
the State if—

(i) the carrier or broker (as such terms are
defined in section 13902 of this title) is not
regulated with the Department of Transpor-
tation;
(ii) the license of a carrier or broker for fail-
ure to file proof of required bodily injury or
cargo liability insurance is pending, or the li-
cense has been revoked for any other reason
by the Department of Transportation;
(iii) the carrier is not rated or has received a
conclusion of unworthy or unsatisfactory
performance; or
(iv) the carrier or broker has been licensed
with the Department of Transportation for less
than three years; and

(B) may review if the carrier or broker fails
to meet criteria developed by the Secretary that
are consistent with this section.

(2) CONGRESSIONAL NOTIFICATION.—The Sec-
retary shall notify the Senate Committee on
Commerce, Science, and Transportation, and the
House of Representatives Committee on
Commerce, Science, and Transportation, and
the House of Representatives Committee on
Transportation and Infrastructure of any cri-
cera developed by the Secretary under para-
graph (2)(B).

(d) 60-DAY DEADLINE.—The Secretary or the
Board shall be considered to have consented
to any such action if the Secretary or the Board
has taken no action with respect to the notice
within 60 calendar days after the date on which
the Secretary or the Board received notice under
paragraph (1).

(e) AUTHORITY TO INTERVENE.—

(1) IN GENERAL.—If receiving the notice
required by subsection (b), the Secretary or the
Board may intervene in such civil action and
uphold any judgment.

(2) SUBSTITUTION.—If the Secretary or the
Board files a motion under paragraph (1)(C), the
court shall—

(A) grant the motion without further hearing
or procedure;

(B) substitute the Secretary or the Board,
appropriate, for the State as plaintiff; and

(C) be substituted, upon the filing of a mo-
ton with the court, for the State as parens
patrae in the action.

(f) PLAN.—If the Secretary or the Board
substitutes under paragraph (1)(C), the court
shall—

(A) grant the motion without further hearing
or procedure;

(B) substitute the Secretary or the Board,
appropriate, for the State as plaintiff; and

(C) be substituted, upon the filing of a mo-
tion with the court, for the State as parens
patrae in the action.

(g) CONSTRUCTION.—For purposes of bring-
ing any civil action under subsection (a), noth-
ing in this section shall—

(1) convey a right to initiate or maintain a
class action brought in an enforcement of a
Federal law or regulation; or

(2) prevent the attorney general of a State
from exercising the powers conferred on the
attorney general by the laws of such State to con-
duct investigations or to administer oaths or af-
firmations or to compel the attendance of wit-
nesses or the production of documentary and
other evidence:

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Federal law or regulation; or

(2) prevent the attorney general of a State
from exercising the powers conferred on the
attorney general by the laws of such State to con-
duct investigations or to administer oaths or af-
firmations or to compel the attendance of wit-
nesses or the production of documentary and
other evidence.

(3) VENUE; SERVICE OF PROCESS.—In a civil
action brought under subsection (a)—

(3) VENUE; SERVICE OF PROCESS.—In a civil
action brought under subsection (a)—
SEC. 7410. CONSUMER COMPLAINTS.
(a) REQUIREMENT FOR DATABASE.—Subchapter II of chapter 141 is amended by adding at the end the following:

§14124. Consumer complaints

(a) Establishment of System and Database.—The Secretary of Transportation shall—

(1) establish a system to—

(A) file and log a complaint made by a shipper that related to a motor carrier transportation of household goods; and

(B) solicit information gathered by a State regarding the number and type of complaints involving the interstate transportation of household goods;

(2) establish a database of such complaints; and

(3) develop a procedure—

(A) to provide public access to the database, subject to section 5226 of title 5; and

(B) to disseminate information, including the motor carrier bill of lading number, if known, related to the complaint to a motor carrier named in such complaint and to an appropriate State authority that regulate the movement of household goods, and

(C) to permit a motor carrier to challenge information in the database.

(b) Summary to Congress.—The Secretary shall transmit a summary each year of the complaints filed and logged under subsection (a) for the preceding calendar year to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(c) Conforming Amendment.—The analysis for chapter 141 is amended by inserting after the item relating to sections 14701 of title 49, United States Code, the following:

(2) ADDITIONAL REGISTRATION REQUIREMENTS—For purposes of section 14706 of title 49, United States Code, the Secretary shall require a person to provide transportation of household goods to register a person to provide transportation of household goods and to revise such regulations, if necessary, to provide enhanced protection in the case of loss or damage.

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish a working group of State attorneys general, not less than $10,000 for each violation.

(2) ADDITIONAL REGISTRATION REQUIREMENTS—For purposes of section 14706 of title 49, United States Code, should be modified.

(b) CONFORMING AMENDMENT.—The analysis for chapter 141 is amended by inserting after the item relating to section 14706 of title 49, United States Code, the following:

(2) ADDITIONAL REGISTRATION REQUIREMENTS—For purposes of section 14706 of title 49, United States Code, should be modified.

(1) by striking the text as a paragraph indented 2 ems from the left margin and inserting—

(1) by striking the text as a paragraph indented 2 ems from the left margin and inserting—

(2) by redesigning paragraph (4) as paragraph (5) and inserting after paragraph (1) the following:

SEC. 7412. CIVIL PENALTIES RELATING TO HOUSEHOLD GOODS BROKERS.

Section 14902(a) is amended—

(2) ADDITIONAL REGISTRATION REQUIREMENTS—For motor carriers of household goods.

(1) by striking the text as a paragraph indented 2 ems from the left margin and inserting—

(1) by striking the text as a paragraph indented 2 ems from the left margin and inserting—

(3) unauthorized transportation.—If a person provides transportation of household goods subject to jurisdiction under subsection 1 of chapter 135 of title 49, United States Code, is liable to the United States for a civil penalty of not less than $25,000 for each violation.

(3) Unauthorized Transportation.—If a person provides transportation of household goods subject to jurisdiction under subsection 1 of chapter 135 of title 49, United States Code, is liable to the United States for a civil penalty of not less than $25,000 for each violation.
“(3) CONSIDERATION OF EVIDENCE; FINDINGS.—The Secretary shall consider, and, to the extent applicable, make findings on any evidence demonstrating that the registrant is unable to comply with the reasonable requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2).”

“(4) WITHHOLDING.—If the Secretary determines under this section that a registrant does not meet, or is not able to meet, any requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2), the Secretary shall withhold registration; and

“(3) by adding at the end of paragraph (3), as redesignated, “In the case of a registration for the transportation of household goods (as defined in section 13102(10) of this title), the Secretary may also hear a complaint on the ground that the registrant fails or will fail to comply with the requirements of paragraph (2) of this subsection.”.

Subtitle E—Sportfishing and Recreational Boating Safety

SEC. 7501. SHORT TITLE.

This subtitle may be cited as the “Sportfishing and Recreational Boating Safety Act of 2005”.

CHAPTER 1—FEDERAL AID IN SPORT FISH RESTORATION ACT AMENDMENTS

SEC. 7511. AMENDMENT OF FEDERAL AID IN SPORT FISH RESTORATION ACT

Except as otherwise expressly provided, whenever in this chapter an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 et seq.).

SEC. 7512. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 3 (16 U.S.C. 777b) is amended—

(1) by striking “the succeeding fiscal year,” in the third sentence and inserting “succeeding fiscal years,”; and

(2) by striking “in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation,” and inserting “to supplement the 57 percent of the balance of each annual appropriation to be apportioned among the States, as provided pursuant to paragraphs (3) and (4) of section 14”;

(b) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—The first sentence of section 3 (16 U.S.C. 777b) is amended—

(A) by striking “Sport Fish Restoration Account” and inserting “Sport Fish Restoration and Boating Trust Fund”; and

(B) by striking “that Account” and inserting “that account as provided in section 5904(c) of the Internal Revenue Code of 1986”;

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect on October 1, 2005.

SEC. 7513. DIVISION OF ANNUAL APPROPRIATIONS.

Section 4 (16 U.S.C. 777c) is amended—

(1) by striking subsections (a)(2) through (c) and redesignating (d), (e), (f), (i), and (l) of that section, and inserting respectively, (c), (d), (e), (g), and (l), and (f), and (i), and (l), respectively;

(2) by inserting before subsection (b), as redesignated by paragraph (1), the following:

“(a) IN GENERAL.—For fiscal years 2005 through 2019, the balance of each annual appropriation made in accordance with the provisions of section 3 shall be distributed to the Secretary of the Interior after 3 fiscal years shall be transferred to the Secretary of Homeland Security and shall be used to provide recreational boating safety programs under section 13106(a) of title 46, United States Code.”.

SEC. 7514. MAINTENANCE OF PROJECTS.

Section 8 (16 U.S.C. 777p) is amended—

(1) by striking “in carrying out the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation,” and inserting “to supplement the 57 percent of the balance of each annual appropriation to be apportioned among the States, as provided pursuant to paragraphs (3) and (4) of section 14”;

(2) by striking “per centum” each place it appears in subsection (c), as redesignated by paragraph (1), and inserting “percent”;

(3) by striking “subsection (a), (b)(3)(A), (b)(3)(B), and (c)” in paragraph (1) of subsection (e), as redesignated by paragraph (1), and inserting “paragraphs (1), (3), (4), and (5) of subsection (c)”;

(4) by adding at the end the following:

“(1) TRANSFER OF CERTAIN FUNDS.—Amounts available under section 4(d)(1) of section 4 of the Act shall be distributed among the States, as provided pursuant to paragraphs (3) and (4) of section 14, of that section, and section 9. The amount specified in subparagraph (B) for a fiscal year may not be included in the amount of the annual appropriation distributed under subsection (a) for the fiscal year.

(2) by striking “Secretary of the Interior, after the distribution, transfer, use, and deduction under subsections (a), (b), (c), and (d), respectively, and after deducting amounts used for grants under section 14 shall be transferred to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.”;

(3) by striking “paragraph (1)” and inserting “paragraph (2)”;

(4) by striking “Secretary of the Interior, after the distribution, transfer, use, and deduction under subsections (a), (b), (c), and (d), respectively, and after deducting amounts used for grants under section 14 of this title, shall apportion the remainder in subsection (c), as redesignated by paragraph (1), and inserting “Secretary, for fiscal year 2005 and each subsequent fiscal year, after the distribution, transfer, use, and deduction under subsection (b), and after deducting amounts used for grants under section 14 of this title, shall apportion the remainder in subsection (c), as redesignated by paragraph (1), and inserting “paragraphs (1), (3), (4), and (5) of subsection (c)”;

(5) by striking “that account as provided in section 5904(c) of the Internal Revenue Code of 1986”.;

(6) by adding a new paragraph (f) to read as follows:

“(f) TRANSFER OF CERTAIN FUNDS.—Amounts available under section 4(d)(1) of section 4 of the Act shall be distributed among the States, as provided pursuant to paragraphs (3) and (4) of section 14, of that section, and shall be used to provide recreational boating safety programs under section 13106(a) of title 46, United States Code.”.

SEC. 7515. BOATING INFRASTRUCTURE.

SEC. 7516. REQUIREMENTS AND RESTRICTIONS ON USE OF FUNDS.

Section 9 (16 U.S.C. 777h) is amended—

(1) by striking “section 4(d)(1)” in subsection (a) and inserting “section 4(b)”; and

(2) by striking “section 4(d)(3)” in subsection (b)(1) and inserting “section 4(b)”.


Section 12 (16 U.S.C. 777k) is amended by striking “in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation,” and inserting “to supplement the 57 percent of the balance of each annual appropriation to be apportioned among the States under section 4(b) of this Act.”.

SEC. 7518. MULTISTATE CONSERVATION GRANT PROGRAM

Section 14 (16 U.S.C. 777m) is amended—

(1) by striking so much of subsection (a) as precedes paragraph (2) and inserting the following:

“(a) IN GENERAL.—

“(1) AMOUNT FOR GRANTS.—For fiscal year 2005 and each subsequent fiscal year, not more than $3,000,000 of each annual appropriation may be distributed under this subsection.

“(2) TO BE DISTRIBUTED.—The amount specified in section 3 shall be distributed to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.”;

“in paragraph (a) in subsection (e) it appears in subsection (a)(2)(B) and inserting “section 4(c)”;

“(3) by striking “subsection (a)” from the first place it appears in each place it appears in subsection (a)(2) and inserting “subsection (c)”;

“(4) by striking “the succeeding fiscal year,” in the third sentence and inserting “succeeding fiscal years,”;

“(5) by striking “in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation,” and inserting “to supplement the 57 percent of the balance of each annual appropriation to be apportioned among the States, as provided pursuant to paragraphs (3) and (4) of section 14, of that section, and shall be used to provide recreational boating safety programs under section 13106(a) of title 46, United States Code.”.

SEC. 7519. EXPENDITURES FROM BOAT SAFETY ACCOUNT

The Act is amended by adding at the end the following:

“SEC. 15. EXPENDITURES FROM BOAT SAFETY ACCOUNT.

“The following amounts in the boating safety account under section 5904(c) of the Internal Revenue Code of 1986 shall be made available without further appropriation and shall be distributed as follows:

“(1) In fiscal year 2006, $28,153,000 shall be distributed—

“(A) under section 4 of this Act in the following manner:

“(i) $11,200,000 to be added to funds available under subsection (a)(2) of that section;

“(ii) $1,245,000 to be added to funds available under subsection (a)(3) of that section;

“(iii) $1,245,000 to be added to funds available under subsection (a)(4) of that section;

“(iv) $420,000, to be added to funds available under subsection (b) of that section; and

“(B) under section 14 of this Act, $420,000, to be added to funds available under subsection (a)(5) of that section;

“(2) In fiscal year 2007, $22,419,000 shall be distributed—

“(A) under section 4 of this Act in the following manner:

“(i) $8,075,000 to be added to funds available under subsection (a)(2) of that section;

“(ii) $712,000 to be added to funds available under subsection (a)(3) of that section;

“(iii) $713,000 to be added to funds available under subsection (a)(4) of that section;

“(iv) $713,000 to be added to funds available under subsection (b) of that section; and

“(B) under section 14 of this Act, $320,000, to be added to funds available under subsection (a)(5) of that section.”.

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"
“(3) In fiscal year 2008, $17,139,000 shall be distributed—

“(a) under section 4 of this Act in the following manner:

“(i) $33,000 to be added to funds available under subsection (a)(2) of that section;

“(ii) $333,000 to be added to funds available under subsection (a)(3) of that section;

“(iii) $33,000 to be added to funds available under subsection (a)(4) of that section;

“(iv) $333,000 to be added to funds available under subsection (a)(5) of that section; and

“(v) $40,000,000 to be added to funds available under subsection (b) of that section; and

“(B) under section 14 of this Act, $140,000, to be added to funds available under subsection (a)(1) of that section.

“(4) In fiscal year 2009, $12,287,000 shall be distributed—

“(a) under section 4 of this Act in the following manner:

“(i) $5,100,000 to be added to funds available under subsection (a)(2) of that section;

“(ii) $48,000 to be added to funds available under subsection (a)(3) of that section;

“(iii) $48,000 to be added to funds available under subsection (a)(4) of that section;

“(iv) $6,900,000 to be added to funds available under subsection (a)(5) of that section; and

“(v) $142,000, to be added to funds available under subsection (b) of that section; and

“(B) under section 14 of this Act, $1,333,336, to be added to funds available under subsection (a)(1) of that section.

“Sec. 7552. Availability of allocations.

“(a) (1) by striking subparagraph (A); and

“(2) by striking subparagraph (B) and (C) as subparagraphs (A) and (B), respectively.

“Chapter 3—Recreational Boating Safety Program Amendments

Sec. 7551. State Matching Funds Requirement.

Section 13103(b) of title 46, United States Code, is amended in subsections (a) and (b) by striking “one-half” and inserting “75 percent”.

Sec. 7552. Availability of allocations.

Section 13104(a) of title 46, United States Code, is amended—

“(1) by striking “2 years” in paragraph (1) and inserting “3 years”; and

“(2) by striking “2-year” in paragraph (2) and inserting “3-year”.


Section 13106 of title 46, United States Code, is amended—

“(a) by striking “(2) of the Act of August 9, 1950 (16 U.S.C. 777c(b))(i)” in subsection (a)(1) and inserting “(a) and inserting “3 years”;

“(b) by striking “three” and inserting “2 years” in paragraph (1) and inserting “3 years”;

“(b) by striking “(2) of the Act of August 9, 1950 (16 U.S.C. 777c(b))” and inserting “(a) and inserting “3 years”;

“(c) by striking “2 years” in paragraph (1) and inserting “3 years”.

“Sec. 7554. Maintenance of Effort for State Recreational Boating Safety Programs.

(a) In General.—Chapter 131 of title 46, United States Code, is amended by inserting after section 13106 the following:

“§13107. Maintenance of effort for State recreational boating safety programs.

“(a) In General.—The amount payable to a State for a fiscal year from an allocation under section 13103 of this chapter shall be reduced if the usual amounts expended by the State for the State’s recreational boating safety program, as determined under section 13105 of this chapter, for the previous fiscal year is less than the average of the total of such expenditures for the 3 fiscal years immediately preceding that previous fiscal year.

“(b) Reduction in Threshold.—If the total amount available for allocation and distribution under this chapter in a fiscal year for all participating State recreational boating safety programs is less than such amount for the preceding fiscal year, the State expenditure requirement under subsection (a) of this section for the preceding fiscal year shall be decreased proportionately.

“(c) Waiver.—

“(1) in general.—Upon the written request of a State, the Secretary may waive the provisions of subsection (a) of this section for 1 fiscal year if the Secretary determines that a reduction in expenditures for the State’s recreational boating safety program is attributable to a non-selective reduction in expenditures for the programs of all Executive branch agencies of the State government, or for other reasons if the State demonstrates to the Secretary’s satisfaction that such waiver is warranted.

“(2) 30-day decision.—The Secretary shall approve or deny a request for a waiver not later than 30 days after the date the request is received.

“(3) Conforming Amendment.—The chapter analysis for section 131 of title 46, United States Code, is amended by inserting after the last sentence the following:

“§13107. Maintenance of effort for State recreational boating safety programs.”.

“Subtitle F—Miscellaneous Provisions

Sec. 7601. Office of Intermodalism.

(a) In General.—Section 5503 is amended—

“(1) by inserting “Amounts reserved under section 5504(d) not awarded to States as grants may be used by the Director to provide technical assistance to States.” after “organizations.” in subsection (e); and

“(2) by redesignating subsection (f) as subsection (e), and inserting after subsection (e) the following:

“(f) National Intermodal System Improvement Plan.—

“(1) in general.—The Director, in consultation with the appropriate board established under section 5002 of this title and other public and private transportation interests, shall develop a plan to improve the national intermodal transportation system to ensure the safety and security of the Nation’s transportation system and improve the nation’s transportation system’s impact on mobility, safety, energy consumption, the environment, technology, international trade, economic activity, and quality of life in the United States;

“(2) assessment of the operational and economic attributes of each passenger and freight mode of transportation and the optimal role of each mode in the national intermodal transportation system;

“(3) a description of recommended intermodal and multi-modal research and development projects;

“(4) a description of emerging trends that have an impact on the national intermodal transportation system;

“(5) recommendations for improving intermodal policy, transportation planning, and financing to maximize mobility and the return on investment of Federal spending on transportation;

“(6) an estimate of the impact of current Federal and State transportation policy on the national intermodal transportation system; and

“(7) specific near and long-term goals for the national intermodal transportation system.

“(2) Progress Reports.—The Director shall submit an initial report on the plan to improve the national intermodal transportation system 2 years after the date of enactment of the Surface Transportation Safety Improvement Act of 2005, and a follow-up report 2 years after that, to the Secretary, the Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The progress report shall—

“(A) describe progress made toward achieving the plan’s goals;

“(B) describe challenges and obstacles to achieving the plan’s goals;

“(C) update the plan to reflect changed circumstances or new developments; and

“(D) make policy and legislative recommendations that the Director believes are necessary and appropriate to achieve the plan.

“(3) Plan Development Funding.—Such sums as may be necessary from the administrative expenses of the Research and Innovative Technology Administration shall be reserved for each year for the purpose of completing and updating the plan to improve the national intermodal transportation plan.

“(4) Impact Measurement Methodology; Impact Review.—The Director and the Director of the Bureau of Transportation Statistics shall jointly

“(A) develop, in consultation with the modal administrations, and State and local planning organizations, common measures to compare transportation investment decisions across the various modes of transportation; and

“(B) formulate a methodology for measuring the impact of intermodal transportation on—

“(i) the environment;

“(ii) public health and welfare;

“(iii) energy consumption;

“(iv) the operation and efficiency of the transportation system;

“(v) congestion, including congestion at the Nation’s ports; and

“(vi) the economy and employment.”.


(a) Establishment of Program.—(1) Program Requirements.—Chapter 201 of title 49, United States Code, is amended by adding at the end of subchapter II the following:

“§20154. Capital grants for rail line relocation projects

“(a) Establishment of Program.—The Secretary of Transportation shall carry out a grant program by providing financial assistance for local rail line relocation projects.

“(b) Eligibility.—A State is eligible for a grant under this section for any construction project to improve the route or structure of a rail line passing through a municipality of the State that—
section, and any in-kind contributions that are permitted to be counted towards the costs of the project under this section or which may not exceed 90 percent of those costs, after considering—

(i) the level of participation by the State, local governments, or private sector participation in the project; and

(ii) the relative public and private benefits expected to be derived from the project.

(2) COSTS OF THE PROJECT.—Costs incurred by the recipient of a grant awarded under this section of the total amount available for costs for the construction of a road underpass or overpass; and

(3) meets the costs-benefits requirement set forth in subsection (c).

(c) COSTS-BENEFITS REQUIREMENT.—A grant may be awarded under this section for a project for the relocation of a rail line only if the benefits of the project for the period equal to the estimated economic life of the relocated rail line exceed the costs of the project for that period, as determined by the Secretary considering the following factors:

(1) The effects of the rail line and the rail traffic on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce if the rail line were not so relocated.

(2) The effects of the rail line, relocated as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce.

(3) The effects of the rail line, relocated as proposed, on the freight and passenger rail operations if the rail line were not so relocated.

(4) Equitable treatment of the various regions of the United States.

(5) ALLOCATION REQUIREMENTS.—

(i) ELIGIBILITY REQUIREMENTS.—(A) grants not greater than $20,000,000. At least 50 percent of all grant funds awarded under this section out of funds appropriated for a fiscal year shall be provided as grant awards of not more than $20,000,000 each.

(ii) LIMITATION PROJECT.—Not more than 25 percent of the total amount available for carrying out a fiscal year may be provided for any 1 project in that fiscal year.

(iii) FEDERAL SHARE.—The total amount of a grant awarded under this section for a rail line relocation project is equal to a percentage of the shared costs of the project, as determined under subsection (g)(4).

