

TRANSIT BENEFITS MODERNIZATION ACT

DECEMBER 8, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 6008]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 6008) to provide transit benefits to Federal employees who use the services of transportation network companies within the national capital region, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the “Transit Benefits Modernization Act”.

(b) FINDINGS.—Congress finds the following:

(1) The Washington Metropolitan Area Transit Authority (“WMATA”) provides approximately 2.3 million Metrorail and Metrobus trips per year across

the National Capital Region to Federal employees, commuters, and millions of visitors to the Nation's capital.

(2) Approximately 40 percent of WMATA peak-hour commuters are Federal employees.

(3) WMATA began building its rail system in 1969, currently serves 91 stations, and has 117 miles of track.

(4) The Federal Transit Administration ("FTA") and the National Transportation Safety Board have found significant safety concerns resulting from a backlog of deferred maintenance.

(5) WMATA has designed a plan, called SafeTrack, in an effort to address this backlog of deferred maintenance.

(6) SafeTrack would close the system earlier on weekends and expand week-day maintenance by reducing the number of rails in use at certain stations from two to one.

(7) The plan includes 15 "Safety Surges" with around-the-clock single tracking or segment shutdowns that will impact rush hour commutes.

(8) FTA's review of SafeTrack's first two "safety surge" areas found a number of defects in the plan's execution.

(9) SafeTrack is scheduled to conclude in March 2017.

(10) During SafeTrack, WMATA is encouraging customers to utilize other commuting options, including ride-sharing services.

(11) WMATA has indicated that service disruptions will continue to occur following SafeTrack as routine maintenance is needed.

(12) The Federal Government, which is negatively affected when employees cannot easily commute to and from work, has an interest in assisting employees with alternate commuting options.

**SEC. 2. PROVIDING A FRINGE TRANSIT BENEFIT FOR USE OF TRANSPORTATION NETWORK COMPANIES.**

For purposes of section 132(a) of the Internal Revenue Code of 1986, the use of a transportation network company by Federal employees as provided for in this Act shall be treated as a fringe benefit which qualifies as a qualified transportation fringe for the period established in section 3(a) of this Act.

**SEC. 3. TRANSIT BENEFITS FOR FEDERAL EMPLOYEES FOR THE USE OF DIGITAL TRANSPORTATION COMPANIES.**

(a) **IN GENERAL.**—During the period beginning on the date of enactment of this Act and ending on December 31, 2018, any agency that has a program, including a program established under section 7905 of title 5, United States Code, or Executive Order 13150 (April 21, 2000; 65 Fed. Reg. 24613), to provide transit benefits to employees of the agency shall provide transit benefits to employees who use the services of any digital transportation company within the Washington Metropolitan Area in the same manner as such agency provides transit benefits to employees who use public transportation services within the Washington Metropolitan Area.

(b) **REQUIREMENTS.**—

(1) **ELECTION.**—Unless otherwise statutorily authorized, an employee may receive transit benefits under this section only if the employee agrees in writing to not accept any other transit or parking benefit offered by the head of any agency with a transit benefit program while receiving the transit benefits under this section.

(2) **LIMITATION.**—The amount of the transit benefit provided to an employee under this section during any month for the use of services provided by any digital transportation company may not exceed the amount of the monthly average transit benefit received by the employee during the 6-month period immediately preceding the month during which an election is made under paragraph (1).

(3) **IMPLEMENTATION.**—Transit benefits under this section shall be provided in a manner substantially similar to the manner in which transit benefits are provided to employees who use mass transportation services. The head of any agency with a transit benefit program may consult with any digital transportation company and any other head of any agency with a transit benefit program to establish the procedures necessary to provide transit benefits under this section.

(4) **SUBSTANTIATION.**—The head of any agency with a transit benefit program, the Secretary of the Department of Transportation, and the Secretary of the Treasury shall, in connection with the establishment of a process for implementing the transit benefit for any digital transportation company, work with any such digital transportation company in establishing a process to substantiate the use of transit benefits by Federal employees using the benefit for services provided by a digital transportation company each month.

(c) **DEFINITIONS.**—In this section—

(1) the term “Washington Metropolitan Area” means the District of Columbia; Montgomery, Prince George’s, Frederick, and Charles Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties;

(2) the term “digital transportation company” means any transportation network company or car-sharing service;

(3) the term “car-sharing service” means a membership or non-membership based service primarily designed for shorter time or shorter distance trips where individuals are charged per mile or per hour, or both, for vehicle usage; and

(4) the term “transportation network company” means a corporation, partnership, sole proprietorship, or other entity that uses a digital network to connect riders to drivers affiliated with the entity in order for a driver to provide transportation services to a rider.

Amend the title so as to read:

A bill to provide transit benefits to Federal employees who use the services of digital transportation companies within the national capital region, and for other purposes.