(iv) NON-FEDERAL SHARE.—(A) A State or other non-Federal entity shall pay at least 10 percent of the shared costs of the project, as determined by the Secretary considering the following:

(1) the effects of the rail line, relocated as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce;

(2) the effects of the rail line, relocated as proposed, on the freight and passenger rail operations if the rail line were not so relocated; and

(3) equitable treatment of the various regions of the United States.

(v) forms.—In subsection (b)(1), the term ‘construction’ means the supervising, inspecting, actual building, and issuance of all costs incidental to the construction or reconstruction of a project described in subsection (b)(1) or (2) of this section, including bond costs and other costs relating to the issuance of bonds or other debt financing instruments issued by the State in performing project related audits, and includes—

(A) locating, surveying, and mapping;

(B) track installment, restoration and rehabilitation;

(C) acquisition of rights-of-way;

(D) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(E) elimination of obstacles; and

(F) any other activities defined by the Secretary.

(vi) STATE.—The term ‘State’ includes, except as otherwise specifically provided, a political subdivision of a State, or any political subdivision of a State that may be used for 1 loan or loan guarantee.

(vii) NON-FEDERAL SHARE.—(A) A State or other non-Federal entity shall pay at least 10 percent of the shared costs of the project, as determined by the Secretary considering the following:

(1) the effects of the rail line, relocated as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce;

(2) the effects of the rail line, relocated as proposed, on the freight and passenger rail operations if the rail line were not so relocated; and

(3) equitable treatment of the various regions of the United States.

(viii) forms.—In subsection (b)(1), the term ‘construction’ means the supervising, inspecting, actual building, and issuance of all costs incidental to the construction or reconstruction of a project described in subsection (b)(1) or (2) of this section, including bond costs and other costs relating to the issuance of bonds or other debt financing instruments issued by the State in performing project related audits, and includes—

(A) locating, surveying, and mapping;

(B) track installment, restoration and rehabilitation;

(C) acquisition of rights-of-way;

(D) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(E) elimination of obstacles; and

(F) any other activities defined by the Secretary.

(v) STATE.—The term ‘State’ includes, except as otherwise specifically provided, a political subdivision of a State, or any political subdivision of a State that may be used for 1 loan or loan guarantee.

(ix) costs.—The term ‘costs’ includes the costs incurred by the recipient of a grant awarded under this section of the total amount available for costs for the construction of a road underpass or overpass; and

(x) meets the costs-benefits requirement set forth in subsection (c).

(b) costs.—Costs incurred by the recipient of a grant awarded under this section of the total amount available for costs for the construction of a road underpass or overpass; and

(c) costs.—Costs incurred by the recipient of a grant awarded under this section of the total amount available for costs for the construction of a road underpass or overpass; and

(d) considerations for approval of grant applications.—In addition to considering the relationship of benefits to costs in determining whether a grant is an eligible State under this section, the Secretary shall consider the following factors:

(1) the capacity of the State to fund the rail line relocation project without Federal grant funding.

(2) the requirement and limitation relating to allocation of grant funds provided in subsection (c).

(3) equitable treatment of the various regions of the United States.

(e) allocation requirements.—

(1) grants not greater than $20,000,000. At least 50 percent of all grant funds awarded under this section out of funds appropriated for a fiscal year shall be provided as grant awards of not more than $20,000,000 each.

(2) limitation project.—Not more than 25 percent of the total amount available for carrying out a fiscal year may be provided for any 1 project in that fiscal year.

(3) federal share.—The total amount of a grant awarded under this section for a rail line relocation project is equal to a percentage of the shared costs of the project, as determined under subsection (g)(4).

(g) non-federal share.—(A) a State or other non-Federal entity shall pay at least 10 percent of the shared costs of a project that are not shared costs under this section or which may not exceed 90 percent of those costs, after considering—

(i) the level of participation by the State, local governments, or private sector participation in the project; and

(ii) the relative public and private benefits expected to be derived from the project.

(b) costs.—Costs incurred by the recipient of a grant awarded under this section of the total amount available for costs for the construction of a road underpass or overpass; and

(d) considerations for approval of grant applications.—In addition to considering the relationship of benefits to costs in determining whether a grant is an eligible State under this section, the Secretary shall consider the following factors:

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(i) the level of participation by the State, local governments, or private sector participation in the project; and

(ii) the relative public and private benefits expected to be derived from the project.

(b) costs.—Costs incurred by the recipient of a grant awarded under this section of the total amount available for costs for the construction of a road underpass or overpass; and

(d) considerations for approval of grant applications.—In addition to considering the relationship of benefits to costs in determining whether a grant is an eligible State under this section, the Secretary shall consider the following factors:

(1) the capacity of the State to fund the rail line relocation project without Federal grant funding.

(2) the requirement and limitation relating to allocation of grant funds provided in subsection (c).

(3) equitable treatment of the various regions of the United States.

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(2) limitation project.—Not more than 25 percent of the total amount available for carrying out a fiscal year may be provided for any 1 project in that fiscal year.

(3) federal share.—The total amount of a grant awarded under this section for a rail line relocation project is equal to a percentage of the shared costs of the project, as determined under subsection (g)(4).

(g) non-federal share.—(A) a State or other non-Federal entity shall pay at least 10 percent of the shared costs of a project that are not shared costs under this section or which may not exceed 90 percent of those costs, after considering—

(i) the level of participation by the State, local governments, or private sector participation in the project; and

(ii) the relative public and private benefits expected to be derived from the project.

(b) costs.—Costs incurred by the recipient of a grant awarded under this section of the total amount available for costs for the construction of a road underpass or overpass; and

(d) considerations for approval of grant applications.—In addition to considering the relationship of benefits to costs in determining whether a grant is an eligible State under this section, the Secretary shall consider the following factors:

(1) the capacity of the State to fund the rail line relocation project without Federal grant funding.

(2) the requirement and limitation relating to allocation of grant funds provided in subsection (c).

(3) equitable treatment of the various regions of the United States.
“(A) the standards of section 24312 of title 49, United States Code, as in effect on September 1, 2002, with respect to the project in the same manner that the National Railroad Passenger Corporation is required to comply with such standards for construction work financed under an agreement made under section 24308(a) of that title; and

(B) the protective arrangements established under section 504 of this Act,

with respect to employees affected by actions taken in connection with the project to be financed under this Agreement, that are covered by the Agreement.

(2) TECHNICAL CORRECTION.—Section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822d) is amended by adding at the end the following new subsection:

“(g) TIME LIMIT FOR APPROVAL OR DISAPPROVAL.—Not later than 90 days after receipt of a complete application for a direct loan or loan guarantee, the Administrator of the National Highway Traffic Safety Administration shall—

(1) develop and implement a comprehensive program to promote compliance with State and local laws to ensure that first responder vehicles are used for the purpose of carrying out this section, including public service announcements, publication of informational materials, and posting information on the Internet.

(2) PUBLIC OUTREACH.—The Secretary shall carry out this section, including public service announcements, publication of informational materials, and posting information on the Internet.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for fiscal year 2006 to carry out this section.

SEC. 7605. FIRST RESPONDER VEHICLE SAFETY PROGRAM.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Administrator of the National Highway Traffic Safety Administration, shall—

(1) develop and implement a comprehensive program to promote compliance with State and local laws intended to increase the safe and efficient operation of first responder vehicles;

(2) compile a list of best practices by State and local governments to promote compliance with the laws described in paragraph (1);

(3) analyze State and local laws intended to increase the safe and efficient operation of first responder vehicles;

(4) develop model legislation to increase the safe and efficient operation of first responder vehicles;

(5) make grants to support the development and implementation of State and local programs to carry out this section.

(b) EXEMPTIONS.—The Secretary may exempt from the requirements of paragraph (1) any other area that the Secretary determines to be in the public interest.

SEC. 7606. FEDERAL SCHOOL BUS DRIVER QUALIFICATIONS.

The effective date of section 383.123 of volume 49, Code of Federal Regulations (as in effect on the date of enactment of this Act), shall be September 30, 2006.

MEASURES PLACED ON THE CALENDAR—S. 1084 AND S. 1085

Mr. CORNYN. I understand there are two bills at the desk that are due for a second reading. I ask unanimous consent that they be read for a second time on bloc.

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

ORDERS FOR MONDAY, MAY 23, 2005

Mr. CORNYN. I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11:30 a.m. on Monday, May 23. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and that the Senate then return to executive session and resume consideration of the nomination of Priscilla Owen to the Fifth Circuit Court of Appeals, provided that the time from 12 noon until 1 p.m. be under the control of the majority leader or his designee; and, at 1 p.m., the Democratic leader or his designee be recognized; provided that floor time then rotate between the two leaders or their designees every 60 minutes until 4 p.m., at which time the majority leader or his designee be recognized until 4:45 p.m., to be followed by the Democrat leader or his designee from 4:45 p.m. until 5:30 p.m.

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

PROGRAM

Mr. CORNYN. Mr. President, on Monday, the Senate will resume consideration of the nomination of Priscilla Owen to serve as a circuit judge on the Fifth Circuit Court of Appeals. Monday will be the fourth consecutive day the Senate considers the Owen nomination.

Over the past 3 days, a number of Members, on both sides of the aisle, have come to the floor to speak on the nomination. We have conducted over 25 hours of debate, and we will continue on Monday. Moments ago, we filed an cloture motion on the nomination, and that will ripen on Tuesday of next week.

On behalf of the majority leader, I remind my colleagues the leader has announced our next rolcall vote will occur Monday afternoon at 5:30. That vote will be on a motion to instruct the Sergeant at Arms to request Senators’ attendance. Senator Feingold will have more to say about next week’s session on Monday.

ADJOURNMENT UNTIL MONDAY, MAY 23, 2005, AT 11:30 A.M.

Mr. CORNYN. If there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 2:23 p.m.,adjourned until May 23, 2005, at 11:30 a.m.
CONGRATULATING KRISTOPHER JONES ON RECEIVING THE GREAT VALLEY YOUNG ENTREPRENEUR OF THE YEAR AWARD FROM THE GREATER HAZLETON CHAMBER OF COMMERCE AND THE GREATER WILKES-BARE CHAMBER OF BUSINESS AND INDUSTRY

HON. PAUL E. KANJORSKI OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. KANJORSKI. Mr. Speaker, I rise today to ask you and my esteemed colleagues in the House of Representatives to pay tribute to Kristopher Jones of Wilkes-Barre, Pennsylvania, on the occasion of having been selected to receive the Great Valley Young Entrepreneur of the Year Award.

As a founder of Pepperjam.com, a 6-year-old internet-based company established by Mr. Jones and his brother to market their grandmother’s 50-year-old jam recipes and other gourmet food products, Mr. Jones has demonstrated the kind of true entrepreneurial spirit for which this award was created.

A bright and talented young man, Mr. Jones possesses a diverse background in both his education and professional pursuits.

Kris served as an intern in my Washington office and for the Financial Services Committee during the summers while he was a law student. Upon his graduation, I hired him as my district director. We talked often about his interest in growing his family business, and I encouraged him to focus on pursuing the unique opportunities presented to him. Because of his deep love of Northeastern Pennsylvania, he promised to keep his company based in the area to help stimulate the local economy.

Recently, Mr. Jones has expanded his business into e-commerce consulting, a new field that has helped enable him to add new jobs to his company and to achieve national recognition in the field of affiliate marketing management.

Always one to give back to his community, Mr. Jones regularly speaks with college students and recent graduates about business opportunities that exist in Northeastern Pennsylvania, recognizing the need to be a good corporate citizen and community advocate.

Mr. Speaker, please join me in congratulating Mr. Kristopher Jones on this auspicious occasion. The entrepreneurial spirit displayed by Mr. Jones has set a fine example for all potential young entrepreneurs and fledgling enterprises in Northeastern Pennsylvania.

IN SPECIAL RECOGNITION OF DUSTIN A. NEDOLAST ON HIS APPOINTMENT TO ATTEND THE UNITED STATES AIR FORCE ACADEMY

HON. PAUL E. GILLMOR OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. GILLMOR. Mr. Speaker, it is my great pleasure to pay special tribute to an outstanding young man from Ohio’s Fifth Congressional District. I am happy to announce that Dustin A. Nedolast of Fostoria, Ohio has been offered an appointment to attend the United States Air Force Academy in Colorado Springs, Colorado.

Dustin’s offer of appointment poises him to attend the United States Air Force Academy this fall with the incoming cadet class of 2009. Attending one of our nation’s military academies is an invaluable experience that offers a world-class education and demands the very best that these young men and women have to offer. Truly, it is one of the most challenging and rewarding undertakings of their lives.

Dustin brings an enormous amount of leadership, service, and dedication to the incoming class of Air Force cadets. While attending Saint Wendelin Catholic High School in Fostoria, Ohio, Dustin has attained a 3.8 grade point average which places him near the top of his class. While a gifted athlete, Dustin has maintained the highest standards of excellence in his academics. Dustin has been a member of the National Honor Society, earned scholastic First Honors for four years, and has earned awards and accolades as a scholar and an athlete.

Outside the classroom, Dustin has distinguished himself as an excellent student-athlete. On the fields of competition, Dustin has earned letters in Varsity Wrestling, Football and Baseball. Dustin has served as class representative during his junior year in high school as well as Senior Class President. Dustin’s dedication and service to the community and his peers has proven his ability to excel among the leaders at the Air Force Academy. I have no doubt that Dustin will take the lessons of his student leadership with him to Colorado Springs.

Mr. Speaker, I ask my colleagues to join me in congratulating Dustin A. Nedolast on his appointment to the United States Air Force Academy in Colorado Springs, Colorado. Our service academies offer the finest military training and education available anywhere in the world. I am sure that Dustin will do very well during his career at the Air Force Academy and I ask my colleagues to join me in wishing him well as he begins his service to the nation.

TRIBUTE TO REPUBLIC OF CHINA PRESIDENT CHEN SHUI-BIAN

HON. THOMAS G. TANCREDO OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. TANCREDO. Mr. Speaker, I rise today to convey my best wishes to Republic of China President Chen Shui-Bian as he begins the sixth year of his presidency. I would also like to Congratulate President Chen on the recent establishment of diplomatic relations between Taiwan and the nation of Nauru. It is my sincere hope that the United States and Taiwan will soon re-establish formal ties as well.

The election of President Chen to his first term in 2000 was a watershed moment for Taiwan, signifying the first election of an opposition party candidate to that post since the establishment of the ROC nearly a century ago. He was re-elected last year.

Since President Chen came to office, he has maintained his commitment to the advancement of democracy. Successful legislative elections, a referendum, a presidential election, and most recently a poll to elect members of a National Assembly that will undertake the monumental task of rewriting Taiwan’s decades old constitution, have all been held.

Under President Chen’s leadership, Taiwan has continued its progress by improving its status as the Western Pacific’s flagship democracy and as one of its premier economic powerhouses. What is perhaps most astonishing, however, is that this has been accomplished in spite of the tense and ominous environment created by China.

Mr. Speaker, Taiwan’s robust democratic institutions shine particularly brightly precisely because of their close proximity to the People’s Republic of China. The PRC, after all, is a nation where open political discourse and the free exchange of ideas remain largely non-existent. It is this glaring contrast between Taiwan and the People’s Republic of China that will continue to be a source of tension—regardless of how many Panda bears China’s leaders might send to Taiwanese zoos, or how many Wax Apples they might purchase from Taiwanese farmers.

I think President Chen summed up the situation rather eloquently when he recently said, “The greatest obstacle between the two sides of the Strait lies in our democratic disparity—not in our political separation.”

So, Mr. Speaker, I extend my congratulations to President Chen on the last five years of his presidency, and I wish him the best of luck in the future as he works to strengthen the historic and decades-long friendship between our two nations.

*Note: This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor. Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.*
CONGRATULATING MASTER SERGEANT VICTOR J. LUKSIC ON THE OCCASION OF HIS RETIREMENT FROM THE PENNSYLVANIA ARMY NATIONAL GUARD

HON. PAUL E. KANJORSKI
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. KANJORSKI. Mr. Speaker, I rise today to ask you and my esteemed colleagues in the House of Representatives to pay tribute to my good friend Master Sergeant Victor J. Luksic, of Wilkes-Barre, Pennsylvania, on the occasion of his retirement from the Pennsylvania Army National Guard following 40 years of distinguished and loyal service.

For the past 22 years of Master Sergeant Luksic’s military service, he was engaged in the Recruiting and Retention Command at Fort Indiantown Gap, Annville, Pennsylvania.

Indeed, Master Sergeant Luksic served as chairman for the Sergeants Major Sub-Committee of the National Recruiting and Retention Council, a body that serves in the capacity of a board of directors for the Recruiting and Retention Force of the National Guard Bureau.

As chairman of that Council, Master Sergeant Luksic was charged with representing all 1,400 recruiting personnel serving throughout the United States.

During his service spanning four decades, Master Sergeant Luksic mastered the specialties of tactical communications, infantryman, senior instructor, finance, career counselor, and recruiting and retention.

The father of two children, Master Sergeant Luksic also distinguished himself by his selfless service to his local community in the great Wyoming Valley. He is a past chairman of the board of directors of Consumer Credit Counseling Service of Northeastern Pennsylvania. He is also a member of St. Nicholas Roman Catholic Church and its Holy Name Society and the St. Conrad’s Young Men’s Association of Wilkes-Barre.

Master Sergeant Luksic earned numerous military awards and decorations while serving the Pennsylvania Army National Guard. Some of the those accolades include the National Defense Service Medal with one oak leaf cluster; Army Achievement Medal with three oak leaf clusters; Armed Force Reserve Medal with Gold Hour Glass; Army Commendation Medal with oak leaf cluster; Non-commissioned Officer Professional Development ribbon; Meritorious Service Medal with three oak leaf clusters; Global War on Terrorism Medal and the Master Recruiting Badge.

Mr. Speaker, please join me in congratulating Master Sergeant Luksic on the completion of 40 years of military service. His devotion to duty and to the United States of America’s defense has helped make this great Nation a safer place and has furthered the noble causes of promoting liberty and democracy.

IN SPECIAL RECOGNITION OF BRADLEY J. MARZEC ON HIS APPOINTMENT TO ATTEND THE UNITED STATES AIR FORCE ACADEMY

HON. PAUL E. GILLMOR
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. GILLMOR. Mr. Speaker, it is my great pleasure to pay special tribute to an outstanding young man from Ohio’s Fifth Congressional District. I am happy to announce that Bradley J. Marzec of Rossford, Ohio has been offered an appointment to attend the United States Air Force Academy in Colorado Springs, Colorado.

Bradley’s offer of appointment poises him to attend the United States Air Force Academy this fall with the incoming cadet class of 2009. Attending one of our Nation’s military academies is an invaluable experience that offers a world-class education and demands the very best that these young men and women have to offer. Truly, it is one of the most challenging and rewarding undertakings of their lives.

Bradley brings an enormous amount of leadership, service, and dedication to the incoming class of Air Force cadets. Bradley is a 2004 graduate of Saint Francis de Sales High School in Toledo, Ohio. While attending St. Francis, Bradley was an honor student in addition to serving as a church youth group volunteer. Since his graduation from St. Francis, Bradley has been preparing to attend the Academy by attending the Air Force Academy Preparatory School in Colorado Springs, Colorado.

Outside the classroom, Bradley has distinguished himself as an excellent student-athlete. On the fields of competition, Bradley earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling where he earned his Varsity letter in Wrestling

Bradley’s exemplary performance and meritorious service and dedication during his military career have earned him an appointment to the United States Air Force Academy.

Mr. Speaker, I ask my colleagues to join me in congratulating Bradley J. Marzec on his appointment to the United States Air Force Academy in Colorado Springs, Colorado.

TRIBUTE TO CAPTAIN BENJAMIN T. LYNG

HON. THOMAS G. TANCRED
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. TANCRED. Mr. Speaker, I rise to honor Captain Benjamin T. Lyng for his eight years of military service and leadership to our country. After graduating from American University in Washington, D.C. and completing Georgetown University’s ROTC program, Captain Lyng was commissioned as a Second Lieutenant in the United States Army with the 518th Maintenance Company at Fort Bliss, Texas. He served as a platoon leader and executive officer before he was promoted to First Lieutenant. With the 518th, he led a 35-soldier platoon during a six month deployment to Saudi Arabia during Operation Southern Watch. Later, he served as an Staff Officer with the First Battalion, First Air Defense Artillery Regiment (1-1 ADA) also at Ft. Bliss. Captain Lyng was promoted to Captain while deployed in Kuwait with the 1-1 ADA.

After graduating first in his class at the U.S. Navy Explosive Ordnance Disposal Ordinance (EOD) School and fourth in his Officer Advanced Course, Lyng was commissioned to command the 764th EOD Unit based at Fort Carson in Colorado Springs, CO. During his command, his company conducted 165 EOD incidents and over 50 U.S. Secret Service details in support of the President, Vice President, First Lady, Vice First Lady and foreign heads of state without injury.

He also commanded the 764th EOD Unit in Kandahar, Afghanistan during Operation Enduring Freedom, where he and his company conducted over 300 combat EOD incidents, rendered safe over 20 improvised explosive devices (IED’s) and improvised rocket attacks, assisted with forensic evidence collection for War Crimes Tribunals and provided technical advisory and security services for Afghanistan’s first direct presidential election. In addition to serving his country, Captain Lyng also served the people of Afghanistan by collecting over 2000 pounds of clothing through the charity he founded, “Children Helping Children.”

During his command in Afghanistan, Captain Lyng earned the Bronze Star Medal for his exceptionally meritorious service while serving as a member of the combined/joint task force-76 in support of Operation Enduring Freedom. Captain Lyng’s tactical proficiency and selfless commitment to mission accomplishment in a combat zone greatly contributed to the success of Operation Enduring Freedom.

In addition to his Bronze Star Medal, he has also received an Army Commendation Medal, Army Achievement Medal, the Armed Forces Expeditionary Medal, the Global War on Terrorism Expeditionary Medal, the Global War on Terrorism Service Medal and the National Defense Service Medal. Captain Lyng received the Explosive Ordnance Disposal Badge and the Air Assault Badge.

Mr. Speaker, I wish to honor Captain Benjamin Lyng for his distinguished career and his contribution to our country. Captain Lyng has left a legacy of leadership and service to his community. Today, I congratulate him on his outstanding performance and meritorious service to the Armed Forces of the United States and wish him well in his future endeavors.
HONORING H.E. SUSILO BAMBANG YUDHOYONO, PRESIDENT OF THE REPUBLIC OF INDONESIA AND COMMEMORATING HIS FIRST OFFICIAL VISIT TO THE UNITED STATES

HON. DAN BURTON OF INDIANA IN THE HOUSE OF REPRESENTATIVES

Thursday, May 19, 2005

Mr. BURTON of Indiana. Mr. Speaker, I rise today to acknowledge the first official visit to the United States by Indonesia’s new President, the first directly elected President in that nation’s history, His Excellency Susilo Bambang Yudhoyono. President Yudhoyono is well known to many in the United States from his years of service in Indonesia’s military, and as Minister of Energy and Mines. In fact, earlier in his career, President Yudhoyono studied for two years in the United States. But this first official working visit as President is a special occasion, and one well marking in the United States Congress.

 Barely two months into his term, the historic and devastating December 26th tsunami struck off Sumatra’s north and western coasts. President Yudhoyono traveled to the hard hit areas immediately, and directed his new Cabinet to do everything possible to expedite immediate relief and assistance. His team undertook a groundbreaking effort to put together a detailed recovery plan, and develop open, inclusive, and transparent processes for aiding the hardest hit communities. President Yudhoyono took his approach through on all the commitments he made to the international donor community to take the necessary steps to develop processes and institutions to assure the world that the generous outpouring of assistance is well managed, free of corruption, and gets to the people who need it the most.

There is no doubt that there will continue to be bumps along the road as Indonesia tackles and gets to the people who need it the most. Assistance is well managed, free of corruption, to develop processes and institutions to as.

Yudhoyono has followed through on all three undertook a groundbreaking effort to put expedite immediate relief and assistance. His

assistance is well managed, free of corruption,

to develop processes and institutions to as-

Yudhoyono has followed through on all three

areas immediately, and directed his new Cabi-

ned, the first directly elected President in that

nations with the largest Muslim population. In-

increased cooperation and improved relation-

ships in a wide range of areas will help us

build a strong bridge across the Pacific, which

will benefit and strengthen both of our coun-

tries. I look forward to the outcomes of Presi-

dent Yudhoyono’s visit and to learning how we

in Congress can reinforce and strengthen our

ties.

As my colleagues have heard me say many times, I believe the United States needs to devote more time and attention to broadening and expanding our relationship with Indonesia, the world’s third largest democracy and the nation with the largest Muslim population. Increased cooperation and improved relationships in a wide range of areas will help us build a strong bridge across the Pacific, which will benefit and strengthen both of our countries. I look forward to the outcomes of President Yudhoyono’s visit and to learning how we in Congress can reinforce and strengthen our ties.

RECOGNITION OF MRS. MARY GUDGE

HON. JOHN SHIMKUS OF ILLINOIS IN THE HOUSE OF REPRESENTATIVES

Thursday, May 19, 2005

Mr. SHIMKUS. Mr. Speaker, I rise today to recognize Mrs. Mary Gude of Dorsey, Illinois. On May 27, Mary Gude will be retiring as a teacher at Trinity Lutheran School in Edwardsville after 30 years of teaching.

Trinity Lutheran Church is the only place Mrs. Gude has ever taught. During her years there, she has taught preschool, kindergarten, first and third grades. Most recently, she has been the very beloved second grade teacher. Her second grade classes have been filled with much learning, but also the joy of music and the love of all God’s creatures with sever-al classroom pets.

Her second grade classes have annually produced a Second Grade Operetta. These productions are truly a labor of love, taking a great deal of time and energy.

Mrs. Gude’s part. The shows are enjoyed by all the children of the school, as well as parents and family members.

Mary Gude’s years at Trinity have not been easy. Early in her tenure, she lost her husband to brain cancer and was raising two of whom she was able to teach at Trinity. She looks forward to this retirement so she can spend more time with her family, continue to teach piano lessons, and continue to serve as the director of the choir at the church.

Mary Gude has been a teacher for many years, and the hundreds of children who have passed through her classroom as her calling from God. Her kindness, goodness, strength, and love of God shines through in all she does and is forever part of the children who have been fortunate enough to have her as a teacher. In the words of Jesus, in Matthew 25:21, “Well done, thou good and faithful servant . . .”

HONORING THE 761ST TANK BATTALION

HON. STEPHANIE TUBBS JONES OF OHIO IN THE HOUSE OF REPRESENTATIVES

Thursday, May 19, 2005

Mrs. JONES of Ohio. Mr. Speaker, I rise today to honor the 761st Tank Battalion of World War II. On November 8, 1944 the men of the 761st became the first all black infantry unit to see combat. They successfully over-took the towns of Moyenvic and Vic-sur-Seile, which were occupied by German forces.

“Come Out Fighting,” was the motto of the 761st also known as the Black Panthers. Their motto personified their tremendous sacrifice and selflessness in defeating the German army in World War II.

For 183 days, the Black Panthers fought four major engagements across six European nations. Their courageous effort contributed to the overtaking of Tillet, Belgium, a German occupied area that no other armed force could successfully take. The Black Panthers also penetrated the Siegfried Line allowing the 4th Armored Division to cross the Rhine River.

On May 6, 1945, as the easternmost Americans, the 761st ended their combat mission with a rendezvous with the First Ukrainian Army at the Steye River in Austria. The Black Panthers were the first Americans to meet the Russian Army.

In 1978, the Black Panthers were awarded a Presidential Unit Citation, 33 years after the war ended. Their recognition was long overdue. Their tremendous sacrifices and sense of duty proved to be indispensable to the Allied Forces’ war effort against the Axis powers. It gives me great pleasure to rise and join with my congressional colleagues in recognition of this elite battalion.

TRIBUTE TO MR. THOMAS P. INFUSINO

HON. BILL PASCRELL, JR. OF NEW JERSEY IN THE HOUSE OF REPRESENTATIVES

Thursday, May 19, 2005

Mr. PASCRELL. Mr. Speaker, I would like to call your attention to the life and work of an
exceptional individual, Mr. Thomas Infusino. Thomas was honored at the Wakefern Food Corporation’s annual meeting on Thursday, May 19, 2005.

Over the past thirty-four years, Thomas Infusino has worked tirelessly on behalf of his investors, employees, and clients. His commitment to the food distribution industry, and the community at large has left an indelible mark on the lives of many, demonstrating the difference one dedicated person can make. It is only fitting that we honor Thomas Infusino, in this, the permanent record of the greatest freely elected body on Earth.

Thomas served in the United States military during World War II, primarily stationed in Italy and Africa. Upon his return he quickly became a part of the Northern New Jersey community and has raised a family in our wonderful state. Thomas has truly made a name for himself as an innovative entrepreneur with a propensity for giving back to the community.

Tom has been chairman and CEO of Wakefern Food Corporation, a retailer-owned cooperative of the wholesale merchandising and distribution arm for ShopRite super markets, since 1971. He is also the owner and president of the Nutley Park ShopRite located in Nutley, NJ.

Mr. Infusino’s philanthropic spirit has been recognized by an array of organizations. Tom was honored by the Cooley’s Anemia Foundation and subsequently given the Lifeline Award for his efforts. Additionally, Tom continues to work closely with the Lautenberg Center for General and Tumor Immunology, which sponsors the annual Thomas Infusino Prize. He also sits on the Board of Governors for the National Conference for Community and Justice as well as retaining a seat on the Board of Directors of the New Jersey Food Council.

The job of a United States Congressman involves so much that is rewarding, yet nothing compares to learning about and recognizing the efforts of individuals like Thomas Infusino.

Mr. Speaker, I ask that you join our colleagues, the members of the Infusino family, and myself in recognizing Thomas Infusino for his outstanding service.

HONORING CONGRESSMAN JERRY KLECZKA FOR HIS LEGACY TO PUBLIC SERVICE EDUCATION

HON. GWEN MOORE
OF WISCONSIN
IN THE HOUSE OF REPRESENTATIVES

Thursday, May 19, 2005

Ms. MOORE of Wisconsin. Mr. Speaker, I rise today to honor Mr. Jerry Kleczka, an esteemed Member of this body who represented Wisconsin’s 4th Congressional District for over 20 years. More specifically, today I want to recognize and celebrate the accomplishments for which he is being honored in Milwaukee this coming weekend.

My colleagues listening here on the floor today know Congressman Kleczka, my predecessor, as a champion of the causes of working men and women. A spirited and tenacious advocate, he fought for so many reforms, from legislation to protect senior citizens in public housing to the expansion of Medicare, and a strong Medicare program, to the rights of workers, and the rights of citizens to privacy in a digital age, just to name a few.

When he decided to leave Federal elective office in 2004, Congressman Kleczka left behind an additional legacy that will endure for many years to come. In 1984, he independently offered to host an individual intern in his Congressional office. From that single internship grew an entire program which, over the last twenty years, has developed into a remarkable center for public service education. Marquette University’s Les Aspin Center for Government in Washington, D.C. As a result, over 700 students with an interest in public service have interned in nearly 100 congressional offices and in multiple federal agencies. Jerry was there for the Center’s internship program from the very start as its stalwart champion, advocate, and host of so many of its interns. Of the countless students to which he offered the opportunity for congressional experience, many have gone on to fine careers in public service and two have even won elective office, Wisconsin State Assemblyman Pedro Colon and Milwaukee County Supervisor Marina Dimitrijevic. He was awarded the Center’s Founders Award in 1999 and has served on its Board of Visitors since 1996.

In addition to all his prior work on its behalf, last year Congressman Kleczka made a remarkably generous donation to Marquette’s Les Aspin Center which has made possible the establishment of an entirely new program through which students will study state and local government in Milwaukee starting this summer. With this selfless act he has permanently endowed the cause of public service learning throughout Milwaukee and at Marquette and created a legacy that will last for years to come.

This weekend, Congressman Kleczka’s efforts will be properly recognized. On Sunday, May 22, Marquette University will award him an honorary doctorate of laws to acknowledge him as a champion of the D.C. intern center and the benefactor of a new Milwaukee institution that will foster the desire for public service among our best and brightest closer to home.

I ask my colleagues to join in congratulating Jerry on receiving this well-deserved honor.

HONORING RICHARD F. CORDELL
HON. DALE E. KILDEE
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES

Thursday, May 19, 2005

Mr. KILDEE. Mr. Speaker, I rise today to pay tribute to an outstanding gentleman, Mr. Richard F. Cordell of Flushing, MI. This Friday, members of the Rotary Club of Flint will pay tribute to Mr. Cordell, as he celebrates 42 years of service as a Rotarian, and 25 years as Executive Secretary/Treasurer of the Club.

Born and raised in Toledo, Ohio, Dick Cordell began his long history of service to others by serving in his country in World War II. Following his graduation from the University of Toledo, Dick piloted a B-26 as a member of the U.S. Air Force, earning the rank of Lieutenant Colonel. After the war, Dick worked as a salesman for IBM. During this time, he met and married Ruth, his wife of 58 years. When Symplex purchased Dick’s division at IBM, he was transferred to Las Vegas, Nevada, where he was appointed District Manager.

Dick began his distinguished career with Rotary International on September 1, 1963. After memberships on various committees and participation in many projects, Dick was elected President of the Flint Rotary Club from 1974-1976. He also served as District Governor from 1984-1985. Since 1980, he has operated as the Flint Club’s Executive Secretary/Treasurer, a position he enjoys due to the constantarendra interaction, and he experiences from his fellow Rotarians. In addition, Dick and Ruth plan to attend this year’s Rotary International Convention, which will be their fifteenth.

I am appreciative of Dick Cordell’s many years of leadership and for the untold number of individuals he has assisted, both personally and indirectly. He truly personifies the Rotary motto: “Service Above Self,” as well as the Rotarian philosophy of truth, fairness, goodwill, and mutual benefit in all professional actions.

Mr. Speaker, as a Rotary Club fellowship beneficiary, I can attest to the unwavering support toward the community exhibited by its members, and I am grateful for people such as Richard Cordell. I ask my colleagues in the 109th to please join me in recognizing his accomplishments, and wishing him the best in all his future endeavors.

HONORING GENE TORRES
HON. TOM UDALL
OF NEW MEXICO
IN THE HOUSE OF REPRESENTATIVES

Thursday, May 19, 2005

Mr. UDALL of New Mexico. Mr. Speaker, I rise today to recognize the lifetime achievements of Northwestern golf legend Gene Torres, a resident of the Las Vegas community in my home state of New Mexico. Gene spearheaded the golf program at New Mexico Highlands University while simultaneously winning over 80 professional tournaments and raising a family.

Born in Colorado, Gene was fascinated with golf since he was a youngster and qualified for major tournaments in high school. Early in his career he set the course record of 16 under par for 52 holes at the University of New Mexico golf course. Gene interrupted his golf career in 1957 to join the Navy and serve his country aboard the USS Shangri-La. After his tour of duty with the Navy concluded, Gene returned home to become the premier amateur golfer in Southern Colorado and Northern New Mexico in the early Sixties.

A pillar of the Las Vegas community, Gene has called New Mexico his home since 1962. Well-known and respected, Gene served 42 years as a Professor of Physical Education and manager of the New Mexico Highlands University golf course, which he helped design. Gene instructed thousands of Northern New Mexico students and started the golf team at Highlands University. In the absence of golf scholarships, Gene often used his own money to pay the team’s tournament expenses. Despite financial challenges, Gene’s golf teams won over 60% of their matches.

In 1970, Gene joined the PGA where he earned the title “The Rock”, for his solid performance. He is said to have consistently hit one of the longest and straightest balls in golf. Gene instructed thousands of Northern New Mexico golfers. In a row, a feat no one else has accomplished to date, and the PGA Life Time Achievement Award. He was named the Southwest Section
Player of the Year and streets have been named after him in both California and Texas. In addition to his tremendous professional success, Gene made time to be a teacher, husband, father, grandfather and great-grandfather.

Throughout his professional career Gene was diligent in promoting the University Golf Program at every opportunity. Wherever you saw the name “Gene Torres”, you would see New Mexico Highlands University right beside it. As a result, the New Mexico Highlands University golf course has been aptly named after Gene in a ceremony attended by more than 200 people, a testament to his involvement in the Las Vegas community and his contribution to New Mexico.

Mr. Speaker, Gene Torres is a model athlete and educator. He exemplifies the qualities that make New Mexico great: dedication to education, devotion to family and commitment to community. Gene Torres has become a legend for not only his golf ability but his selfless giving in the Las Vegas community. I welcome this opportunity to honor his lifetime achievements and am proud that he calls New Mexico his home.

AN OPPORTUNITY TO GIVE LIFE

HON. JOE WILSON
OF SOUTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. WILSON of South Carolina. Mr. Speaker, more than 86,000 men, women, and children currently await life-saving transplants.

However, due to lost wages and increased medical expenses, the organ donation process is expensive, time consuming, and discouraging for many potential donors. Since so many Americans could benefit from the tremendous generosity of organ donors, I believe Congress should help make it easier for people to donate their organs.

Today, I’m introducing the “Living Organ Donor Tax Credit Act of 2005,” which will provide a one time, tax credit up to $5,000 to help cover non-reimbursable expenses, including lost wages, incurred by living organ donors.

The National Kidney Foundation has endorsed this legislation, and I believe it is an effective way to encourage more Americans to serve as living donors. Today, I’d like to ask my colleagues to join me in providing tax relief to the millions of Americans who unselfishly serve as living organ donors.

In conclusion, God bless our troops and we will never forget September 11th.

TRIBUTE TO SIM EDWARDS STOKES

HON. EDDIE BERNICE JOHNSON
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I appreciate this opportunity to tell my colleagues about a proud American and a beloved Dallas resident: Sim Edward Stokes. As family and friends fondly know him as “Simi,” I would like to take a moment to acknowledge his energy and vitality to every undertaking. He is the king of networking, and his unabashed enthusiasm is irresistibly infectious. I do not doubt for a second that, he brings his skills from the NFL Champion Dallas Cowboys where he was part of the 1967–1968 team.

Anyone who has had the pleasure of working with Simi is immediately struck by his passion for education, and his belief that all children should be able to receive a top notch education, regardless of their economic standing. He is Vice Chairman of the St. Paul Endowment Fund which provides grants for special programs for children, youth and adults. This fund enables them to grow in their understanding of the Christian faith and have the opportunity to receive scholarships and grants for the purpose of attending college and seminary to prepare for a church related vocation, and for funding church camping, retreats and leadership conferences.

Mention his family and you’ll see Simi burst with pride. He is married to the lovely Elnora Jean Stokes. He is also the father of four young lads, and one “princess” whom is a U.S. Army Major at the Pentagon.

Simi holds a MBA from University of Dallas. He has been member of Kappa Alpha Psi Fraternity since 1965. He was also honorably discharged from the Texas National Guard in 1968.

We, in Dallas, are lucky that Simi left Alabama and adopted Dallas as his home and, in time, adopted each of us and shared his great love for his fellow man. I ask my colleagues in the House of Representatives to join me in extending my appreciation to Simi for over three decades of service to the people of Texas.

NIGERIA’S CONTINUING PRESENCE ON CAMEROON’S BAKASSI PENINSULA

HON. JOHN R. CARTER
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. CARTER. Mr. Speaker, I rise today to call attention to a continuing threat to the long-standing goal of the United States to diversify our energy sources. Nigeria refuses to return full sovereign control of the oil-rich Bakassi Peninsula to Cameroon. The International Court of Justice has confirmed Cameroon as the rightful owner of this territory. However, President Obasanjo has not withdrawn Nigerian troops from the peninsula, despite having promised to do so by September 2004.

Mr. Speaker, Nigeria’s intransigence in Cameroon threatens to jeopardize the United States’ energy security. I agree that Nigeria, despite its turbulent history, has been a valuable source of oil for the United States over the years. However, America’s interests would be better served by Cameroon becoming another such source—a stable, independent source. Nigeria must return control of the Bakassi Peninsula to Cameroon.

RECOGNIZING THE LIFE OF LOURNINIA CARINO SEN FOR HER OUTSTANDING DEDICATION TO HER COMMUNITY

HON. MIKE THOMPSON
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. THOMPSON of California. Mr. Speaker, I rise today to express my sadness regarding the recent passing of a leader in our community, Lourminia Carino Sen, known to all as “Mimi.”

A 37-year resident of Davis, California, Mimi was born and raised in the Philippines where she received a bachelor’s degree in food technology from the University of the Philippines. She also earned a bachelor’s degree in food science, a master’s degree from Oregon State University—where she met her husband, Arun—and a Ph.D. in agricultural chemistry and biochemistry from the University of California, Davis, where she was a National Institutes of Health Pre-doctoral Fellow.

Mimi had an illustrious career conducting research at UC Davis. In 1991 she began her service, working at the State of California Department of Food and Agriculture’s Center for Analytical Chemistry. In 1996, CDFA Secretary Ann Veneman presented her with the Outstanding Performance Award for her efforts in management of the National Plant Germplasm System. In 2001, Governor Gray Davis appointed Mimi as the Agricultural and Environmental Science Advisor to the California Department of Food and Agriculture; she was the first person to be appointed to this position.

Mimi dedicated her life to her family and the community of Davis. While raising her two daughters, she was active in the Davis School Arts Foundation, serving as president from 1987–88. She was active in Girl Scouts, Davis Ballet, the Davis Art Center and Habitat for Humanity. However, her most extensive volunteer work was on the board of the International House of Davis. Starting in 1986, she chaired the Philippines conference and eventually became vice president in charge of programs. An excellent cook, Mimi initiated the ethnic and Thanksgiving dinners that brought people together from all over the world. During that period she also cochaired a China conference, Japan conference, Sunday brunches and international teas. Over the years the Sen family hosted more than 40 foreign exchange students. Mimi’s volunteer work at I-House led her being honored with the city’s Brinley Award for outstanding contributions to an organization.

Mr. Speaker, Mimi’s dedication to others inspires us all. In her personal life, her volunteer life and her professional life, Mimi Sen was continually promoting respect and appreciation for all peoples and cultures. It is appropriate that we celebrate and honor her life. Mimi will be missed in our community but her dedication to international relations and her life example will be cherished forever.
In the House of Representatives

Thursday, May 19, 2005

Ms. SLAUGHTER. Mr. Speaker, I rise today to enter into the Record an editorial by the Canadian Ambassador to the United States, Frank McKenna, on the crisis surrounding Devils Lake.

From the New York Times, May 12, 2005

HELL FROM HIGH WATER
(By Frank McKenna)

Washington.—A crisis looms on the United States border with Canada, and it could easily be averted with some research and a little patience.

The problem stems from a body of water in North Dakota known as Devils Lake. The lake has no natural drainage, and because North Dakota has drained surrounding wetlands, it has risen 26 feet since 1993, flooding nearby communities. In Canada, we are sympathetic to the plight of the lake’s neighbors, but not to the solution their state has proposed.

In June, North Dakota plans to open an outlet that will let Devils Lake water travel into the Red River and on into the Hudson Bay, which flows north into Canada. From there the water will eventually stream into Lake Winnipeg and the Hudson Bay watershed.

Devils Lake, a remnant of a shallow glacial sea, is a closed ecological system that has been geographically separate from the surrounding Hudson Bay basin for more than a thousand years. Its salty waters have high concentrations of nitrogen, sulfates and phosphates—minerals that could cause digestive distress if consumed and could be lethal to aquatic life. Because of these contaminants, North Dakota does not allow Devils Lake waters to be used for irrigation.

Once the canal is opened, the pollutants will enter the water supply of downstream communities in North Dakota, Minnesota and Manitoba. Moreover, species of fish, plants, parasites and viruses previously confined in Devils Lake, in some cases for millennia, will spill out into the Sheyenne and Red rivers. They could kill the native plants and fish of the larger ecosystem.

The consequences for Lake Winnipeg, the largest freshwater fishery in North America, are particularly worrisome.

Despite concerns on both sides of the border about maintaining safe water sources, North Dakota has decided to pump out Devils Lake water without undertaking any environmental assessment or establishing ecological safeguards.

There is a solution to this impending crisis. Nearly 100 years ago, Canada and the United States established the Boundary Waters Treaty. Under that treaty the two governments set up an International Joint Commission to address differences of opinion involving boundary waters. So far, of the 53 issues the two countries have jointly referred to the commission, 51 have been resolved.

For over a year, Canada has been requesting that North Dakota put off pumping water while the United States and Canada refer the issue to the commission for a full, independent, scientific review. Both the Canadian and Manitoban governments have stated that they will support the commission’s findings. Whatever it may be, the governors of Minnesota and Missouri, as well as many other officials, have expressed support for the Canadian request in letters to the United States secretary of state.

At their March meeting in Waco, Texas, President Bush, Prime Minister Paul Martin of Canada and President Vicente Fox of Mexico pledged to enhance water quality “by working bilaterally, trilaterally and through existing regional bodies.” Of State Condoleezza Rice should demonstrate the strength of that commitment by joining Canada in referring the Devils Lake project to the joint commission.

If instead the Devils Lake project goes forward without a review, it will damage not only the region’s environment and economy, but also North America’s most important bilateral water management arrangement. There is a better solution.

In Honor of Women’s Health Week

HON. ROSA L. DELAUR

In the House of Representatives

Thursday, May 19, 2005

Ms. DeLAURO. Mr. Speaker, I rise in honor of Women’s Health Week. It is only within the past decade that scientists have begun to uncover significant biological and physiological differences between men and women. Before that time, women were regularly left out of clinical trials and it was simply assumed that women’s bodies would respond to medication in the same way as men’s bodies.

Thanks to the efforts of women in the House and Senate, and dedicated organizations such as the Society for Women’s Health Research, that has changed. In clinical trials, we are now gaining greater knowledge of the unique differences between the genders—from the composition of bone matter and the experience of pain, to the metabolism of certain drugs and the rate of brain activity—and what we need to do to ensure optimal health care for everyone.