## COMMITTEE STATEMENT AND VIEWS

### PURPOSE AND SUMMARY

H.R. 6008, the Transit Benefits Modernization Act, allows federal employees to expend their federal transit benefits with digital transportation companies, including transportation network companies and car-sharing services, in the Washington D.C. Metropolitan Area. Under the legislation, an employee may only receive transit benefits for the use of a digital transportation company if he or she declines other transit benefits, and such use may not exceed the monthly average benefit received during the six-month period prior to choosing digital transportation company benefits.

### BACKGROUND AND NEED FOR LEGISLATION

Recently, the Washington Metropolitan Area Transit Authority (WMATA) has experienced a number of high-profile infrastructure related incidents, largely stemming from inadequate long-term maintenance.<sup>1</sup> These events included an incident at the L’Enfant Plaza Metro station, whereby a smoke incident ultimately resulted in the death of a passenger. Despite efforts by WMATA personnel to address the problems that caused the L’Enfant incident, on March 14, 2016, a fire occurred in a tunnel outside of the McPherson Square Metro station as a result of an electrical malfunction involving one of the third-rail power cables—a malfunction similar to that which caused the L’Enfant Plaza incident.<sup>2</sup>

Following this fire, WMATA announced an unprecedented 24-hour shutdown safety surge<sup>3</sup>—an action which disrupted the com-

<sup>1</sup>See e.g. Paul J. Wiedefeld, A Message to Blue, Orange & Silver Line Customers from GM Wiedefeld, WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY (March 14, 2016), available at [http://www.umata.com/rider\\_tools/metro\\_service\\_status/advisories.cfm?AID=5491](http://www.umata.com/rider_tools/metro_service_status/advisories.cfm?AID=5491); and Paul Duggan, et. al., 1 Dead, Dozens Hurt After Metro Car Fills with Smoke, WASH. POST (Jan. 13, 2015), available at [https://www.washingtonpost.com/local/trafficandcommuting/1-dead-dozens-hurt-on-metro-car-filled-with-smoke/2015/01/12/e832c0f0-9aa8-11e4-a7ee-526210d665b4\\_story.html](https://www.washingtonpost.com/local/trafficandcommuting/1-dead-dozens-hurt-on-metro-car-filled-with-smoke/2015/01/12/e832c0f0-9aa8-11e4-a7ee-526210d665b4_story.html).

<sup>2</sup>Paul J. Wiedefeld, A Message to Blue, Orange & Silver Line Customers from GM Wiedefeld, WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY (March 14, 2016), available at [http://www.umata.com/rider\\_tools/metro\\_service\\_status/advisories.cfm?AID=5491](http://www.umata.com/rider_tools/metro_service_status/advisories.cfm?AID=5491).

<sup>3</sup>Press release, All Metrorail Service Will be Suspended Wednesday, March 16, for Emergency Inspections, Washington Metropolitan Area Transit Authority (March 15, 2016), available at [http://www.umata.com/about\\_metro/news/PressReleaseDetail.cfm?ReleaseID=6082](http://www.umata.com/about_metro/news/PressReleaseDetail.cfm?ReleaseID=6082).

mute of Washington D.C. metropolitan area workers to the point that the Office of Personnel Management (OPM) expanded telework authority.<sup>4</sup> Despite the safety surge, the system continued to experience smoke and fire incidents related to electrical and infrastructure maintenance issues.<sup>5</sup> The persistent incidents led WMATA to consider more drastic ways to rapidly improve the safety of the system.

In June 2016, WMATA began the implementation of an aggressive plan to address the deferred maintenance backlog on the Metrorail system. This plan, known as SafeTrack, is designed to accelerate three years' worth of track work into approximately one year and seeks to address safety recommendations issued by the Federal Transit Authority and the National Transportation Safety Board.<sup>6</sup> According to WMATA, SafeTrack provides the additional time necessary to complete track work by implementing 15 "Safety Surges" that "utilize long-duration track outages through around-the-clock single tracking or line-segment shutdowns that will impact rush hour commutes."<sup>7</sup>

As a result of SafeTrack, Metrorail riders have experienced longer travel times, closed stations, and crowded conditions when riding Metrorail. In order to lessen congestion, WMATA has urged riders to consider alternate travel options while work is completed on their lines.<sup>8</sup> Federal employees, who utilize the Metrorail system to complete their daily commutes, have been limited in their ability to find alternative options as a result of the small pool of transportation services for which transit benefits may be used.

In addition to disruptions federal employees face during their home-to-work-to-home commute, the federal government experienced disruptions in its operations as employees arrive late to work. Foreseeing this impact, OPM issued a memorandum on May 20, 2016 urging federal agencies to plan for disruptions to the Metrorail system.<sup>9</sup> H.R. 6008 furthers the goal of OPM's memo by ensuring the disruptions to the federal government from SafeTrack are minimized.