As an ovarian cancer survivor, I understand that research on women’s health can both improve and save lives. As a result of such research, death rates have decreased for women with tumors of the cervix, breast, uterus, and ovary due to advances in detection and treatment, such as the development of a cervical cancer vaccine. Quality of life has also improved for cancer patients through the development of less invasive surgical techniques, organ-sparing treatments, and better control of pain and nausea related to chemotherapy.

Women’s health research can also lead to less expensive treatments and cost-saving prevention strategies. For example, the total economic value to Americans from reductions in mortality from cardiovascular disease, which strikes 50,000 more women than men each year, averaged $1.5 trillion annually between 1970 and 1990.

While progress has been made in recent years, there is much more that Congress can do to improve women’s health. The Office of Research on Women’s Health, ORWH, in the Office of the Director at NIH must be fully funded so that it can continue supporting the expansion and funding of peer-reviewed Specialized Centers of Research on Sex and Gender Differences. The agency funds the Women’s Health, SCOR, and the Building Interdisciplinary Research Careers in Women’s Health, BIRCWH, programs.

In addition, I urge Congress to pass the Women’s Health Office Act (S. 569/H.R. 949), which will permanently authorize the existing offices of women’s health in five federal agencies: the Department of Health and Human Services; the Centers for Disease Control and Prevention; the Agency for Toxic Substances and Disease Registry; the Health Resources and Services Administration; and the Food and Drug Administration. This will allow these offices to continue to carry out their important work without facing underfunding, understaffing, or elimination in the future.

Finally, Congress should further encourage NIH to update and modify its guidelines to actively promote sex differences research at all levels, including basic research in cell and tissue culture, development and study of appropriate animal models, and in early stage clinical research.

I would like to commend the Society for Women’s Health Research for its tireless efforts to improve the health of both women and men. I hope that during Women’s Health Week, all Members will take a moment to consider the importance of passing these measures and continuing our commitment to women’s health.

CONGRATULATIONS AND BEST WISHES TO COLONEL ALAN R. LYNN

In the House of Representatives

Thursday, May 19, 2005

Mr. EDWARDS. Mr. Speaker, I rise to recognize a great Army officer and soldier, Colonel Alan R. Lynn, and to thank him for his contributions to the Army and the country. On Thursday, June 2, 2005, Colonel Lynn will relinquish command of the Army’s 3rd Signal Brigade which is stationed at Fort Hood, Texas, for reassignment to the Army Staff in Washington, DC.

Colonel Lynn began his military career in 1979 following his graduation from the University of Pennsylvania at California, Pennsylvania. Commissioned as an Air Defense Artillery officer from ROTC he completed several successful assignments in the Air Defense Artillery before he transferred to the U.S. Army Signal Corps. During Operations Desert Shield and Desert Storm he served as the 1st Brigade Signal Officer with the fabled 101st Airborne Division. In 1997, he commanded the 13th Signal Battalion, 1st Cavalry Division both at Fort Hood, Texas and in Bosnia with Task Force Eagle. Colonel Lynn took command of the 3rd Signal Brigade, Fort Hood, Texas, on June 13, 2002. He deployed the Brigade to 66 separate locations throughout Iraq in January, 2004 in support of Operation Iraqi Freedom creating the largest tactical communications network in Army history. For over a decade Alan has been tested in conflict and in the battle to become one of the Army’s finest and most experienced Signal Corps commanders.

Alan is a consummate professional whose performance personifies those traits of courage, competency, and commitment that our Nation has come to expect from its Army officers. It is with sadness that we wish him Godspeed and good luck as he leaves Fort Hood for his new assignment.
Alan’s career has reflected his deep commitment to our Nation, and has been characterized by dedicated, selfless service, love for soldiers and their families and a commitment to excellence. I ask Members to join me in offering our heartfelt appreciation for a job well done and best wishes for continued success to a great soldier and friend—Colonel Alan R. Lynn.

**HONORING GHAZAROS KADEMIAN**

**HON. ADAM B. SCHIFF**

**OF CALIFORNIA**

**IN THE HOUSE OF REPRESENTATIVES**

Thursday, May 19, 2005

Mr. SCHIFF. Mr. Speaker, I rise today to honor Ghazaros Kademian, a resident of Glendale, Californian and a 96-year-old survivor of the Armenian Genocide. The courage of survivors like Mr. Kademian reminds all mankind of the extraordinary strength and determination of the Armenian people who endured the unspeakable atrocities perpetrated against them by the Ottoman Empire between 1915 and 1923.

Ghazaros Kademian was just six years old when his family was forced into exile from their homeland in the village of Zaitoun (modern-day Salimoun, Turkey). His mother saved him and his siblings by fleeing the oncoming slaughter of the Ottoman Turks. His father stayed behind to defend their village and was murdered by the Turk gendarmes. The family only had the clothes on their backs during the long journey away from their home. Mr. Kademian does not remember all the details of his family’s tragic journey, except that it was harrowing, and they had no idea where they were going.

They endured their perilous flight in Krikuk, in what is now northern Iraq. He remembers very vividly that first night in Kirkuk with his mother. They hugged each other for warmth and slept while going.

They continued that tradition.

The tragic events of 1915–1923 are part of the dark pages of history. However, the horrors of the Armenian Genocide have not diminished by the passage of time. It is our sacred obligation to honor the memory of the one and a half million men, women, and children systematically murdered during the Armenian Genocide, and the estimated half million more who were forced into exile. The story of Ghazaros Kademian’s family is terrible and tragic, but not uncommon. It is our responsibility to acknowledge the Armenian Genocide and collectively demand reaffirmation of this crime against humanity.

I am very proud to honor Ghazaros Kademian of California’s 29th Congressional District and I ask all Members of Congress to join me in paying tribute to this inspiring individual and the important lessons his experience illustrates.

**HONORING HYUNDAI MOTOR COMPANY’S FIRST U.S. ASSEMBLY AND MANUFACTURING PLANT IN MONTGOMERY, ALABAMA**

**HON. TERRY EVERETT**

**OF ALABAMA**

**IN THE HOUSE OF REPRESENTATIVES**

Thursday, May 19, 2005

Mr. EVERETT. Mr. Speaker, I would like to take this opportunity to recognize the completion and grand opening of Hyundai Motor Company’s first U.S. automotive assembly and manufacturing plant on May 20th in Montgomery, Alabama.

Hyundai broke ground on its $1.1 billion Alabama facility in April 2002. When Hyundai Motor Manufacturing Alabama reaches peak production, it will employ approximately 2,000 people and produce 300,000 vehicles per year. Hyundai’s in-state suppliers will provide another 4,500 jobs and invest more than $500 million in the local economy.

This plant is the most advanced automobile manufacturing facility in the world, using state of the art robotics and other technologies. Hyundai is truly creating quality jobs and quality products in Alabama.

I am proud to welcome Hyundai Motor Manufacturing Alabama to our Montgomery area and look forward to the job opportunities it will provide for our motivated workforce from central Alabama to the Wiregrass.

I would like to applaud Hyundai for its commitment to building quality products, and its confidence in the great state of Alabama to continue that tradition.

**HONORING THE LIFE OF JON SCRIBNER**

**HON. DON YOUNG**

**OF ALASKA**

**IN THE HOUSE OF REPRESENTATIVES**

Thursday, May 19, 2005

Mr. YOUNG of Alaska. Mr. Speaker, I rise today to note the passing of a fine man, long-time Alaskan Jon Scribner. Jon was from Juneau, where he had served as the Regional Director of the Department of Transportation and Public Facilities. In this job, Jon managed transportation issues for Southeast Alaska. He loved his job and did it well; he will be badly missed by his many friends and co-workers in Juneau.

Scribner, 63, died May 12, 2005 at elevation 3,100 feet, in an accidental fall while returning from a successful climb of Mount Stroller White near Juneau.

He was born March 1, 1942, in San Francisco, California and was raised in Weed, California. Jon majored in civil engineering and played basketball at the University of California Davis. For part of his senior year, he had been a bench warmer until he entered late into a game when his team was so far behind that the coach figured the game was lost. Jon intercepted passes, stole balls, and single-handedly scored about a dozen points in less than two minutes. Davis won and Scribner started the rest of the season.

After UC Davis, Jon earned a master’s degree in engineering from Stanford, which had a distinguished program in environmental engineering.

He married Kathryn (Kit) Duggan of Carmel, California, on June 10, 1967.

After Stanford, Jon served his nation honorably in the Army Medical Service. Captain Scribner taught at the Medical Field Service School at Fort Sam Houston, Texas from 1967 to 1969. He had been selected as faculty based upon his academic record and related credentials.

Jon and Kit moved in 1969 to Alaska, and he worked for the Alaska Department of Health and Welfare in Fairbanks. In 1971, they moved to Juneau, where he served as director of air and water quality for the Alaska Department of Environmental Conservation. He was a senior official in the Alaska Department of Transportation and Public Facilities, serving as assistant deputy commissioner for design and construction and as director of the department’s Southeast Alaska Region. He served at the pleasure of Governors Hammond, Sheffield, Cowper, Hickel, and Knowles. His repeated reappointments attest to his integrity and hard work.

He retired from state service in 1997 after a career publicly recognized for professionalism and accomplishment. When he left the department, then-Juneau Mayor Dennis Egan proclaimed his retirement date, Feb. 7, 1997, as Jonathan Scribner Day in the city. The proclamation included thanks for Scribner getting a Thane Road project out to bid on his last day of work.

In the legislature, the speaker of the House and president of the Senate signed a statement honoring Scribner for his contributions. “All Alaskans, both now and in the future, will continue to benefit from his efforts,” it said.

The couple raised their family in Juneau, where they enjoyed boating, hunting, fishing, bird watching, scuba diving, and hiking. They made frequent visits with family to the Mount Shasta area of California. He traveled Southeast Alaska with his 24-foot Bayliner cruiser, Mandy Ann, speeding family and close friends from one end of Southeast Alaska to the other.

He is survived by his wife, Kit; his daughters, Jennifer Laitinen and her husband Todd, and Amanda Mallott and her husband Anthony; his son, Nathan; and his grandson Tyler and granddaughter Addison.

I feel as though I have lost a dear friend. Lu and I send our deepest sympathies to the family of Jon Scribner and to all of his friends and admirers. I consider myself one of them.
HONORING MARK MORGAN
HON. MARSHA BLACKBURN
OF TENNESSEE
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mrs. BLACKBURN. Mr. Speaker, it is a pleasure to honor Mark Morgan of Laurel, Mississippi today. Mark was returning home one evening when he passed a vehicle that had pulled to the side of a bridge. Despite the dark and his own exhaustion, Mark pulled over to be sure the woman who sat in the car alone did not need any assistance. Little did Mark know he had just answered the prayers of a worried family and community.

Louise Martin had left church to drive home; she’d become confused and lost. Eventually her car ran out of gas, leaving her stranded along a rarely traveled stretch of highway. After Mark stopped, he called Mrs. Martin’s family and told them he was going to bring her home. Nearly twelve hours after Mrs. Martin left her church, she was reunited with her husband and family.

Mr. Speaker, Mark Morgan is a shining example of the spirit of concern and the willingness to aid others.

SUPPORTING INCREASED FUNDING FOR THE NEA AND NEH
HON. NITA M. LOWEY
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mrs. LOWEY. Mr. Speaker, I rise in support of this amendment and strongly urge its adoption.

Our contributions to the arts and humanities are the standard by which our history as a society will be measured. A strong public commitment to the arts and humanities, along with a dedication to freedom, is the hallmark of great civilizations. History has shown that religious and political freedoms go hand in hand with greater artistic and literary activity, and that the societies that flourish and have a lasting influence on humanity are those that encourage free expression in all of its forms. This is a lesson that resonates with people of every age, background, and belief, and one we can guarantee our children learn.

By sharing ideas and images from a diverse range of backgrounds and through many different media, the arts and humanities help to create a more informed citizenry. We are better prepared to meet the responsibilities of democracy; to ask ourselves the hard questions; to demand of our leaders the full answers; and to judge fairly the actual and potential endeavors of our country.

Our support for the arts and humanities also has a profound impact on our economy. In my Congressional District, there are over 2000 arts-related businesses, providing more than ten thousand jobs. This creates a substantial economic impact. In Fiscal Year 2000, for example, the arts industry contributed more than $92 million in revenue to Westchester County alone. Nationwide, the figures are even more impressive. The arts are a $134 billion industry sustaining nearly 5 million jobs. While the federal government spends just over $250 million on the NEA and NEH annually—approximately 40 cents per person—it collects over $10 billion in tax revenue related to the arts industry. NEA and NEH dollars are crucial to the arts community, helping them leverage more state, local, and private funds. Clearly, the numbers show that investment in the arts is important not only to our national identity, but also to our national economy.

Mr. Speaker, we must act decisively to commit ourselves to our national heritage and culture, by voting to increase funding for the NEA and NEH. I urge my colleagues to support creativity and reflection, to support our economy, and to support the continued growth and expression of democracy in its fullest form.

RECOGNITION OF THE 150TH ANNIVERSARY OF THE ESTABLISHMENT OF THE CITY OF TRENTON, IL
HON. JOHN SHIMKUS
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. SHIMKUS. Mr. Speaker, I rise today to recognize the 150th Anniversary of the establishment of the City of Trenton.

This past weekend, the City of Trenton celebrated the establishment of their city. In 1818,
William Lewis and his brother-in-law, A.W. Casad of Trenton, New Jersey located Lewis' farm at the location where the city now stands. A few years later, in 1825, the first church congregation met with others soon to follow. In 1853 the area found itself in need of a Post Office, which was given the name of Trenton. On May 14, 1855, Trenton, Illinois was established. Less than a year later, on February 16, 1856, the Village of Trenton was chartered with Joseph Hanke as the first mayor. A little over 30 years later, on September 20, 1887, Trenton was incorporated as a city.

In 1955, the year of its centennial, with a population of 1,400, the City of Trenton was given the nickname, the "Friendly City", and went on, in 2003, to receive the Governor's Hometown Award.

Today, the City of Trenton has grown to a city of 2,700 citizens under the current mayor, Robert Louis Koentz. Here's to the City of Trenton and all who reside there.

HONORING THE 40TH ANNIVERSARY OF GRACE BAPTIST CHURCH

HON. BART GORDON
OF TENNESSEE
IN THE HOUSE OF REPRESENTATIVES

Thursday, May 19, 2005

Mr. GORDON. Mr. Speaker, I rise to recognize the 40th year of existence of the Grace Baptist Church of Alpine, Tennessee. The congregation will celebrate the anniversary on May 29, 2004, with a special service. Grace Baptist Church has grown from its original 25 members to more than 100 members today. The church serves the community through weekly jail ministries, bimonthly nursing home services in Livingston, Tennessee, and Saturday youth activities. Grace Baptist Church devotionals are also heard daily on the local radio station in Livingston.

Grace Baptist Church supports missionaries every month, and members have taken mission trips to Mexico, and Laredo, Texas, to visit the missions they’ve supported. In fact, Pastor John Copeland has been to Laredo three times. "It's amazing how God can turn lives around," Pastor Copeland has said.

Overtown County is a better place because of the work of Grace Baptist Church and its congregation. I am sure the church will continue to make a positive difference in the community for the next 40 years, as well. I congratulate the congregation and Pastor Copeland for all the good they have done. I also want to recognize one of the founding members of Grace Baptist Church, Bruce Ledford, who currently serves as a deacon there. Congratulations to you, too, Bruce for 40 years of service.

HONORING THE 30TH ANNUAL CAPITAL PRIDE FESTIVAL

HON. ELEANOR HOLMES NORTON
OF THE DISTRICT OF COLUMBIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, May 19, 2005

Ms. NORTON. Mr. Speaker, I rise to pay tribute to the 30th Annual Capital Pride Festival, a celebration of the National Capital Area’s Gay, Lesbian, Bisexual and Transgender, GLBT communities, their families and friends. The Capital Pride Festival has grown from a small block party in 1975 to the current weekend-long celebration. This year Capital Pride culminates with the Pride Parade on June 12th and a street fair on Pennsylvania Avenue in the shadow of the Capitol.

I have marched in the Pride parades since coming to Congress. I've emphasized the universality of human rights and the importance of enacting federal legislation to secure those rights for the GLBT community. Each year the Parade stops for a moment of silence to remember those who have died in the preceding year. That quiet will be particularly poignant as we will remember local two women, who, in confronting injustice, were never silent: Wanda Alston and my frequent marching and running companion, Sister Maria, O.W., the Blue Nun.

This year’s theme of “Honor Our Past, Fight for Our Future” holds special meaning for the citizens of the District of Columbia and its GLBT community in particular. Eleven years ago this District of Columbia lost the first vote ever on the floor of the House of Representatives, the delegate vote in the Committee of the Whole. The Republicans retracted the District’s vote when they assumed control of the House. Our city of nearly 600,000 residents, who pay more taxes per capita than 49 of the 50 states, remains the only jurisdiction in the United States subject to Taxation Without Representation. Our Nation’s Capital is entitled to that vote on the House floor now and to our birthright as American Citizens of full voting representation in Congress.

The joy of the Capital Pride Festival contrasts with the unhappy lot of GLBT soldiers who volunteer to protect our country with their lives, but must serve in silence and without the open support of their chosen families and communities, neither asking nor telling. The Armed Forces’ homophobic policies, especially as they apply them to their own speakers of critical languages cannot continue to compromise our national security. Congress must pass The Military Readiness Enhancement Act of 2005 this session.

IN HONOR OF ST. ADALBERT ROMAN CATHOLIC CHURCH

HON. ROBERT MENEDEZ
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES

Thursday, May 19, 2005

Mr. MENENDEZ. Mr. Speaker, I rise today to honor St. Adalbert Roman Catholic Church, which is celebrating its 100th anniversary this year. To begin the year-long celebration, the parish will hold its opening ceremony event on May 21, 2005, in Elizabeth, New Jersey.

Founded in 1905, St. Adalbert was developed from the hopes and dreams of Polish immigrants in the Elizabeth area. Longing for a place of worship that would serve the needs of Polish-speaking Americans, the original members each contributed their own money to purchase land and construct the church. As it prepares for its centennial celebration, we look back and honor the innumerable contributions that St. Adalbert has made to the Elizabeth community. Though the building was constructed in just one year, this parish has spent the last century providing strong spiritual support for its members.

Today, I ask my colleagues to join me in honoring St. Adalbert Roman Catholic Church for 100 years of religious commitment and excellence in serving the people of Elizabeth, New Jersey.

TRIBUTE TO THE LATE WARREN "CLIP" SMITH

HON. THOMAS M. REYNOLDS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES

Thursday, May 19, 2005

Mr. REYNOLDS. Mr. Speaker, it is with great pleasure that I rise to pay tribute to the late Warren "Clip" Smith, a veteran broadcast personality and civic leader who touched the lives of thousands through his career and work in the Western New York community. The life-long Lockport resident is fondly remembered by thousands following his unexpected passing on August 21, 2004.

From the 1960s on, the "Clipper," as he was commonly referred, was a respected name in the radio and television industry, earning a reputation for his strong opinions, as well as his quick wit and one-liner quips. His career began as Operations Manager and Director of News and Sports for WUSJ Radio, now known as WLVL in Lockport. He went on to serve as anchor, reporter and sports play-by-play announcer with WKBW–TV Channel 7 in Buffalo, New York, from 1971 to 1989, later working as a reporter and talk show host with WGR Radio in Buffalo from 1991 to 1995. Clip was also a widely recognized commentator and reporter with WBEN Radio in Buffalo. Finally, from 1990 until the time of his death, Clip served as anchor, reporter and in public relations for the Empire Sports Network in Buf-

The multi-talented Clipper also was a musician. He was a member of the Lockport Federation of Musicians and a professional member of the American Federation of Musicians; Clip was a concert soloist on the trombone, euphonium, tuba and string bass.

But above all else, Clip will be remembered for the active civic role he played, always ready to take up the citizens’ cause on a variety of issues. Clip served on a local board of education from 2003–2004, was active with Lockport Rotary Club, Literacy Volunteers, Buffalo City Mission, New York State Recy-

eling Congress, and the Niagara County Re-

publican Committee. He also was a member of several local unions.

Western New Yorkers will always remember Clip as a respected community leader and a dear friend.

Mr. Speaker, I ask that this Congress join me in honoring the late Warren "Clip" Smith, and recognize his years of service to the community and broadcast industry.
The employment bar has been set so low for the Bush administration that even a modest gain is cause for celebration. But we shouldn’t be blinded by the flash of last Saturday's headlines. And especially younger workers, remain stuck in a gloomy employment landscape.

For example, a recent report from the Center for Labor Market Studies at Northeastern University in Boston tells us that the employment rate for the nation’s teenagers in the first 11 months of 2004—just 36.3 percent was the lowest in decades since the federal government began tracking teenage employment in 1948.

To be sure, the economy is growing. Younger workers, however, do not have that clout, including the powerful and unwavering types may be saying, the simple truth is that there are not nearly enough jobs available for the one in three temporary families with that of comparable families with no history of work, or for the one in three teenage high school dropouts working.

The squeeze on the younger generation of workers is so tight that in many cases the young men and women of today are faring less well than their parents’ generation did at a similar age. Professor Sum has been comparing the standard of living of contemporary families with that of comparable families three decades ago.

Two-thirds of this generation are not living up to their parents’ standard of living,” he said.

College graduates today are doing better in real economic terms than college graduates in the 1970’s. But everyone else is doing less well. If you look at families headed by someone without a college degree,” said Professor Sum, “their income last year in real terms was below that of a comparable family in 1973. For dropouts it’s like 25 percent below where it was. And for high school grads, about 15 to 20 percent below.

Workers can’t even get a modest increase in the national minimum wage.
Globalization was supposed to be great for everyone. NAFTA was supposed to be a boon. Increased productivity was supposed to be the ultimate tool—the sine qua non—for raising the standard of living for all. Instead, wealth and power in the United States has become ever more dangerously concentrated, leaving an entire generation of essentially powerless workers largely at the mercy of employers. A remark by Louis Brandeis comes to mind: “We cannot have democracy in this country, or we can have great wealth concentrated in the hands of a few. But we can’t have both.”

HONORING THE DISTINGUISHED SERVICE OF MILLARD OAKLEY

HON. BART GORDON
OF TENNESSEE
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. GORDON. Mr. Speaker, I rise today to recognize the outstanding support that Livingston, Tennessee, resident Millard Oakley has shown his community and the education of its children. In fact, Millard is being honored by Volunteer State Community College as its Friend of the Year this weekend for his unprecedented support of the college and higher education.

Millard is a lifelong resident of Livingston who prospered after receiving a first-rate education in the community’s public school systems and at nearby Tennessee Technological University and Cumberland University School of Law. A successful attorney and businessman who remembers his humble beginnings, Millard recently made a significant contribution for capital improvements at the Livingston campus of Vol State. He also established the Oakley First National Foundation, which awards full scholarships to Overton County students attending Vol State, Tennessee Technological University or the Tennessee Technology Center.