Federal employees already receive transit benefits that encourage beneficiaries to use mass transit for up to \$255 per month under the law.<sup>10</sup> H.R. 6008, introduced by Representative Mark Meadows (R-NC), would help federal employees living and working in the Washington D.C. metropolitan area avoid the effects of SafeTrack for the duration of the program (until December 31, 2018) by allowing them to apply their transit benefits toward the use of a digital transportation company. The bill would help

<sup>4</sup>Status Archives, Wednesday, March 16, 2016 Status, OFFICE OF PERSONNEL MANAGEMENT (March 15, 2016), available at <https://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/status-archives/16/3/15/Open-with-Option-for-Unscheduled-Leave-or-Unscheduled-Telework-730/>.

<sup>5</sup>See e.g. Martin Di Caro, et. al., A Smoke-Filled Red Line Train was Evacuated On Saturday. Here's What Happened, WAMU 88.5 (Apr. 23, 2016), available at <http://wamu.org/news/16/04/23/a-red-line-train-was-evacuated-on-saturday-night-heres-what-happened>.

<sup>6</sup>Washington Metropolitan Area Transit Authority, SafeTrack, available at [wmata.com/rail/safetrack.cfm](http://wmata.com/rail/safetrack.cfm)? (last visited Sept. 20, 2016).

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup>Memorandum from Beth F. Cobert, Acting Director of the Office of Personnel Management, to Heads of Executive Dep'ts and Agencies, *Impact of the Metro SafeTrack Project on Washington, D.C., Area Federal Employees* (May 20, 2016).

<sup>10</sup>5 U.S.C. 7905, in addition to Exec. Order No. 13150, 65 Fed. Reg. 24613 (April 21, 2000), in addition to U.S. Dep't of Transportation, *TranServe F.A.Q.*, available at [transerve.dot.gov/faq.html](http://transerve.dot.gov/faq.html) (last visited Sept. 20, 2016).

WMATA lessen crowding on Metrorail trains as a result of SafeTrack, as federal employees account for 42 percent of WMATA peak-hour commuters.<sup>11</sup>

An earlier version of the bill, H.R. 5647, also introduced by Rep. Meadows, provided authority for use of transportation benefits with transportation network companies only through the proposed end of SafeTrack in June 2017. Several recent announcements by WMATA have extended the expected completion date for SafeTrack past June 2017.<sup>12</sup> As a result, extended periods of single tracking and/or complete shutdowns of rail sections will continue longer than initially expected. This in turn will result in further inconvenience and delays for federal workers.

H.R. 6008 allows employees to utilize digital transportation company transit benefits until December 31, 2018. The longer time frame in the bill ensures federal employees will retain flexibility in using transit benefits should WMATA continue to run into delays while working on the Metrorail system.

In addition to a potentially extended SafeTrack timeline, two other factors contribute to an expectation that longer travel times and the need for alternative transportation methods will continue for federal workers for the foreseeable future. First, WMATA has begun considering proposals that would permanently curtail the hours in which the Metrorail operates.<sup>13</sup> Due to the nature of their work, federal employees may need at times to work late, and the Metrorail's possible future cuts in operating time may disrupt federal employees' ability to get to and from work.

The second factor suggesting continued need for alternative transportation services beyond the end of SafeTrack is a report by the American Public Transportation Association that was requested by WMATA. The report finds that, while SafeTrack is ensuring pressing maintenance needs are met, the system is in a continual state of catch-up as it relates to infrastructure maintenance.<sup>14</sup> The result of this constant state of catch-up on maintenance will likely mean continued track and service disruptions beyond the end of SafeTrack.

#### LEGISLATIVE HISTORY

H.R. 6008, the Transit Benefits Modernization Act, was introduced on September 13, 2016 by Representative Mark Meadows (R-NC), and referred to the Committee on Oversight and Government Reform. In addition, the bill was referred to the Committee on Ways and Means.

On September 15, 2016, the Committee on Oversight and Government Reform favorably reported H.R. 6008, as amended, by unanimous consent.

<sup>11</sup> Washington Metropolitan Area Transit Authority, Metro Facts 2016 1, available at [http://www.wmata.com/about\\_metro/docs/Metro%20Facts%202016.pdf](http://www.wmata.com/about_metro/docs/Metro%20Facts%202016.pdf).

<sup>12</sup> Martine Powers, *Even Congress may be giving up hope that SafeTrack will end on time*, WASH. POST, Sept. 19, 2016, available at <https://www.washingtonpost.com/news/dr-gridlock/wp/2016/09/19/even-congress-may-be-giving-up-hope-that-safetrack-will-end-on-time/> (last visited Sept. 20, 2016).