Millard’s life is a prime example of what a good education and the proper motivation can do for a country boy raised in the rural hills of Tennessee. He has served in the Tennessee General Assembly, as the state’s Insurance Commissioner, in the state’s Constitutional Convention, as the Overton County Attorney and as the general counsel of the U.S. House of Representative’s Select Committee on Small Business. He presently serves on the board of directors of the First National Banks of Tennessee in Livingston, Cookeville and Crossville, and of Thomas Nelson Publishers, the world’s largest Bible-publishing company.

I cannot count the times I have sought Millard’s advice on a wide range of issues. He has always given me his honest opinion and wise counsel, and I sincerely thank him for that. Millard is a true friend to me, his community and the Overton County students who benefit from his generosity. Once again, I congratulate Millard for his unselfish devotion to his community and to those who seek a better life through education.

HONORING THE DISTINGUISHED SERVICE OF MILLARD OAKLEY

HON. ELEANOR HOLMES NORTON
OF THE DISTRICT OF COLUMBIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Ms. NORTON. Mr. Speaker, today, I introduce my first comprehensive clean-up plan for the Anacostia River. It has been called the “forgotten river,” “a neighborhood river,” “the dirtiest river in America” and an especially appropriate name would be the congressional river. The current original cosponsors include Representatives Jim Moran, Tom Davis, Chris Van Hollen, Robert Brady, Ed Markey, Albert Wynn, and Raul Grijalva and I expect additional regional members who signed on when I originally introduced the bill during the last Congress to do so again. The Anacostia River flows within 2,000 yards of the Capitol Dome, within 7,000 yards of the Anacostia River and region have been associated with blight and despair. Like many cities across America in the past few years that have developed their waterfronts, the District of Columbia government has decided to end the underutilization of the waterfront by creating the Anacostia Waterfront Initiative, dedicated to developing the Anacostia waterfront. However before development and hope can be brought to this area of the city, the river must be cleaned up. If the river is cleaned, it could be a very important economic development asset for the entire region. With the river cleaned up, visions of restaurants, parks, office buildings and pedestrian walkways will become a reality.

The bill introduced today would amend the Federal Water Pollution Control Act to establish a program within the federal Environmental Protection Agency (EPA) known as the “Anacostia Watershed Restoration Initiative.”

This initiative would create an “Anacostia Watershed Council,” composed of the EPA Administrator, the Secretary of the Army, the Secretary of the Interior, the Mayor of the District of Columbia, the Governor of Maryland, the Governor of Virginia and the County Executives of Montgomery and Prince George’s County. The primary responsibility of the council would be to develop an action plan for the restoration, protection, and enhancement of the environmental integrity and social and economic benefits of the Anacostia watershed. Several federal agencies, such as the Departments of Interior, Agriculture, Transportation, the EPA, and Army Corps of Engineers would be involved in the development and implementation of the council’s plan. It calls for $3 million for each of 10 years to be authorized for use by the EPA, and $1 million for each of 10 years would be authorized for the other agencies. The strong Federal involvement in the bill reflects not only the location of the river, but also that Federal facilities represent the major source of pollution.

This vital piece of legislation also would amend the Water Resources Development Act (WRDA) to authorize $150 million to repair and upgrade the District’s inadequate combined sewer overflow system, a critical part of cleaning up the river. The District’s combined sewer system was designed and constructed by the Army Corps of Engineers 160 years ago. The sewer system services Federal downtown DC, including the Capitol complex. As such, the Federal Government is directly responsible for the sewage and pollution that drains into the Anacostia River on a daily basis. I had secured a $35 million authorization in last Congress’s WRDA bill in 2003, but the Senate never acted. This year I have requested $150 million. That amount is not enough to help the District address the combined sewer overflow problem. However, this authorization will be a major step toward correcting a serious problem.

This bill also will be the first step in bringing real hope to a region often referred to as “east of the river.” With this bill, this once neglected region of our Nation’s capital will become a thriving gathering place for tourists and residents of this region. 60 Minutes recently captured the story of the young people who are cleaning up the Anacostia River in a moving segment entitled “Endangered Species.” These young members of the Earth Conservation Corps (ECC) are working not only to clean up the river but to “empower our endangered youth to reclaim the Anacostia River, their communities, and their river” with the Anacostia River as their classroom. The ECC has been able to achieve positive strides, both environmentally and socially. There is more we can do to support and expand their efforts and help Anacostia to become the jewel of the District of Columbia.

IN HONOR OF JOSE C. CAYON DÍEGUEZ

HON. ROBERT MENENDEZ
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. MENENDEZ. Mr. Speaker, I rise today to honor José C. Cayón Díeguez, an accomplished Cuban-American journalist who has dedicated his career to reporting on and promoting issues important to the Hispanic community. Mr. Cayón Díeguez is the founder of El Tiempo de Nuevo York, New Jersey and Miami.

Launched in 1963, this weekly newspaper offers stories and insight into the lives of Hispanics throughout the United States. Mr. Cayón Díeguez has served as the director and guiding force behind this New York-based publication for the past 33 years. During that time, he has proven himself to be an outstanding leader and a strong voice within the Hispanic community. As the manager and contributing editor of the paper, Mr. Cayón Díeguez has become a spokesman for the causes important to community organizations such as the Puerto Rican Parade Committee, the Puerto Rican Folklore Festival, the Columbian Civic Center, and the Dominican Cultural Civic Center, among others. In addition to his work with El Tiempo de Nuevo York, New Jersey and Miami, he was also the editor for the first Hispanic Guide to New Jersey and New York.

Mr. Cayón Díeguez is an active member of the community, who volunteers his time and takes on leadership roles in a multitude of organizations. In the past he has served as the president of the National Federation of Hispanic Owned Newspapers, vice-president of the Hispanic Media Council, director of art and columnist for the Diario Hispanoamericano.
Mr. AKIN. Mr. Speaker, today I rise to draw the attention of the House to the passing of Missouri General Assembly was completed, Representative Byrd collapsed of an apparent heart attack after carrying his suitcase into his home. A friend to many, his death was a shock to all who knew him.

Richard Byrd received his JD from Washington University Law School and practiced commercial litigation law while serving as a Kirkwood, Missouri city councilman from 1994–2000. He served in the Missouri State House representing the Kirkwood area since 2000, where he made his mark by always listening to both colleagues and constituents, by his consistent willingness to help draft bills and amendments, and by explaining the legal ramifications of complex legislative proposals.

Richard Byrd worked hard to the very end. He was known for burning the midnight oil, always being both an entrepreneur and a philanthropist. I would like to recognize Mr. Johnson's contributions to Arkansas and our Nation.

Mr. Johnson is the founder, publisher, and chairman of Johnson Publishing Company, the world's largest African-American owned publishing company. He is also the publisher of Ebony and Jet Magazines. Ebony alone has a circulation of 1.7 million people and reaches 11 million readers monthly.

In 1982, Mr. Johnson was the first African American to be named on Forbes' list of the 400 wealthiest Americans. Mr. Johnson's long list of awards and achievements include: the Black Journalists' Lifetime Achievement Award in 1987, the Wall Street Journal/Dow Jones Entrepreneurial Excellence Award in 1993, the Presidential Medal of Freedom in 1996—the highest honor this nation gives to a citizen, the Arkansas Business Hall of Fame Award in 2001, The Vanguard Award in 2002, and The Trumpet Award in 2002.

Arkansas City and the University of Arkansas at Pine Bluff have worked together to create the John H. Johnson Cultural and Education Museum. On Saturday, May 21st this museum will be dedicated in Desha County, Arkansas. This museum will capture Mr. Johnson's life by restoring his boyhood home and will include period memorabilia, printed material, and video chronicles about Mr. Johnson's life.

In addition to the museum, the University of Arkansas at Pine Bluff is in the planning stages of opening a learning center in Arkansas City and an academic complex at the University of Arkansas at Pine Bluff. These institutions will undoubtedly become a tremendous asset and staple of the University of Arkansas at Pine Bluff.

I am honored to recognize Mr. Johnson, and am delighted that the John H. Johnson Cultural Education Museum will be open for Arkansans to see firsthand Mr. Johnson's lifetime of work and contributions to our nation. His dedication, entrepreneurial spirit, and legacy will continue in Arkansas for the years and decades ahead.

Mr. SHIMKUS. Mr. Speaker, I rise today to recognize the 150th Anniversary of the establishment of the City of Trenton. This past weekend, the City of Trenton celebrated the establishment of their city. In 1818, William Lewis and his brother-in-law, A.W. Casad of Trenton, New Jersey located Lewis' farm at the location where the city now stands. A few years later, in 1825, the first church congregation with others soon to follow.

In 1853 the area found itself in need of a Post Office, which was given the name of Trenton. On May 14, 1855, Trenton, Illinois was established. Less than a year later, on February 16, 1856, the Village of Trenton was chartered with Joseph Hanke as the first Mayor. A little over 30 years later, on September 20, 1887, Trenton was incorporated as a City.

In 1855, the year of its centennial, with a population of 1,400, the City of Trenton was given the nickname, the "Friendly City", and went on, in 2003, to receive the Governor's Hometown Award.

Today, the City of Trenton has grown to a city of 2,700 citizens under the current Mayor, Robert Louis Koentz. Here’s to the City of Trenton and all who reside there.

Mr. BART GORDON. Mr. Speaker, I rise to recognize the 190th year of existence of the Hurricane Baptist Church of Lebanon, Tennessee. The congregation will celebrate the church's anniversary on Sunday, May 29, 2005, with an afternoon program.
Founded in 1815, Hurricane Baptist Church is the fifth oldest Baptist church in Wilson County. Located on the edge of the Cedars of Lebanon State Park, the church began with about 30 members. Today, Hurricane Baptist Church has 190 members.

The Hurricane Baptist Church facility was built in 1899. Since that time, the church has added a fellowship hall and Sunday School rooms. Church records dating back to 1897 were lost when clerk W.B. Edwards’ home was destroyed by fire. Some records survived through the Baptist association and other sources.

Ollie Edwards Lester, a descendant of W.B. Edwards, and Elsie Lou Williams Merritt are two of the surviving members among the 36 original members baptized in Hurricane Creek during a service in 1925. “It’s been a family church,” said brother James Gordon Williams, the 38th pastor of Hurricane Baptist Church. Brother Williams is the fourth generation of his family to be a member of the church. Four generations of the Flatt family have also attended Hurricane Baptist Church. Former members, their families, old friends and new have been invited to join “The Little White Church down in Cedar Forest” on its special day of thanksgiving and praise. I am sure Hurricane Baptist Church will continue to make a positive difference in the community for the next 190 years. I cordially congratulate the congregation and Brother Williams for all the good they have done.

STATEMENT TO HOUSE COMMITTEE ON GOVERNMENT REFORM

HON. DENNIS KUCINICH
OF OHIO
IN THE HOUSE OF REPRESENTATIVES

Thursday, May 19, 2005

Mr. KUCINICH. Mr. Speaker, on May 12, 2005, I made the following statement during a hearing in the House Committee on Government Reform on “Securing Our Borders: What We Have Learned from Government Initiatives and Citizen Patrols”:

Good afternoon. Thank you, Chairman Davis, for holding this important hearing and thank you to the witnesses. We can all agree on the tremendous importance of securing our border. But frankly, I am not confident in how our government has been handling border security one bit. I have two concrete examples of deficiencies on the part of U.S. Customs and Border Patrol, and the Justice Department has been investigating that I’d like to highlight—that I think are representative of a much greater problem.

The first case involves how U.S. Customs has handled an investigation into slave labor allegations regarding a product that we import into the United States—as you know, importing products made with slave labor has been illegal since 1938. Allegations of slave labor used in the production of pig iron, in the Para state of Brazil, came out in the summer of 2000. As the United States reportedly import 92 percent of the pig iron produced in Brazil, most of which is produced in Para, it is highly probable that this importation violates section 1907 of the U.S. Tariff Act of 1930, which states:

“All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/land forced labor or land indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, unless the importation thereof is hereby prohibited.”

I sent a letter to U.S. Customs to ascertain what actions had been taken in response to this violent human rights abuse. I finally got a response, which said that Customs had opened a file on the case in July 2004, and had referred it to the FBI Attaché Brasilia, Washington, DC, for further investigation. The reference letter explained how logistical difficulties had prevented even a single investigator from visiting Para for a site visit. One example: “The Amazon rain forest is a remote area where the majority of the roads to this area are only accessible via 4-wheel drive vehicles.” The Trans-Amazon highway, an important route for the economic development in that area, runs right through Para. It can carry the pig iron out of Para, but can’t take our investigators into Para. And frankly I would be surprised if none of our FBI investigators in Brazil had access to a 4-wheel drive vehicle.

The inaction of the investigators in this case is highly unsatisfactory, and I am deeply disturbed by implications of such inadequacies. U.S. Customs and Border Patrol, along with FBI Attaché offices, are responsible not only for investigating violations of labor laws, but are responsible for keeping terrorists out of our country. I believe the deficiencies highlighted in this case reflect the greater threat to the national security interests of the United States. Furthermore, I am disturbed to think of the possibility that trade motivations are hidden behind the inadequate investigation, in that you all the American miners forced to compete with slave labor would also be disturbed by that possibility.

The second case involves the presence of an international terrorist, Luis Posada Carriles, in the United States, and his recent application for asylum. Posada, a CIA-trained Cuban exile, was responsible for organizing the 1976 bombing of a Pan American airliner flying from Bermuda to Venezuela. The bombing killed all 73 people on the plane on October 6, 1976. In addition to the civilian airline bombing, Posada was implicated in the 1976 Washington, DC assassination of former Chilean government minister Orlando Letelier. Letelier, a prominent opponent of the Pinochet dictatorship, was killed along with his associate, Joe D. Whitley, then-Associate U.S. Attorney General, said, “The United States cannot tolerate the inherent inhumanity of terrorism as a way of settling disputes. Apparachment of those who would use force will only breed more terrorists. We must look on terrorism as a universal evil, even if it is directed toward those with whom we have no political sympathy.” Mr. Whitley, now General Counsel for the Department of Homeland Security has declined to comment on the Posada case.

Posada supposedly crossed the U.S. border six weeks ago, and is presently here. His Miami lawyer, Eduardo Soto, confirmed at a news conference last month that he had arrived clandestinely into the United States. Orlando Bosch said in a recent interview broadcast in Miami that he had spoken by telephone with Posada, who, “as everybody knows, is here.”

Yet the U.S. government has not even acknowledged it. Roger F. Nortega, Assistant Secretary for Western Hemisphere Affairs in the State Department said he did not even know whether Posada was in the country. State Department spokesman Tom Casey said in a recent press release in terms of where he presently is, I think it’s fair to say we don’t know.”

The U.S. government has not sent teams of investigators into South Florida to find Posada—or if they have, the investigators haven’t done a very good job of finding him. No bounty have been offered to recover Posada. U.S. Customs and Border Patrol is responsible for securing our border, and preventing terrorists from crossing it, yet a known international terrorist—who committed an act of terrorism on U.S. soil that killed thousands of Americans, and the U.S. government hasn’t done a thing. It just isn’t a political priority.

I hope this hearing and the series of hearings on border security that this Committee intends to hold will shed some light not only on the two cases I described, but on the larger problem that those cases represent: major deficiencies on the part of the U.S. government to investigate Customs and Border violations, when it frankly isn’t in the political interest of the United States. That is unacceptable. We cannot pick and choose when to apply our laws and our policies; they must be applied in universal situations. And when they aren’t, it compromises our national security. Thank you.
INTRODUCING THE NATIONAL AMUSEMENT PARK RIDE SAFETY ACT OF 2005

HON. EDWARD J. MARKEY
OF MASSACHUSETTS
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. MARKEY. Mr. Speaker, Memorial Day is the beginning of the season when American families take their children to our amusement parks for a day of fun and sun. Unfortunately, it is also the case that over 75 percent of the serious injuries suffered on these rides occur between the months of May and September. It is also the case that over 75 percent of the deaths and injuries with fatal outcomes occur in June, July, and August. However, half of those injuries occur on rides that are not safety tested.

THE PROBLEM WITH STATE-ONLY REGULATION

"Fixed" or "fixed-site" rides are found predominately in destination theme parks. When an accident occurs on such rides, the law actually prevents the CPSC from even setting foot on the park in order to investigate what happened. In some States, an investigation into what has happened is not even required, or in many parks, there is a literally no regulatory oversight at all. And no matter how diligent a particular state might be, there is no substitute for federal oversight of an industry where; park visitors often come from out-of-state; a single manufacturer will sell versions of the same ride to park operators in many different States; no State has the jurisdiction, resources or mission to ensure that the safety lessons learned within its borders are shared systematically with every other State.

It is simply inexcusable that when a loved one dies or is seriously injured on these rides, there is no system in place to ensure that the investigation is allowed. But the industry has its loophole, and it is placing its priority on protecting itself. It is simply inexcusable that when a loved one dies or is seriously injured on these rides, there is no system in place to ensure that the investigation is allowed. But the industry has its loophole, and it is placing its priority on protecting itself.

Last year, the Nation’s pediatricians—the doctors who treat the injuries suffered by children on amusement park rides—endorsed our bill. According to the American Academy of Pediatrics, “a first step to prevention of these injuries is adopting stronger safety regulations that allow for better inspection and oversight of the fixed-ride system.”

THE PROBLEM WITH STATE-ONLY REGULATION

Fixed-ride or fixed-site rides are found predominately in destination theme parks. When an accident occurs on such rides, the law actually prevents the CPSC from even setting foot in the park in order to find out what happened. In some States, an investigation into what has happened is not even required, or in many parks, there is literally no regulatory oversight at all. And no matter how diligent a particular state might be, there is no substitute for federal oversight of an industry where; park visitors often come from out-of-state; a single manufacturer will sell versions of the same ride to park operators in many different States; no State has the jurisdiction, resources or mission to ensure that the safety lessons learned within its borders are shared systematically with every other State.

Although the overall risk of death on an amusement park ride is very small, it is not zero. Sixty-four have occurred on amusement park rides since 1987, and over two-thirds occur on “fixed-site” rides in our theme parks. In August 1999, 4 deaths occurred on roller coasters just one week, “one of the most calamitous weeks in the history of America’s amusement parks,” according to U.S. News and World Report:

August 22—a 12-year-old boy fell to his death after slipping through a harness on the Stratosphere ride at the Casino Queen Resort in East St. Louis, Illinois.

August 29—a 20-year-old man died on the Shadowhawk roller coaster at Paramount’s Kings Dominion theme park near Richmond, Virginia.

August 28—a 39-year-old woman and her 8-year-old daughter were killed when their car slid backward down a 30-foot ascent and crashed into another car, injuring two others on the Wild Wonder roller coaster at Gillian’s Wonderland Pier in Ocean City, New Jersey.

In 2003:

An 11-year-old girl died at Six Flags Great America in Gurnee, Illinois.

A 35-year-old woman was killed after being struck by the Joker’s Jukebox ride at Six Flags New England. She was making sure her grandson’s seat belt was properly fastened.

A 34-year-old woman died a day after suffering a heart attack during her ride on the Top Gun roller coaster at Paramount’s Kings Island theme park in Cincinnati, Ohio.

An 8-year-old boy has died from injuries he suffered on a bumper car ride last month at the Lake County Fair in Ohio. The boy was severely shocked when he touched a pole on a bumper car ride called the Scooter.

In 2004:

A 51-year-old woman was killed after she fell 60 feet from an amusement ride called the Hawk at the Rockin Raceway in Pigeon Forge, Tennessee. The owner was later convicted of reckless homicide for bypassing the ride safety system.

A 55-year-old man fell 60 feet from an amusement ride called the Joker’s Jukebox ride at Six Flags Great America in Gurnee, Illinois. He was thrown from his seat belt and died of his injuries.

Every one of these is an unspeakable horror for the families, and every one of them decimates trust in the amusement ride industry. By the industry expert with the knowledge and the power to ensure that what happened at the accident site does not get repeated in other States.

The industry attempts to justify their special-interest exemption by pretending that there is no risk in riding machines that carry human beings 70, 80 or 90 miles an hour. The rides are very short, and most people are not injured. But in fact, the number of fatalities per passenger mile on roller coasters is higher than on passenger trains, passenger buses, and on many similar rides in other States.

That’s just plain wrong.

ROLLER COASTERS ARE AS DANGEROUS AS TRAINS, PLANES, AND BUSES.

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Children are uniquely vulnerable to hazards associated with amusement ride machinery. It is simply indefensible for Congress to allow a special interest loophole of this magnitude in an industry that serves up high-speed thrills to 300 million paying customers every year, especially when most of the resulting injuries accrue to children.

"Children are uniquely vulnerable to hazards associated with amusement ride machinery. It is simply indefensible for Congress to allow a special interest loophole of this magnitude in an industry that serves up high-speed thrills to 300 million paying customers every year, especially when most of the resulting injuries accrue to children."—Kathy Fackler, Saferparks.org.

"Federal oversight is crucial to the prevention of future deaths and injuries with fixed site amusement parks due to the vast variation in state laws and the absence of any regulation in some states."—Rachel Weintrub, Consumer Federation of America and Lindsey Johnson, U.S. Public Interest Research Group.

"The CPSC must be granted jurisdiction of fixed-site amusement park rides in order for all states to benefit from federal investigation of safety hazards."—Alan Korn, National SAFE KIDS Campaign.

"Unregulated amusement rides are not what consumers expect when they visit some of the best-known tourist attractions in the U.S. Consumers expect that someone has made these rides as safe as possible and that the government oversees such safety."—Nancy Cowles, Kids In Danger.

The CPSC must be granted jurisdiction of fixed-site amusement park rides in order for all states to benefit from federal investigation of safety hazards. The CPSC must be granted jurisdiction of fixed-site amusement park rides in order for all states to benefit from federal investigation of safety hazards.
sample of hospital emergency rooms and then estimates national numbers. Nevertheless, NEISS has been gathering these statistics systematically over many years, so that trends become clear over time.

Beginning in 1996, a sharp upward trend can be seen in hospital emergency room visits by passengers on unregulated "fixed-site" amusement park rides. The category of rides exempt from CPSC regulation under the Roller Coaster Loopehole. These injuries soared 96 percent over the next 5 years. Meanwhile, such emergency room visits were falling for passengers on rides that the CPSC still regulates.

The theme park industry likes to tell the public that its rides are safer than the mobile rides because they are overseen by a permanent park staff, but according to this independent government safety agency report, the mobile parks have less of an injury problem than the theme parks.

Why has this startling increase in amusement park rides occurred recently? No one knows for sure. If the facts were known to the CPSC, it could do its job. But the facts are kept from the CPSC, so we are left to speculate. We know, for example, that new steel technology and the roller coaster building boom in 1996 resulted in an increase in the speed almost as dramatic as the increase in serious injuries. All of the nation's 15 fastest coasters have been built in the last 10 years. In 1980, the top speed hit 60 mph. In 1990, it hit 70 mph. The top speed today is 120 mph. Six Flags is advertising a new ride for 2005 of 128 mph. The roller coaster arms race is alive and well.

For the most part, these rides are designed, operated and ridden safely. But clearly, the margin for error is much narrower for a child on a ride traveling at 100 mph than on a ride traveling 50 mph. Children often do foolish things, and the operators themselves are often teenagers. People make mistakes. The design of these rides must anticipate that their patrons will act like children, because they often are children.

THE BILL RESTORES BASIC SAFETY OVERSIGHT TO THE CPSC

The bill we are introducing today will close the special-interest loophole that prevents effective federal safety oversight of amusement park rides. It would, therefore, restore to the CPSC the standard safety jurisdiction over "fixed-site" amusement park rides that it used to have before the Roller Coaster Loopehole was adopted. There would no longer be an artificial and unjustifiable split between unregulated "fixed-site" rides and regulated "mobile" rides. When a family traveled to a park anywhere in the United States, a mother or father would know that their children were being placed on a ride that was subject to basic safety regulation by the CPSC.

It would restore CPSC's authority to: 1. Investigate accidents. 2. Develop and enforce action plans to correct defects, and 3. Act as a national clearinghouse for accident and defect data.

The bill would also authorize appropriations of $500 thousand annually to enable the CPSC to carry out the purposes of the Act.

I urge my colleagues to join us in this effort to make this the safest summer ever in our theme parks. Let's pass the National Amusement Park Ride Safety Act.

THE SIGNIFICANCE OF BROWN VS. BOARD OF EDUCATION

HON. CHARLES B. RANGEL
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. RANGEL. Mr. Speaker, I rise today to commemorate the historical decision and individuals involved in the Brown vs. Board of Education decision. This Supreme Court decision was one of the most significant decisions in the history of the United States and was an important impetus in the Civil Rights Movement. Those involved moved the country forward and opened the doors for generations of Americans that would no longer believe that "separate but equal" was a justifiable policy.

In 1896, the Supreme Court held in Plessy vs. Ferguson that the equal protection clause of the Fourteenth Amendment permitted separate facilities of equal quality for blacks and whites. It established the policy of "separate but equal" as a constitutionally acceptable system in this country. For the next seventy years, many parts of this great Nation promoted segregation in education, housing, transportation, and other facilities. Blacks and whites had separate water fountains, rode in separate railroad cars, and were educated in separate schools.

For the first half of the 20th century, there were two distinct Americas—one black, one white. White schools had far greater educational resources. They receive larger portions of state budgets for education. Their schoolbooks were current and up-to-date. Their teachers were paid competitive salaries. Black schools were far from equal. Black students were barely prepared for the educational and living challenges ahead of them. Black students were closed to many of the opportunities for advancement. Segregation proved that separate would be inherently unequal.

Lawyers for the National Association for the Advancement of Colored People, including Thurgood Marshall, would lead a series of court cases challenging the constitutionality of segregated educational facilities. Their argument would rest on the disparities in the educational funding and spending, the quality of the educational systems, and the psychological impacts of segregated schools.

Researchers and scholars across the Nation provided evidence of the harmful effects of segregation of young minds. Dr. Kenneth Clark demonstrated that segregated schools nurtured feelings of inferiority in black children. Others showed how the preparation, opportunities, and access of black children were severely hampered by separate educational facilities.

The Supreme Court heard these arguments and agreed with the NAACP and its panel of experts. Separate facilities were inherently unequal. States must treat all its citizens equally, regardless of race. The value of education demanded that the opportunities available to one group be available to all groups.

The ruling nonetheless would have larger import outside of education. It provided hope to African-Americans that they would no longer be second-class citizens. It encouraged African-American leaders, such as Martin Luther King Jr. and Malcolm X, to pursue full equality through the Civil Rights Movement.

Despite considerable resistance, this Nation has moved forward in equalizing the educational and social opportunities of its citizens, but more can still be done. Public facilities are no longer separated based on race. The gap in educational opportunities is slowly narrowing. The opportunities available to minorities are increasing.

For today, Mr. Speaker, it is important that we reflect on the importance of that Brown vs. Board of Education decision. The Supreme Court in 1954 was a wise and important decision that changed the course of this Nation for the next 50 years. It guaranteed to all of our citizens equal treatment before the law regardless of race. This was a clearly important event in American history. The men and women who challenged the policy of segregation should be commended for their deeds. They should have the full appreciation of this Nation.

HONORING MISS JEAN CORNELL

HON. ROBERT E. ANDREWS
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. ANDREWS. Mr. Speaker, I rise today to honor an exceptional young lady, Jean Katherine Elizabeth Cornell. Miss Cornell is a resident of Mt. Laurel, New Jersey in my district, and is currently in the seventh grade at Harrington Middle School. She is a member of the school's Student Council, and a talented singer in the First United Methodist Church of Moorestown's Youth Choir. Above all, she is a motivated and inspired young lady who is standing up for equal rights for all women.

Miss Cornell has been involved in the Alice Paul Institute's Leadership Program, and helped start the Alice Paul Institute Girls' Advisory Council. She is very active in her community, spreading Alice Paul's message of leadership and equality. She is helping to build support for the Equal Right Amendment by educating the public about this vital piece of legislation. This amendment to the Constitution would guarantee the equality of rights under the law for all persons regardless of gender.

Mr. Speaker, I applaud Miss Cornell for her contributions to her community, and to women everywhere. Her efforts are much needed in the struggle to close the equality gap between men and women. If there were more girls like Jean, our Nation would be a more just and equal society.

RECOGNIZING REAR ADMIRAL GREG SLAVONIC

HON. TOM COLE
OF OKLAHOMA
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. COLE of Oklahoma. Mr. Speaker, today I am pleased to congratulate Rear Admiral Gregory J. Slavonic on his career and the important decisions that change the course of service in the United States Navy and Navy Reserve. Throughout his 34-year military career, Rear Admiral Slavonic served with distinction and dedication, ultimately
becoming the Deputy Chief of Information and Director of the Navy Reserve Public Affairs program, responsible for the training and readiness of more than 500 public affairs reservists.

In June 2004, Rear Adm. Slavonic was ordered to active duty in support of Operation Noble Eagle and Operation Enduring Freedom II, Baghdad, Iraq. He was assigned to the Multinational Force—Iraq (MF—I) staff. He served as the senior public affairs officer for Army Gen. George W. Casey, Commanding General for MNF—I, and the Director, Combined Press Information Center (CPIC).

From June to November, Rear Adm. Slavonic led a 65-person team responsible for ensuring more than 500 national and international media organizations received timely and accurate information concerning daily combat operations throughout the Iraqi theater.

Rear Adm. Slavonic began his Navy career in 1971, as a Seaman who enlisted after graduating from high school in Great Bend, Kansas. After completing boot camp at Navy Training Center, Great Lakes, Ill., and attending Signalman “A” school in Newport, R.I., he received orders to the aircraft carrier USS Constellation (CVA 64) and completed two western Pacific deployments.

Upon separation from active duty, Rear Adm. Slavonic affiliated with the Navy Reserve Command in Oklahoma City. He received a direct commission as a restricted line officer in public affairs and, in 1976, earned a master of education degree from the University of Central Oklahoma.

In November 1990, Rear Adm. Slavonic was recalled to active duty for Operations Desert Shield and Desert Storm. He was assigned to the Joint Information Bureau in Dhahran, Saudi Arabia. During his tour in the Arabian Gulf theater, Rear Adm. Slavonic served as a Chief of Navy News Division and combat media escort officer, which included escorting media pools on board USS Curtiss (FFG 38) to document processing and interrogation of more than 40 Iraqi prisoners of war.

He was serving as media escort officer with a media pool on the 18,000-ton amphibious assault ship USS Tripoli (LPH 10) in the Arabian Gulf when it struck an Iraqi underwater mine.

Rear Adm. Slavonic has served four commanding officer tours, twice with Navy Center of Information Southwest Detachment 111 Dallas-Fort Worth and twice with the Office of Information Detachment 411 Oklahoma City. He has also served as executive officer of O1 Det 411 and staff public affairs officer for RECOMMEND.

Rear Adm. Slavonic’s Oklahoma City unit earned the Rear Adm. Robert Ravitz Award for Public Affairs Excellence and was a finalist for the Readiness Command Ten Admiral Robert Natter (small) Unit Award. In 1984, Rear Adm. Slavonic was the first recipient of the Navy Reserve Association’s “Junior Navy Reserve Officer of the Year” Award.

A native of Great Bend, Kansas, Rear Adm. Slavonic was raised and resides in Oklahoma City. He is an account executive with NBA affiliate KFOR-TV. He is a life member of the Navy Reserve Association as well as Oklahoma State University and the University of Central Oklahoma alumni organizations.

Rear Adm. Slavonic has also served as president of the Navy Reserve Association (central chapter); president of the U.S. Navy League (local chapter); minority officer of the Oklahoma City Cavalry (Continental Basketball Association team); and as an adjunct professor at the University of Central Oklahoma. He is also active in the Oklahoma City Advertising Club and Leadership Oklahoma City.

Awards earned by Rear Adm. Slavonic include the Bronze Star Medal; Meritorious Service Medal (two awards); Navy Commendation Medal (two awards); Navy Achievement Medal (three awards); Presidential Unit Citation; Combat Action Ribbon; Vietnam Cross of Gallantry; Vietnam Service Medal (one star); Republic of Vietnam Service Medal; Southeast Asia Service Medal (two stars); Kuwait Liberation Medal (Saudi Arabia); Global War on Terrorism Expeditionary Medal; and the Joint Service Unit Citation, as well as other service and campaign awards.

Mr. Speaker, I know Rear Adm. Slavonic personally. We first met when he was assisting veterans of the USS Oklahoma, obtaining the financial and civic support necessary to create a permanent memorial to their lost ship and fallen comrades. This told me a great deal about his appreciation of Americans of every generation for their country and placing their lives at risk for their countrymen. My second opportunity to see Rear Adm. Slavonic was in Baghdad, where he was serving professionally, capably, and courageously in the combat zone. This more than anything else demonstrates that Rear Adm. Slavonic lives according to the values he professes. Like every other American, I am grateful for his service.

I asked the Rear Admiral to call upon me when he returned from Iraq because I was interested in his candid appraisal of our country’s efforts there. Upon his arrival in Washington, he visited my office, and our exchange was so productive that I asked him to join me for a breakfast meeting to continue our conversation. He graciously complied, and as a result I had the benefit of his profound expertise, personal judgment, and keen insights into the challenges our country and our military face in Iraq.

On every occasion on which I have encountered and interacted with Rear Adm. Slavonic, he has impressed me with his professional courtesy, his commitment to our country, and his wise counsel. He is an able and honorable sailor who embodies the finest traditions of the United States Navy.

His family and fellow shipmates can be proud of his service. Rear Adm. Slavonic, his wife Molly, and children Kara, Maggie, and Blake, and Blake’s wife Kasey and grandson Hogan have made many sacrifices during his Naval and civilian careers, and we appreciate their contributions of conscientious service to our country. As he departs the Pentagon to start his third career, I call upon my colleagues to follow Greg’s example, wherever our country and our civilization need us.

STATEMENT DURING HEARING ON “FOSTERING DEMOCRACY IN THE MIDDLE EAST”

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

THURSDAY, MAY 17, 2005

Mr. KUCINICH. Mr. Speaker, on Tuesday, May 17, 2005, I, as the Ranking Minority Member for the House Subcommittee on National Security, Emerging Threats and International Relations, made the following statement during a hearing on “Fostering Democracy with Ballots.”

Good morning, Mr. Chairman, and good morning to the distinguished witnesses that are here today for this important hearing. We have much to learn from the experts who are here with us, and we must listen and use this knowledge to correct the disastrous foreign policy road that this Administration has embarked upon—a policy which has resulted in the lives of over 1,500 U.S. soldiers and wounded thousands more. Congress can help save many more lives by changing these failed policies immediately. As the journalist Thomas Friedman wrote just recently, “you can’t build a decent society on the graves of suicide bombers and their victims.”

Our policy is greatly misguided and also misrepresented. During January of 2005 the State of the Union address there were Iraqis in the audience who held up ink-stained thumbs in a symbol intending to convey that democracy had reached Iraq—thanks to the U.S. Their hope was to send the message that even though WMDs were never found, the victory of bringing democracy to Iraq was worth the cost in blood and treasure.

But before we congratulate ourselves, I must admit that I am skeptical of the Administration’s policy of promoting democracy. The United States does not have a history of bringing democracy to nations out of pure altruism. Rather than usually something we have to gain by overthrowing a nation and the promotion of democracy is the excuse we use to do it. Or in the case of Iraq, our fall-back excuse. The war to eradicate WMDs quickly transformed into the war to bring democracy to Iraq—once the world discovered that WMDs did not in fact exist in Iraq.

Perhaps the greatest argument against this vision of pure altruism is that when it is in our interest to leave undemocratic governments alone, we do.

Examples of this argument are the Central Asian states of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. These countries have well-known horrendous human rights records and have severe impediments to democracy. According to the State Departments 2004 Report on Human Rights Practices, “Uzbekistan is an authoritarian state with limited civil rights. . . . the December 26 elections did not meet international standards for democratic elections . . . the executive branch heavily influenced the courts and did not ensure due process but the government still remained very poor . . . police and National Security Service forces tortured, beat, and harassed persons . . . the Government restricted freedom of movement and the Government severely restricted fundamental worker rights.”

These conditions are more or less present throughout the other authoritarian Asian states. Yet the U.S. has not taken firm steps to encourage reforms. There have been provisions
to condition aid based on progress in democratization and respect for human rights, however when the State Department decided to cut aid to Uzbekistan (or failure to meet these conditions), the State Department approved this funding. Secretary of Commerce Gutierrez explained that the absence of an approved application could result in sanctions.

The aid condition in Kazakhstan is also an issue. The State Department is currently considering whether to approve aid to Kazakhstan. The aid condition in Kazakhstan is based on progress in democracy, respect for human rights, and adherence to democratic processes. The conditions have been met, however it is unclear whether the State Department will approve aid to Kazakhstan.

Mr. Speaker, on behalf of the people of North Alabama, I congratulate Lieutenant Colonel Van Rassen for his 20 years of service to our country.

INTRODUCTION OF RESOLUTION CONDEMNING RELIGIOUS INTOLERANCE AND URGING RESPECT FOR ALL HOLY BOOKS

HON. JOHN CONYERS, JR.
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. CONYERS. Mr. Speaker, so much of American history is defined by our national commitment to other religious differences. This was the wisdom behind the words of President John Kennedy, who reminded us that "tolerance implies no lack of commitment to one’s own beliefs. Rather it condemns the oppression or persecution of others."

I introduce this Resolution today as a reminder that we must strive to condemn bigotry and religious intolerance, and recognize that holy books of every religion should be treated with dignity and respect. Our dedication to this struggle has never been more important than it is today, with recent events both at home and abroad. We can begin to fulfill this obligation with a renewed effort to continue education and the dispelling of stereotypes.

For example, much of the public is not aware that the word Islam comes from the Arabic root word meaning “peace” and “submission.” Terrorism cannot be justified under any valid interpretation of the Islamic faith. There are an estimated 7 million Muslims in America, from a wide variety of ethnic backgrounds. The holy book of Islam, the Quran, is not recited by Muslims during prayer. From the Quran, Muslims learn valuable lessons about peace, humanity and spirituality.

This Resolution recognizes that believers of all religions, including the faiths of Christianity, Judaism, and Islam, should be treated with respect and dignity. The mistreatment of prisoners and disrespect toward the holy book of any religion is unacceptable and against civilization humanity. I am concerned as anyone that our nation would disparage the Quran or commit acts that make it clear that it is not the official policy of the U.S. government to disparage the Quran, Islam or any other faith. I hope this Resolution will help us recognize that we need to embrace the Muslim people and tolerate if we are truly interested in supporting democracy around the world.

SUPPORT FOR H.R. 2057

HON. CORRINE BROWN
OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Ms. BROWN of Florida. Mr. Speaker, I rise today to express my support for H.R. 2057, which disapproves of DC. Act 15–47, the Transportation Hazardous Materials Transportation Temporary Act of 2005; which calls for the rerouting of hazardous materials around Washington, DC.

While re-routing hazardous materials from the Capitol area of Washington, DC sounds well intentioned, it only shifts the risk of that transportation to other neighborhoods and other modes of transportation. The additional switching of these cars will add to the congestion in the yards, and back up traffic on CSX and main lines, potentially affecting their entire network, including Amtrak, VRE, and MARC.

It also means that chemical containers could be sitting for hours, if not days, in rail yards waiting to be moved.

Longer transit times and distances, increased car handling and dwell times are factors that tend to increase the inherent risk of transporting hazardous materials. This would also add significant cost to the shippers, and potentially disrupt the flow of commerce for those customers like water treatment plants, pharmaceutical companies, gas stations, etc.

The Federal Government has always had the authority to over interstate commerce. The transportation of hazardous materials is governed by Federal regulations as prescribed under the Hazardous Materials Transportation Act, which gives the authority to DOT. And it is important to note that the railroads are governed by the common carrier duty, which means we must carry what is legally tendered to them by law.

Finally, the Department of Justice, the National Industrial Transportation League, the American Trucking Associations, the United Transportation Union, Norfolk Southern and others have either weighed in with an amicus brief in Federal Court, a letter to the STB, or a letter to the House Government Reform and Senate Homeland Security Committees.

I call upon government at all levels to develop meaningful standards that improve safety and security for all modes. Rerouting freight from one backyard to another does not constitute meaningful standards, improve safety and security for any mode, and I encourage this Congress to promptly disapprove DC’s ordinance.

The First National Asian and Pacific Islander HIV/AIDS Awareness Day

HON. MICHAEL M. HONDA
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. HONDA. Mr. Speaker, I rise today in support of the first National Asian and Pacific Islander HIV/AIDS Awareness Day. This commemorative day aims to raise the awareness
of Asian Pacific Islander American, APIA, communities about the devastating impact of HIV/AIDS as well as educating our communities about the progress in the areas of prevention, care and treatment, and vaccines.

Asian Pacific Islander Americans are among the fastest growing racial/ethnic populations in the United States. However, stereotypes depicting APIAs as “model citizens” who enjoy perfect health, health advocates point out that HIV/AIDS awareness is lacking in many communities. Indeed, APIAs in the U.S. have higher rates of those preventable diseases that are also common for HIV/AIDS—such as syphilis, hepatitis B and tuberculosis—than white Americans.

Worldwide, AIDS has killed more than 20 million people, including 3.1 million in 2004 alone. Through 2003, in the United States, approximately 930,000 people had been diagnosed with AIDS and more than 400,000 people were living with AIDS. While the number of reported AIDS cases among APIAs remains small, lack of detailed HIV surveillance, under-reporting, and misclassification often mask the true impact of the HIV epidemic on APIAs.

Mr. Speaker, according to such groups as the San Francisco-based Asian and Pacific Island Wellness Center, the Asian Pacific Islander American Health Forum, and the Centers for Disease Control and Prevention, CDC, HIV data collected between 2000–2003 reveals a 54 percent increase in AIDS diagnosis among APIAs. As of December 2003, men accounted for 87 percent of APIA AIDS cases, with 71 percent occurring among men who have same-sex relations. Among APIA women, 49 percent of AIDS cases were attributed to heterosexual contact.

As Chair of the Congressional Asian Pacific American Caucus, I want to say it loud and clear that there is no misunderstanding. HIV/AIDS is a public health emergency for Asian Pacific Islander Americans.

National API HIV/AIDS Awareness Day is the first step in breaking the silence and reducing the shame associated with HIV/AIDS, and I applaud the Banyan Tree Project for their efforts. Reducing stigma will give APIAs greater access to services we need and deserve, which in turn will reduce the spread of HIV.

I urge my colleagues to join me today, along with national, regional, and local HIV/AIDS groups, in supporting this effort to raise awareness of HIV/AIDS among Asians and Pacific Islanders and to mobilize communities to get involved. Only through collaboration and a willingness to break down barriers and build bridges will we be able to win this fight against HIV/AIDS.

THE PRESERVING MEDICARE FOR ALL ACT OF 2005

HON. BENJAMIN L. CARDIN
OF MARYLAND
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. CARDIN. Mr. Speaker, I rise to introduce legislation to help fulfill the promise made by Congress and the President to our seniors. This year, Congress may consider a multifaceted approach to programs that affect the security of our seniors. Any discussion about ensuring the financial security of retired Americans must also take into account their ability to access meaningful prescription drug coverage.

In November 2003, Congress passed legislation to provide limited coverage for prescription drugs. I opposed that legislation because it contained serious flaws that will result in more harm than help for Medicare beneficiaries. The bill that I am introducing today, the Preserving Medicare for All Act of 2005 corrects the legislation’s structural defects and provides additional beneficiary protections.

Over the past several years, I have met with thousands of seniors in my district about Medicare and their need for prescription drug coverage. They brought me their empty pill bottles and their pharmacy receipts. With the highest out-of-pocket costs among Medicare beneficiaries in the country, they and millions of other seniors across the nation were looking to Congress for real prescription drug coverage that would give them substantial help with their drug costs. They wanted their drug benefit to be provided like other benefits covered by Medicare—administered by the Centers for Medicare and Medicaid Services, CMS, with a guaranteed benefit, universally available regardless of where they live, for it not to jeopardize the drug coverage they are used to experiencing. They wanted the choice of their own doctor and hospital and the freedom to choose a private health plan if they prefer that option.

I believe that a clear majority of the House and Senate wanted to enact legislation that met our seniors’ needs. Unfortunately, the bill that moved through Congress failed to provide seniors with what they needed or expected. The plan that became law will not be administered by CMS but by private insurers.

Under the 2003 law, the government is prohibited from collecting rates one-fifth higher than fee-for-service Medicare. This so-called “stabilization fund” and a premium support demonstration project are not designed to offer choice, but instead to lure younger, healthier seniors away from traditional Medicare and into private plans. These provisions will not save money, according to the Congressional Budget Office’s estimate. Instead, scarce dollars that could be used to provide a better drug benefit are used to increase health plan profits.

The current law would undermine the entire Medicare system as we know it, shifting the burden of the program onto those least able to afford it. The bill I am introducing today will modify these damaging aspects of the new Medicare law. First it will authorize the HHS Secretary to use the purchasing power of 40 million seniors and disabled Americans to negotiate lower drug prices. Second, it will guarantee seniors the choice of a nationally available, defined benefit within Medicare. The premium, deductible, copays and stoploss will be set by law, not by private insurers. Third, my bill will fully reimburse employers for the cost of qualified retiree drug coverage and it will permit their costs to count toward seniors’ catastrophic line of credit. Fourth, it will provide an additional $150 billion in funding for Medicare Part D. Fifth, it will eliminate the “stabilization” fund for private health insurers and dedicate these funds to strengthening the traditional Medicare program for seniors. Finally, it will eliminate the “cost containment” provision of the bill, which will harm both working families, seniors, and health care providers.

Mr. Speaker, the Medicare prescription drug provisions of this bill will not take effect until 2006. We have time to fix the structural problems that prevent this law from benefiting today’s beneficiaries and those who will depend on Medicare in future years. If this Congress is serious about the financial security of older Americans, it will make every effort to keep the promises we have made to our seniors. I urge my colleagues to cosponsor this legislation.

LETTER TO SALVADORAN AMBASSADOR TO THE U.S. RENE ANTONIO L ´ EN RODR ´ I GUEZ

HON. DENNIS J. KUCINICH
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. KUCINICH. Mr. Speaker, on April 29, 2002, Rep. Raul Grijalva and I sent the following letter to Salvadoran Ambassador to the United States, Rene Antonio Leon Rodriguez regarding police brutality against Salvadoran government officials:

DEAR AMBASSADOR LEON: It has just been brought to our attention the recent beating and arrest of several Salvadoran citizens. These events, which occurred in El Salvador, are disturbing. We wish to express our concern.

The protesters were members of the doctors union who were upset about the unjust decision to deport Dr. Pedro Bachon Rodriguez, an Ecuadorian doctor and adviser to the doctors union who has been a legal resident of El Salvador for the past 8 years.
Mr. Speaker, ensuring that the research and development into the software and telecommunication tools that will animate the technologies for use in classrooms and workplaces around the country is a sound investment. Making available additional resources for public television and radio stations for their needs in the digital era is also vital. Finally, our nation’s libraries, museums, universities are great repositories of information and possess the tremendous wealth of our cultural heritage. These treasures can and ought to be digitized in a way that makes them accessible to our citizens, online and over the-air using our national public broadcasting system. This will help to ensure we have an informed and skilled citizenry for our civic institutions. Putting these great educational resources at the heart of the technological transformation our society is undergoing will strengthen our democracy in fundamental ways.

For all of these reasons, I believe we must rise to the challenge of funding advanced research and development for education and technology training in a way that reflects the urgent need to do so and the current inadequate resources being put to these efforts. Telecommunications technology has an awesome potential to affect change positively by driving economic growth, preparing our citizens for the tough challenges ahead, and enriching our democracy. Yet without a plan, or will, we will remain just that—merely the “potential” and “promise” but not the reality. That’s why I believe we ought to reinvest the auction resources we obtain from winning bidders to the public’s airwaves. A permanent trust fund built from these funds will go a long way in meeting the need and that is what our legislation is designed and intended to do.

NATIONAL ASIAN AND PACIFIC ISLANDER HIV/AIDS AWARENESS DAY

HON. JANICE D. SCHAOKWSKY
OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Ms. SCHAOKWSKY. Mr. Speaker, I would like to draw attention to the first annual National Asian and Pacific Islander HIV/AIDS Awareness Day today, May 19, 2005. This day seeks to raise awareness among Asian Americans and Pacific Islanders about the devastating impact of HIV/AIDS on their community and to highlight AIDS prevention and treatment opportunities.

AIDS has fundamentally changed the lives of over 20 million people worldwide since it was first diagnosed in 1981, and the numbers continue to grow at an alarming rate. An estimated 5,500 of 750,000 Americans who face the perils of AIDS today are Asian Americans and Pacific Islanders, but with the fastest-growing racial/ethnic population in the nation, this number is increasing at a staggering rate. According to the Centers for Disease Control and Prevention (CDC), the number of AA/PIs living with AIDS has increased 10 percent annually over the past five years.

Many Asian Americans and Pacific Islanders living with HIV/AIDS too often do not take the steps necessary to prevent and combat the disease due to cultural stigmas around issues of sex, sexuality, and drug use. Other obstacles include the fact that nearly 40 percent of AA/PIs have limited English proficiency and 13 percent live below the federal poverty line. Nearly one in five are uninsured, and many others lack adequate health insurance. That is why this day is immensely important in communicating the facts and preventative practices regarding HIV/AIDS. With increased national awareness and improved communications, HIV/AIDS information will become more widely available and more effective in crossing the social, linguistic, and economic barriers this population faces.

It is also critically important that we expand the budgets of the CDC, especially the Office of Minority Health and the National Institutes of Health, and reauthorize the Ryan White CARE Act to ensure that HIV/AIDS is addressed seriously and with adequate resources. Asian Americans and Pacific Islanders face a serious health threat, and they are just one segment of the American population which battles this deadly disease on a daily basis. Our financial support is critical in providing information, medicine, care, and ultimately a cure for this debilitating disease.

Mr. Speaker, I urge my colleagues to join me in acknowledging the first National Asian and Pacific Islander HIV/AIDS Awareness Day and working to enact healthcare solutions to the HIV/AIDS crisis.

BIKE TARIFF SUSPENSION BILLS

HON. EARL BLUMENAUER
OF OREGON

IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. BLUMENAUER. Mr. Speaker, today I introduce seven bills that will waive tariffs for specialty bike parts not produced domestically.

The bicycle industry is an important part of our economy. There are over 6,000 bicycle shops and 2,000 companies that deal with bicycle manufacturing with tens of thousands of employees. These tariff waivers will reduce costs for the bicycle industry and will allow the savings to be passed onto the more than 57 million adult bicyclists across the country. Similar bike components that are not produced in the United States are already exempt from tariffs in the Harmonized Tariff Schedule. Without a domestic producer of compatible components, bike companies should not be required to pay duties. This legislation will level the playing field for the industry which provides one of the cleanest, healthiest, most efficient, and environmentally friendly modes of transportation that exists.

THE SIXTY-FOURTH ANNIVERSARY OF THE BATTLE OF CRETE

HON. MICHAEL BILIRAKIS
OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. BILIRAKIS. Mr. Speaker, I rise proudly today to celebrate the 64th anniversary of the Battle of Crete, a World War II event of epic proportions that profoundly impacted on the
determination of many countries to resist the aggression of Nazi Germany. This is a story of the sacrifices made by a battered but brave group of individuals thrown together in a combined effort to halt the domination of a smaller, weaker nation by a larger, more powerful aggressor.

Amidst the cataclysm that engulfed the countries of Europe at the time, it seems now preposterous that a small island dared to stand up to the aggressor to preserve its freedom and defend its honor. Today, more than half a century later, these heroic events that took place in the Battle of Crete remain etched in the memory of people around the world. In commemoration of this anniversary, and for the benefit of future generations, I will share a brief account of these events as they unfolded.

In early April 1941, the German army rushed to the aid of their defeated ally, Italy, and invaded Greece. Following a valiant struggle, Greek forces had been pushed entirely off the continent and forced to take refuge on the island of Crete. The German army then looked covetously across the sea to Crete because of the British airfields on the island, which could be used by the Allies for air strikes against the oil fields of Rumania. Realizing this vital air commodity to Hitler’s forces now preparing for their attack on Russia, if captured, it would also provide air and sea bases from which the Nazis could dominate the eastern Mediterranean and launch air attacks against Allied forces in northern Africa. In fact, the Nazis high command envisioned the capture of Crete to be the first of a series of assaults leading to the Suez Canal. Hitler intended a short, one month, campaign, starting in March. On successful completion, his troops would be re-assembled to invade Russia.

Cretes’ defenses at the time had been badly neglected due to the deployment of Allied forces in North Africa. General Bernard Freyberg of the New Zealand Division was appointed by the British to command a small contingent of Allied troops which had been dispatched to the island a few months before and re-enforced by additional troops who had retreated from the Greek mainland.

Early on the morning of May 20, 1941, Crete became the theater of the first and largest German airborne operation of the war. The skies above Crete were filled with more than eight thousand Nazi paratroopers, landing in a massive invasion of the island, which was subjected to heavy bombing and attacks in what became known as “Operation Mercury.”

Waves of bombers pounded the Allied positions followed by a full-scale airborne assault. Elite paratroopers and glider-borne infantry units landed upon the rag-tag Allied soldiers and were met with ferocious resistance from the Allied troops and the Cretan population.

Although General Freyberg had decided not to arm the Cretans because they were believed to be anti-royalist, they fought bravely with whatever weapons and ammunition they had. As soon as the battle broke out, the people of Crete volunteered to serve in the militia. Centuries of oppression and several revolts against Venetians and Turks had taught them that freedom is won and preserved by sacrifice, and there was hardly a family without a gun stashed somewhere in the house. For the first time, the Germans met stiff partisan resistance.

War-seasoned men joined the regular troops in the effort to repel the invader. Old men, women and children participated and used whatever makeshift weapons they could find. They pointed their antiquated guns at the descending German paratroopers. They used sticks, sickles and even their bare hands, to fight their way across the ground. Most of them were illiterate villagers but their intuition, honed by the mortal risk they were facing, led them to fight with courage and bravery. “Aim for the legs and you’ll get them in the heart,” was the popular motto that summarized their hastily acquired battle experience.

Seven days later, the defenders of Crete—though clinging to their rocky defensive positions—knew that they would soon be overrun. The evacuation order was given, and nearly 18,000 men were rescued. These valiant survivors had brought the Allies a week’s precious time free of Nazi air and sea attacks based from Crete. More importantly, they inflicted severe losses on the German airborne forces, the showpieces of the Nazi army. Although the outnumbered and thoroughly equipped, the Germans didn’t buy the Cretan’s love of freedom.

Although the Germans captured the island in ten days, they paid a heavy price. Of the 8,100 paratroopers involved in this operation, 3,000 were killed or captured and 3,000 were wounded. So injured were the German units that they never again attempted an airborne assault of the magnitude launched at Crete. Hitler may have won the Battle of Crete, but he lost the war. The German victory proved a hollow one because it had been the usual prelude of the German parachute troops. In fact, it is a lesson taught in almost every major military academy in the world on what not to do.

In retaliation for the losses they incurred, the Nazis spread punishment, terror and death to the innocent civilians of the island. More than two thousand Cretans were executed for the just cause of defending the integrity of their island, Cretans paid a stiff price. Within the first five months of the Battle of Crete, 3,500 Cretans were executed and many more were killed in the ensuing three-and-a-half years of occupation.

Mr. Speaker, there are historical reasons why we Americans appreciate the sacrifices of the Cretan people in defending their island during the Battle of Crete. We have a history replete with similar heroic events starting with our popular revolt that led to the birth of our nation more than two centuries.

We must always remember that as long as there are people willing to sacrifice their lives for the just cause of defending the integrity and freedom of their country, there is always hope for a better tomorrow. May we take inspiration from the shining example of the people of Crete in ensuring that this is indeed the case.

A TRIBUTE TO TSCL CHAIRMAN GEORGE A. SMITH

HON. WALTER B. JONES
OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 19, 2005

Mr. JONES of North Carolina. Mr. Speaker, I rise today to pay tribute to George Smith. Since 2001 the TREA Senior Citizens League (TSCL) has been under the strong leadership of Board of Trustees Chairman George A. Smith. With George Smith at the helm, TSCL has gained greater credibility and respectability in the Congress and in the country as a whole. TSCL has become a significant national player on Social Security issues such as the Notch, Cost of Living Adjustment based on the Producer Price Index rather than the Consumer Price Index, Mexico Totalization, and a Lock Box of Trust Funds, and on other issues such as drug importation. This has largely occurred because Chairman Smith insisted that TSCL emphasize...
educating the public about senior issues. Like other TSCL Board of Trustees members he has served without pay.

George A. Smith was born on October 28, 1930. He currently resides in San Antonio, Texas, with his wife Marie. Mr. Smith entered the U.S. Army in July 1948 and served an illustrious 21-year military career. While on active military duty, Mr. Smith earned the Bronze Star, the Army Commendation Medal with Oak Leaf Cluster and a multitude of miscellaneous awards and commendations.

Mr. Smith is a life member (The Retired Enlisted Association) Past National President. As a TREA leader, he initiated and finalized the purchase of the first TREA National Headquarters. He has served as Chairman of the Past President’s Advisory Council, Chairman of the TREA Memorial Foundation, Chairman of TREA Finance Committee, Chairman of TREA 5-Year Planning Committee, President of TREA Chapter 3, and Chairman of TREA Convention Committee.

George Smith has an Associate Degree in Business Management from Metro State College in Denver, Colorado, and is retired from the Colorado Department of Employment where he served as the Job Service Director. He also worked in the area of direct sales for Telecommunications, and was an owner of his own precision welding business. He served as President of the Veterans of Foreign Wars Post 3482, and as President of a local homeowners association.

George Smith learned from his experiences in the military and private sector that a strong foundation has to be constructed brick by brick using motivational management and a team concept. At TSCL Chairman Smith used his management expertise to revitalize the organization. He developed an expanded legislative agenda of activities in Congress. His visionary leadership helped move TSCL forward to the status of a well-known and respected organization by most Members of Congress. During his tenure as Chairman, TSCL has become a significant national player on several senior issues.

As a member of the House Armed Services Committee, Mr. Payne is especially grateful for George Smith’s service in the military. His advocacy for senior issues and for retired enlisted military will be missed when he steps down as TSCL Chairman later this year. Thank you George for your remarkable contributions and distinguished sacrifices for our country. You did make a difference. God bless you.

HIGH SCHOOL REFORM

HON. DENNIS K. KUCINICH
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. KUCINICH. Mr. Speaker, on May 17, 2005, during a Committee on Education and the Workforce hearing on High School Reform, I gave the following statement:

I am pleased we will today hear from the Governors of Massachusetts and Iowa on what steps they have taken and what results they have found useful in reforming high schools in their states. I am especially pleased that Governor Vilsack has highlighted the importance of vocational education in high schools. High school reform is an important piece of the puzzle ensuring that our nation’s young adults are able to succeed in their chosen career path. The goal of high schools should be to prepare students for the next step in their lives, whether that be continuing on to college or beginning a vocational training program.

First, we must work to ensure that students graduate from high school. Recent statistics from Opportunity Gap Project show that only 88 percent of students who entered the 9th grade graduated in the 12th grade. Minority students were even less likely to graduate. In today’s economy, a high school diploma has increasingly become a minimum requirement for workers. We must address issues that keep students from graduating and get diplomas in their hands. Students, regardless of background, should also know the options they have after graduation. The knowledge of training programs, entry requirements for universities, and financial aid options is invaluable for both students and their parents. Course work must effectively engage and challenge students, continuing their academic growth and building upon their foundation of skills. Students of all levels should make progress in their studies.

Our nation is diverse and so are the students in our high schools. There is no ‘one size fits all’ for high schools or the students in them. Regular schools should both recognize and employ that fact and aim to ensure that all students graduate from high school and are prepared for the next step in lives.

TRIBUTE TO KATIE BROWNELL

HON. THOMAS M. REYNOLDS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. REYNOLDS. Mr. Speaker, it is with great pleasure that I rise to pay tribute to 11-year-old Katie Brownell, of Genesee County, New York, for pitching a perfect Little League game on May 14th. This is a terrific accomplishment and Katie has much to be proud of, as do her family and her community.

Katie, the only female player in the league, displayed tremendous ability as she pitched the perfect game, striking out every single batter she faced, allowing not even a single baserunner. This is not the first time Katie has dominated a baseball game however. In her first appearance on the mound this season, Katie allowed only one hit, striking out 14 batters through five innings. Katie also has a batting average of .714 through the first three games of the season.

Furthermore, Katie has shown tremendous sportsmanship, taking this accomplishment humbly and in stride. Katie has never gloated and has never bragged. She simply loves the game and enjoys playing it—characteristics equally as impressive as her abilities. Mr. Speaker, I ask that this Congress join me in honoring Katie Brownell, and recognize her tremendous athletic abilities and sportsmanship after pitching a perfect game for her Little League team.

TRIBUTE TO JOHN GARRETT, JR.—A TRUE AMERICAN PATRIOT

HON. DONALD M. PAYNE
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. PAYNE. Mr. Speaker, I rise today to honor the memory of my uncle, John Garrett, Jr. and I ask my colleagues here in the U.S. House of Representatives to join me in paying tribute to this outstanding American patriot.

John Garrett, Jr. was a Staff Sergeant and platoon leader of the 229th Port Company attached to the 1st Engineer Specialist Brigade of the 1st Army and on June 6th, 1944, his contingent of 75 men was responsible for transporting ammunition to the landing Allied Forces.

He was extremely proud of his service in the Army during WWII; however, he was disheartened that the role of African American soldiers who helped lead our country to victory
was not accurately depicted in history. Their names were not mentioned, their achievements were not celebrated, and their sacrifices were not honored. He considered it his mission to correct the historical omissions of the role of African American soldiers, and he developed a comprehensive collection of historical information, including visual displays and artifacts that he used during lectures to community groups and to the many schools where he was invited to speak.

He would speak about the contributions of African Americans in battle that history did not record. He told about the Tuskegee Airmen, the Red Ball Express, and the lesser-known Fighting 369th—a group of African Americans, largely from New York City, who valiantly chose to fight for a country that gave them only minimal civil rights and would not even allow them to carry arms or participate in battle. But this band of patriots would not be deferred, and eventually fought as Americans for our ally, the French. They were so fierce in battle, in fact, that the enemy called them “The Hell-Fighters,” and they would later come to be known as The Harlem Hell-Fighters.

He was tenacious in his attempts to have the recognition due African American soldiers afforded them, and was the catalyst for the movement that eventually led President Clinton to recognize those soldiers; as a result, a movement that eventually led President Clinton’s decision to award Letters of Commendation, was later awarded that medal in recognition of their service in WWII. Purple Hearts were not the only awards withheld from African American soldiers. President Eisenhower, when presenting Letters of Commendation, chose to send Letters to white soldiers only. My Uncle John was directly responsible for President Clinton’s decision to award Letters of Commendation to those African American soldiers who participated in the D-Day Invasion and whose service had gone unmentioned and unrecognized for decades.

One of my uncle’s most treasured experiences, capping off his life’s work, was visiting Washington last Memorial Day weekend for the official dedication of the long-awaited World War II Memorial. As a veteran of the war, he and his wonderful wife Ruth, who were married over 60 years, were able to view the moving ceremony from special seats and also mingled with the crowds, enjoying great camaraderie with other World War II veterans gathered together for this historic occasion.

John Garrett, Jr. lived life to the fullest. When he and his wife attended my Annual Congressional Ball in March, they danced the night away, outlasting most of the others on the dance floor. He also made a point of traveling to Washington every fall to participate in the Congressional Black Caucus Annual Legislative Conference.

Mr. Speaker, let us honor John Garrett, Jr. for his patriotism and his service to our country. He was tireless in his fight to ensure that all our soldiers received the honor that was due them. He was a role model for our community, enlightening thousands of school children with the true story of the role African American soldiers played in our Nation’s history, instilling in them pride for the legacy of their ancestors. We extend our heartfelt condolences to his wife, Ruth, his son Kenny and his granddaughter, Cindy.

Mr. KUCINICH. Mr. Speaker, I rise today in recognition of Beth Israel—The West Temple, in commemoration of its 50th anniversary. Beth Israel was organized in April 1954 by Abe Silverstein, an early director of the NASA Lewis Research Center and 25 founding families, to provide a religious center for Reform Jews living on Cleveland’s west side. The congregation’s first service, Rosh Hashanah, was on September 27, 1954, at the First Universalist Church in North Olmsted. For the next three years, services were held at either the Universalist Church or the North Olmsted Community Club House. Following the merger with the West Side Jewish Center in October 1957, Beth Israel occupied the Center’s newly completed building at 14308 Triskett Road in Ohio’s 10th Congressional District. The building was dedicated on May 11, 1958. The congregation continues to worship there today.

For its first seven years, Beth Israel was served by a succession of six student rabbis from Hebrew Union College in Cincinnati. Among them was Daniel Litt who became Beth Israel’s first full-time rabbi, serving from 1961 to 1965; he also brought the construction of a new eight-room, two-story wing and the first of two Cleveland Foundation library grants. The library and its volunteer staff have provided services for the congregation as well as colleges, schools, and churches throughout western Cuyahoga County. By 1995, the library contained more than 6,000 volumes and audio-visual materials.

Beth Israel draws its members from Cleveland’s west side and western suburbs in Ohio’s 10th Congressional District. It prides itself on its commitment to education and social action. Its school, staffed by volunteers, covers preschool through grade 12 and has more than 100 students enrolled. Among its alumni is Sally Priesand, who went on to become the first woman ordained to the rabbinic ministry in 1975. Beth Israel’s current rabbi, Alan Lettofsky, remains active in local affairs and has spoken out at interfaith rallies to save local hospitals and on other issues of concern to the people of Ohio’s 10th District.

Mr. KUCINICH. Mr. Speaker, I am pleased to recognize Beth Israel—The West Temple for its 50 years of service to, and a center of worship and community for, my Jewish constituents on Cleveland’s west side and western suburbs. Please join me in marking this auspicious occasion.

Mr. Speaker, tomorrow is May 20, and on that day, 103 years ago, the Republic of Cuba was born. Today the Cuban people, led by heroic activists such as Mr. Iglesias Ramírez, continue to fight for freedom. It is my fervent hope that next year, on May 20, the Cuban people will be able to celebrate the anniversary of Cuba’s independence and also celebrate the return of freedom to that long suffering island.

Mr. Speaker, it is unconscionable that peaceful Cubans of all genders, creeds and colors are locked in Castro’s barbarous gulag because they believe in a free Cuba. While the entire world sits by and ignores the suffering of the Cuban people, brave men and women like Mr. Iglesias Ramírez represent the best of mankind. My Colleagues, we must demand freedom and human rights for all people, especially those who live under the darkness of totalitarian regimes. We must demand immediate and unconditional freedom for Regis Iglesias Ramírez and every prisoner of conscience in totalitarian Cuba.

HON. CAROLYN B. MALONEY
OF NEW YORK

CONGRESSIONAL RECORD — Extensions of Remarks
Thursday, May 19, 2005

IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

HON. CAROLYN B. MALONEY
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. MALONEY. Mr. Speaker, I rise today to mark the 64th anniversary of the Battle of Crete by introducing this House Resolution which recognizes and appreciates the historical significance of the people of Crete during World War II.

Mr. Speaker, I am pleased to recognize Beth Israel—The West Temple for its 50 years of service to, and a center of worship and community for, my Jewish constituents on Cleveland’s west side and western suburbs. Please join me in marking this auspicious occasion.
I urge my colleagues to join me in honoring the Cretans in the United States, Greece, and the diaspora.

HONORING THE CAREER OF RICHARD MARTIN

HON. DEVIN NUNES
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. NUNES. Mr. Speaker, I would like to take this opportunity to honor a man who has dedicated his life to protecting our nation’s treasures so generations of Americans can continue to enjoy their riches. Richard Martin, Superintendent of Sequoia and Kings Canyon National Parks, is retiring after 48 years of federal land management service.

Without question, my district has some of the finest landscapes in the world—from the High Sierras where these parks are found to the vast Central Valley where agriculture is king. All of these riches are interrelated. I came to know Superintendent Martin during his tenure of Sequoia and Kings Canyon National Parks. Since day one, I have had the privilege of working closely with Dick to find solutions for future challenges. He and I have found him a man of his word and deed. I have been especially impressed with his ability to reach out to Valley residents to make the park more accessible. Dick has encouraged park staff to participate as active members of the many community boards and discover how any park decision affects the neighborhood. He has developed close friendships with Valley communities and provided park educational opportunities for all.

Superintendent Martin has also tackled issues that go way beyond the National Park System to include the war on drugs. This is a problem no one expected the park staff to have to undertake until the disgusting discovery of a re-routed mountain stream, poisoned by a time release fertilizer component, irrigating hundreds of thousands of dollars worth of marijuana fields. Automatic weapons, animal carcasses, and a landfill emitting methane gas, are often found in these illegal marijuana plantations within the park. I applaud Dick’s effort to eliminate this destructive cash crop and restore the stream and vegetation.

We have visitors walking along trails near these locations and private property not far away—we want to ensure the safety of everyone and Dick has taken this task to heart. Superintendent Martin’s career has spanned some of this nation’s most remote and vast landscapes, from the lowest in elevation to the highest. Death Valley National Park, to a far north locale at Alaska’s Wrangell St Elias National Park and Preserve, to Sequoia and Kings Canyon National Parks. Dick is an extraordinary park manager with an eye on retaining public access, protecting the American worker.

As the sun sets on his government career, I suspect that I will one day find him walking or riding along one of our western trails with his wife, Carol. I am certain that it will be great to see him continue to enjoy what he spent 48 years to protect. Dick, I wish you a hearty so-long and a fond farewell.

INTRODUCING A BILL TO POSTPONE THE 2005 ROUND OF DEFENSE BASE CLOSURE AND REALIGNMENT

HON. RON PAUL
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. PAUL. Mr. Speaker, I rise today to introduce a bill to postpone the 2005 round of military base closure and realignment. This bill would postpone the conclusion of the Realignment report issued by the Department of Defense on 13 May 2005, as well as any preceding or subsequent plans that may ultimately be enacted to close or realign military bases on U.S. territory. This bill will postpone such closures and realignments until a specific set of criteria have been fulfilled, including until both the Defense Department and Congress have had the opportunity to fully study the recommendations and their implications for national security and defense of the United States.

This round of base closure and realignment also should not go forward while we have hundreds of thousands of troops deployed overseas in major conflicts in Iraq and Afghanistan. The constant rotation of troops and other personnel to these major theaters of operations has caused great disruption, logistical strain, and terrible burdens on our servicemembers, their families, and the military itself.

Also, we should not proceed with this round of base closures and realignments before the 2006 release of the Quadrennial Defense Review. Congress must have ample time to study the recommendations of the QDR before agreeing on any major closure and realignment strategy. To do otherwise just does not make any sense.

Mr. Speaker, for these and other reasons I feel it is essential—for the strength of our military, the effectiveness of our defense, and the security of all Americans—that we postpone this round of BRAC closings until we are able to satisfy the critical criteria outlined in this bill. I hope my colleagues will join me by supporting this legislation and I hope for its speedy consideration on the House Floor.

IN HONOR OF SALVATORE J. CHILIA

HON. DENNIS J. KUCINICH
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 19, 2005

Mr. KUCINICH. Mr. Speaker, I rise today in honor of Salvatore J. Chilia, as the State of Israel Bonds is honoring his decades-long commitment and work in supporting and protecting the American worker.

Mr. Chilia began work as an electrician with an apprenticeship in 1967. His service to workers began in 1977, when he was elected as an officer of Local 38’s examining board. Mr. Chilia served seventeen years on the executive board, including nine years as chairman. In 1989, he was elected president of Local 38, working on behalf of 2,200 active members and 850 retirees. Throughout his tenure as board member, president and chairman, Mr. Chilia maintained an unwavering
focus on the rights and welfare of workers and their families. His ascension through the union ranks is reflected by the numerous successes for members, including the protection and promotion of workers’ safety, compensation, benefits and pensions.

Mr. Chilia created strong bonds of trust and respect throughout the union community and was elected to the office of Business Manager of the Cleveland Electrical JATC. His expertise and commitment has been sought out nationally as well. In 2001, Mr. Chilia was elected as a member of the 36th Annual IBEW International Convention’s executive council, representing members in the areas of construction, manufacturing, broadcasting, utilities, maintenance and railroad workers. Beyond his service to workers, Mr. Chilia has a deep and abiding dedication to his family and community. Mr. Chilia and his wife, Arlene, maintain an unbreakable focus on their children and grandchildren. His love for children extends outward into the community, where he is actively involved in children’s charities, including the Children’s Museum of Cleveland and the Cystic Fibrosis Foundation Golf Tournament.

Mr. Speaker and colleagues, please join me in honor and recognition of Salvatore J. Chilia, in the spirit of the Children’s Foundation Golf Tournament. Today, as we observe Asian Pacific American Heritage Month, our nation is the witness to the contributions of this distinguished colleague from the great State of New Jersey, the Honorable ROBERT MENENDEZ.

The House in Committee of the Whole considered the amendment being offered by Mr. MENENDEZ not out of parochial if entirely justified concern for the residents and workers of the area between Port Newark and Newark International Airport. Mr. MENENDEZ has noted, this area is the largest on the East Coast of the United States, with products and goods being funneled through its checkpoint to destinations all over the United States.

As my colleague Mr. MENENDEZ has noted, the reported number of AAPI AIDS cases from 1999 through 2002. As one of the fastest growing ethnic groups, made up of over 49 ethnicities and 100 languages and with annual growth rates among Asian ethnicities as high as 115 percent, effective HIV prevention and education programs which utilize culturally and linguistically appropriate strategies are urgently needed. These programs must also be supported at the federal level through changes in funding guidelines and requirements that take these factors into account.

Pacific Island jurisdictions such as my district of Guam face additional challenges due to their remote location. These communities lack the infrastructure, capacity, equipment and training to deliver HIV/AIDS services. In addition, these jurisdictions lack community-based services and support found on the mainland. Prevention, testing, treatment and care depends on the local public health departments, many of which do not have the staff or funding resources to provide more than basic services. As a result, a diagnosis of AIDS usually means the patient will need to leave the island in order to receive proper care. Yet some choose to remain because of cultural and familial ties, sacrificing proper health care. No one should have to make such a choice.

Today, as we observe Asian American and Pacific Islander American HIV/AIDS Awareness Day, we must take this opportunity to educate and motivate our communities to advocate for resources to support initiatives that address these issues. I look forward to working with the Asian American and Pacific Islander community in support of these efforts.
Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S5551–S5714

Measures Introduced: Six bills were introduced, as follows: S. 1090–1095.

Nomination Considered: Senate continued consideration of the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

A motion was entered to close further debate on the nomination and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Tuesday, May 24, 2005.

A unanimous-consent-time agreement was reached providing for further consideration of the nomination at 11:30 a.m., on Monday, May 23, 2005.

Measures Referred:

Measures Placed on Calendar:

Executive Communications:

Additional Cosponsors:

Statements on Introduced Bills/Resolutions:

Additional Statements:

Text of H.R. 3 as Previously Passed:

Adjournment:

Senate convened at 9:31 a.m. and adjourned at 2:23 p.m. until 11:30 a.m., on Monday, May 23, 2005. (For Senate’s program, see the remarks of the Acting Majority Leader in today’s Record on page S5714.)

Committee Meetings

No committee meetings were held.

House of Representatives

Chamber Action

The House was not in session today. It will meet at 12:30 p.m. on Monday, May 23 for Morning Hour debate and 2 p.m. for legislative business.

Committee Meetings

D.C. PUBLIC SCHOOLS—TOWARD A CULTURE OF ACHIEVEMENT

Committee on Government Reform: Held a hearing entitled “Declaration of Education: Toward a Culture of Achievement in D.C. Public Schools.” Testimony was heard from the following officials of the District of Columbia: Robert C. Bobb, Deputy Mayor/City Administrator; Kathleen Patterson, Chairperson, Committee on Education, Libraries and Recreation, Council; Peggy Cooper Cafritz, President, Board of Education; Clifford B. Janey, Superintendent, Public Schools; Charles H. Ramsey, Chief of Police, Metropolitan Police Department; and Brenda Donald Walker, Director, Child and Family Services Agency; and public witnesses.

CONGRESSIONAL PROGRAM AHEAD

Week of May 23 through May 28, 2005

Senate Chamber

On Monday, at 11:30 a.m., Senate will resume consideration of the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit. Also, at 5:30 p.m., Senate will vote on a motion to instruct the Sergeant at Arms to request the attendance of absent Senators.

On Tuesday, Senate will continue consideration of the nomination of Priscilla Richman Owen, of Texas,
to be United States Circuit Judge for the Fifth Circuit, with a vote on the motion to invoke cloture to occur thereon.

During the balance of the week, Senate will consider any other cleared legislative and executive business.

**Senate Committees**

(*Committee meetings are open unless otherwise indicated*)

**Committee on Agriculture, Nutrition, and Forestry:** May 25, to hold hearings to examine the U.S. Grain Standards Act, 10 a.m., SR–328A.

**Committee on Appropriations:** May 24, Subcommittee on Commerce, Justice, State, and the Judiciary, to hold hearings to examine proposed budget estimates for fiscal year 2006 for the Department of Justice, 10 a.m., SD–192.

May 26, Subcommittee on Commerce, Justice, State, and the Judiciary, to hold hearings to examine proposed budget estimates for fiscal year 2006 for the Department of Commerce, 2 p.m., S–146, Capitol.

May 26, Subcommittee on State, Foreign Operations, and Related Programs, to hold hearings to examine proposed budget estimates for fiscal year 2006 for the U.S. Agency for International Development, 2:30 p.m., SD–138.

**Committee on Banking, Housing, and Urban Affairs:** May 24, to hold hearings to examine money laundering and terror financing issues in the Middle East, 3 p.m., SD–538.

May 25, Full Committee, to hold hearings to examine the nominations of Ben S. Bernanke, of New Jersey, to be a Member of the Council of Economic Advisers, and Brian D. Montgomery, of Texas, to be Assistant Secretary of Housing, Federal Housing Commissioner, Department of Housing and Urban Development, 10 a.m., SD–538.

May 26, Full Committee, to hold hearings to examine the report to Congress on international economic and exchange rate policies, 10 a.m., SH–216.

**Committee on Commerce, Science, and Transportation:** May 24, to hold hearings to examine S. 529, to designate a United States Anti-Doping Agency and to examine the competitive pressures that lead amateur athletes to use drugs, the sources of such drugs, and the science of doping, 10 a.m., SR–253.

May 25, Full Committee, to hold hearings to examine S. 360, to amend the Coastal Zone Management Act, 10 a.m., SR–253.

May 26, Subcommittee on Aviation, to hold hearings to examine aviation capacity and congestion challenges regarding summer 2005 and future demand, 10 a.m., SR–253.

**Committee on Energy and Natural Resources:** May 24, business meeting to consider comprehensive energy legislation, 9:30 a.m., SD–366.

May 25, Full Committee, business meeting to consider comprehensive energy legislation, 9:30 a.m., SD–366.

May 26, Full Committee, business meeting to consider comprehensive energy legislation, 9:30 a.m., SD–366.

**Committee on Environment and Public Works:** May 25, to hold an oversight hearing to examine permitting of energy projects, 9:30 a.m., SD–406.

May 26, Subcommittee on Clean Air, Climate Change, and Nuclear Safety, to hold an oversight hearing to examine the Nuclear Regulatory Commission, 9:30 a.m., SD–406.

**Committee on Finance:** May 23, Subcommittee on Taxation and IRS Oversight, to hold hearings to examine exposing the individual alternative minimum tax (AMT), 2 p.m., SD–628.

May 24, Full Committee, to hold hearings to examine the nominations of Alex Azar II, of Maryland, to be Deputy Secretary of Health and Human Services, Timothy D. Adams, of Virginia, to be Under Secretary of the Treasury for International Affairs, Shara L. Aranoff, of Maryland, to be a Member of the United States International Trade Commission, Suzanne C. DeFrancis, of Maryland, to be Assistant Secretary of Health and Human Services for Public Affairs, and Charles E. Johnson, of Utah, to be Assistant Secretary of Health and Human Services for Budget, Technology, and Finance, 10 a.m., SD–628.

**Committee on Foreign Relations:** May 24, to hold hearings to examine the nominations of Eduardo Aguirre, Jr., of Texas, to be Ambassador to Spain and Andorra, Julie Finley, of the District of Columbia, to be U.S. Representative to the Organization for Security and Cooperation in Europe, with the rank of Ambassador, Victoria Nuland, of Connecticut, to be Permanent Representative of the United States of America on the Council of the North Atlantic Treaty Organization, with the rank and status of Ambassador, and John F. Tefft, of Virginia, to be Ambassador to Georgia, 9:30 a.m., SD–419.

May 25, Full Committee, to hold hearings to examine the nominations of David Horton Wilkins, of South Carolina, to be Ambassador to Canada, William Alan Eaton, of Virginia, to be Ambassador to Panama, James M. Derham, of Virginia, to be Ambassador to Guatemala, and Robert Johann Dieter, of Colorado, to be Ambassador to Belize, 9:30 a.m., SD–419.

May 26, Full Committee, to hold hearings to examine the nominations of Sean Ian McCormack, of the District of Columbia, to be an Assistant Secretary of State for Public Affairs, and Dina Habib Powell, of Texas, to be an Assistant Secretary of State for Educational and Cultural Affairs, 10:30 a.m., SD–419.

**Committee on Homeland Security and Governmental Affairs:** May 24, Oversight of Government Management, the Federal Workforce, and the District of Columbia, to hold an
oversight hearing to examine a review of the U.S. Office of Special Counsel, focusing on safeguarding the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing, 10 a.m., SD–562.

May 24, Federal Financial Management, Government Information, and International Security, to hold an oversight hearing to examine the competitive effects of specialty hospitals, 2 p.m., SD–562.

May 25, Full Committee, to hold hearings to examine how counterfeit goods provide easy cash for criminals and terrorists, 9:30 a.m., SD–562.

May 25, Full Committee, to hold hearings to examine the nomination of Linda Morrison Combs, of North Carolina, to be Controller, Office of Federal Financial Management, Office of Management and Budget, 2:30 p.m., SD–562.

May 26, Permanent Subcommittee on Investigations, to hold hearings to examine the container security initiative and the customs-trade partnership against terrorism, focusing on how Customs utilizes container security initiative and customs trade partnership against terrorism in connection with its other enforcement programs and review the requirements for and challenges involved in transitioning these from promising risk management concepts to effective and sustained enforcement operations, 9:30 a.m., SD–562.

May 26, Federal Financial Management, Government Information, and International Security, to hold hearings to examine federal funding for private research and development, focusing on effectiveness of federal financing of private research and development, and whether some of these programs result in the development of new technologies or displace private investment, 2:30 p.m., SD–562.

Committee on Indian Affairs: May 25, to hold hearings to examine S.J. Res. 15, to acknowledge a long history of official depredations and ill-conceived policies by the United States Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States, 10 a.m., SR–485.

Committee on the Judiciary: May 24, business meeting to consider pending calendar business, 9:30 a.m., SD–226.

May 25, Full Committee, business meeting to consider pending calendar business, 9:30 a.m., SD–226.

May 25, Subcommittee on Intellectual Property, to hold hearings to examine piracy of intellectual property, 2:30 p.m., SD–226.

May 26, Subcommittee on Immigration, Border Security and Citizenship, to hold hearings to examine the need for comprehensive immigration reform relating to the national economy, 2:30 p.m., SD–226.

Committee on Veterans’ Affairs: May 26, to hold hearings to examine challenges facing the VA claims adjudication and appeal process, 2 p.m., SR–418.

Select Committee on Intelligence: May 24, to resume hearings to examine the USA Patriot Act (P.L. 107–56), 9:30 a.m., SD–106.

May 25, Full Committee, to hold closed hearings to examine certain intelligence matters, 9:30 a.m., SH–219.

May 26, Full Committee, closed business meeting to consider certain intelligence matters, 9 a.m., SH–219.

House Committees

Committee on Agriculture, May 24, Subcommittee on General Farm Commodities and Risk Management, hearing to Review the U.S. Grain Standards Act, 10 a.m., 1300 Longworth.

May 25, full Committee, hearing to Review National Forest Land Management Planning, 2 p.m., 1300 Longworth.

Committee on Appropriations, May 23, on the House of Representatives, GAO, GPO, Library of Congress and Open World Leadership Program, 1 p.m., 2359 Rayburn.

Committee on Education and the Workforce, May 24, Subcommittee on Select Education, hearing entitled “An Examination of the Older Americans Act,” 10 a.m., 2175 Rayburn.

May 26, Subcommittee on Workforce Protections, hearing on the following measures: the Improving Access to Workers’ Compensation for Injured Federal Workers Act; and H.R. 697, Federal Firefighters Fairness Act of 2005, 10:30 a.m., 2175 Rayburn.

Committee on Energy and Commerce, May 26, Subcommittee on Energy and Air Quality, hearing on the Administration’s Clear Skies Initiative, 2 p.m., 2123 Rayburn.

May 26, Subcommittee on Health, hearing entitled “The Threat of and Planning for Pandemic Flu,” 10 a.m., 2123 Rayburn.

Committee on Financial Services, May 24, Subcommittee on Housing and Community Opportunity and the Subcommittee on Financial Institutions and Consumer Credit, joint hearing entitled “Legislative Solutions to Abusive Mortgage Lending Practices,” 10 a.m., 2128 Rayburn.

May 25, full Committee, to consider H.R. 1461, Federal Housing Finance Reform Act of 2005, 10 a.m., 2128 Rayburn.


Committee on Government Reform, May 24, Subcommittee on Federalism and the Census, hearing entitled “Bringing Community Development Block Grant Program (CDBG) Spending into the 21st Century: Introducing Accountability and Meaningful Performance Measures into the Decades-Old CDBG Program,” 10 a.m., 2154 Rayburn.

May 25, Subcommittee on Regulatory Affairs, hearing entitled “Less is More: The Increasing Burden of Taxpayer Paperwork,” 2 p.m., 2154 Rayburn.

May 26, full Committee, hearing entitled “Federal Student Loan Program: Are They Meeting the Needs of Students and Schools?” 10 a.m., 2154 Rayburn.


May 25, Subcommittee on Intelligence, Information Sharing and Terrorism Risk Assessment, hearing entitled
“Evaluating the Threat of Agro-Terrorism,” 2 p.m., 210 Cannon.

May 26, Subcommittee on Prevention of Nuclear and Biological Attack, hearing entitled “Building a Nuclear Bomb: Identifying Early Indicators of Terrorist Activities,” 1 p.m., 210 Cannon.

Committee on House Administration, March 26, to mark up H.R. 1316, 527 Fairness Act of 2005, 2 p.m., 1310 Longworth.

Committee on International Relations, May 25, Subcommittee on Europe and Emerging Threats, hearing on Northern Ireland: Prospects for the Peace Process, 1 p.m., 2200 Rayburn.

May 25, Subcommittee on the Middle East and Central Asia, hearing on U.S. Security Policy in the Middle East, 10 a.m., 2172 Rayburn.

May 25, Subcommittee on Western Hemisphere, hearing on Transparency and Rule of Law in Latin America, 1:30 p.m., 2172 Rayburn.


May 26, Subcommittee on Asia and the Pacific, hearing on the United States and Northeast Asia, 9:30 a.m., 2172 Rayburn.


May 25, full Committee, to continue mark up of H.R. 800, Protection of Lawful Commerce in Arms Act;” and to mark up the following measures: H.R. 420, Lawsuit Abuse Reduction Act of 2005; H.R. 554, Personal Responsibility in Food Consumption Act; and H.J. Res. 10, Proposing an amendment to the Constitution of the United States authorizing the Congress to prohibit the physical desecration of the flag of the United States, 10 a.m., 2141 Rayburn.


May 26, Subcommittee on Commercial and Administrative Law, oversight hearing on the Department of Justice: Reauthorization of Executive Office for United States Attorneys, Civil Division, Environmental and Natural Resources Division, Office of the Solicitor General, and Executive Office for United States Trustees, 11:30 a.m., 2141 Rayburn.


Committee on Resources, May 24, Subcommittee on Fisheries and Oceans, oversight hearing on the Federal Fish Hatchery System, 10 a.m., 1324 Longworth.

May 24, Subcommittee on Forests and Forest Health, oversight hearing on Current Obstacles in Biomass Utilization: A GAO Report on Problems Agencies Face in the utilization of Woody Biomass, and the extent to which they are addressing these problems, 3:30 p.m.,1324 Longworth.


May 26, Subcommittee on Fisheries and Oceans, oversight hearing on Public Access within the National Wildlife Refuge System, 10 a.m., 1324 Longworth.

Committee on Rules, May 23, to consider H.R. 2419, making appropriations for energy and water development for the fiscal year ending September 30, 2006, 5 p.m., H–313 Capitol.


Committee on Small Business, May 24, Subcommittee on Workforce, Empowerment, and Government Programs and the Subcommittee on Economic Opportunity of the Committee on Veterans’ Affairs, joint hearing on recent legislation enacted into law to assist veterans, 10 a.m., 311 Cannon.

May 26, Subcommittee on Rural Enterprises, Agriculture and Technology and the Subcommittee on Tax, Finance and Exports, joint hearing on Does China Enact Barriers to Fair Trade? 10 a.m., 2360 Rayburn.


Committee on Veterans’ Affairs, May 25, Subcommittee on Economic Opportunity, hearing on the following bills: H.R. 717, To amend title 38, United States Code, to expand the scope of programs of education for which accelerated payments of educational assistance under the Montgomery GI Bill may be used; H.R. 745, Veterans Self-Employment Act of 2005; and H.R. 1207, Department of Veterans Affairs Work-Study Act of 2005, 2 p.m., 334 Cannon.

Committee on Ways and Means, May 24, to mark up H.J. Res. 27, Withdrawing the approval of the United States from the Agreement establishing the World Trade Organization, 10 a.m., 1100 Longworth.

May 24, Subcommittee on Select Revenue Measures, hearing on Tax Credits for Electricity Production from Renewable Sources, 2 p.m., 1100 Longworth.
May 24 and 26, Subcommittee on Social Security, to continue hearings on Protecting and Strengthening Social Security, 2 p.m., B–318 Rayburn.

May 26, full Committee, hearing on the Tax-Exempt Hospital Sector, 10 a.m., 1100 Longworth.

Permanent Select Committee on Intelligence, May 24, executive, to mark up the Intelligence Authorization, 12:30 p.m., H–405 Capitol.

March 25, Subcommittee on Terrorism, Human Intelligence Analysis and Counter-Intelligence, executive, Briefing on Iran, 2 p.m., H–405 Capitol.

May 25, Subcommittee on Terrorism, Human Intelligence Analysis and Counter-Intelligence, executive, Briefing on CIA Humint Training Needs, 4 p.m., H–405 Capitol.

May 26, full Committee, executive, Briefing on Global Updates, 9 a.m., H–405 Capitol.
Next Meeting of the SENATE
11:30 a.m., Monday, May 23

SENATE CHAMBER

Program for Monday: Senate will resume consideration of the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit. At 5:30 p.m., Senate will vote on a motion to instruct the Sergeant at Arms to request the attendance of absent Senators.

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