<sup>13</sup> Martine Powers et. al., *Metro general manager proposes permanent end to late-night service*, WASH. POST, July 26, 2016, available at [https://www.washingtonpost.com/local/trafficandcommuting/metro-general-manager-proposes-permanent-end-to-late-night-service/2016/07/26/b36b15aa-535e-11e6-b7de-dfe509430c39\\_story.html](https://www.washingtonpost.com/local/trafficandcommuting/metro-general-manager-proposes-permanent-end-to-late-night-service/2016/07/26/b36b15aa-535e-11e6-b7de-dfe509430c39_story.html) (last visited Sept. 20, 2016).

<sup>14</sup> American Public Transportation Association, *A Peer Review of Third Rail Power & Infrastructure* (Sept. 21, 2016), available at [http://www.wmata.com/about\\_metro/board\\_of\\_directors/agenda.cfm?agendaID=2588&committeeID=53&committeeName=Safety%20Committee](http://www.wmata.com/about_metro/board_of_directors/agenda.cfm?agendaID=2588&committeeID=53&committeeName=Safety%20Committee).

An earlier version of the bill, H.R. 5647, was introduced on July 6, 2016 by Rep. Meadows and referred to the Committees on Ways and Means and Oversight and Government Reform.

#### SECTION-BY-SECTION

##### *Section 1. Short title; findings*

Designates the short title of the bill as the “Transit Benefits Modernization Act”.

Makes findings of certain facts relating to the Washington Metropolitan Area Transit Authority’s (WMATA) SafeTrack program.

Finds that the federal government is negatively affected when its employees cannot commute to and from work and alternate commuting options are needed during the course of SafeTrack.

##### *Section 2. Providing a fringe transit benefit for use of transportation network companies*

Provides a transit fringe benefit (income that is excluded from taxable gross income) for qualified ride-sharing service provided by a transportation network company between the date of enactment and December 31, 2018.

##### *Section 3. Transit benefits for federal employees for the use of digital transportation companies*

Instructs federal agencies that offer a transit benefit to their employees to include digital transportation companies within their transit benefit programs between the date of enactment and December 31, 2018.

Limits the new transit benefit program to the Washington, D.C., metropolitan area.

Clarifies that unless otherwise statutorily authorized, employees may not accept any other transit benefits or parking benefits offered by agencies while utilizing the digital transportation company benefits.

Limits the amount of the transit benefit for digital transportation companies to the average transit benefit received by the employee during the six month period immediately before the month in which the employee chooses the digital transportation company benefit.

Instructs heads of agencies to work with the Secretary of Transportation and the Secretary of the Treasury to establish a process for the substantiation of the use of digital transportation company benefits by employees.

Defines “Washington Metropolitan Area” as the District of Columbia; Montgomery, Prince George’s, Frederick, and Charles Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties.

Defines “digital transportation company” as any transportation network company or car-sharing service.

Defines “car-sharing service” as a membership or non-membership based service primarily designed for shorter time or shorter distance trips where individuals are charged per mile or per hour, or both, for vehicle usage.

Defines “transportation network company” as a corporation, partnership, sole proprietorship, or other entity that uses a digital network to connect riders to drivers affiliated with the entity in order for a driver to provide transportation services to a rider.

#### EXPLANATION OF AMENDMENTS

During Full Committee consideration of the bill, Representative William Lacy Clay (D–MO) offered an amendment that would allow federal employees to use their transit benefits for car-sharing services in addition to transportation network companies. The Clay amendment was adopted by unanimous consent.

#### COMMITTEE CONSIDERATION

On September 15, 2016, the Committee met in open session and ordered reported favorably the bill, H.R. 6008, as amended, by unanimous consent, a quorum being present.

#### ROLL CALL VOTES

No roll call votes were requested or conducted during Full Committee consideration of H.R. 6008.

#### APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill provides transit benefits to Federal employees who use the services of transportation network companies within the national capital region. As such this bill does not relate to employment or access to public services and accommodations.

#### STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee’s performance goal and objective of the bill is to provide transit benefits to Federal employees who use the services of transportation network companies within the national capital region.

#### DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does direct the completion of specific rule makings within the meaning of 5 U.S.C. 551. Specifically, H.R. 6008 requires agencies, in conjunction with transit entities and the Department of Transportation, to formulate a procedure for providing benefits to employees for use with digital transportation companies. The bill also requires that agencies create and implement a substantiation process to ensure accuracy in benefit calculations.

## FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

## UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

## EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

## COMMITTEE ESTIMATE

At the time of this writing, the Committee had yet to receive a formal cost estimate from the Congressional Budget Office for H.R. 6008. The Committee estimates that H.R. 6008 will not result in significant cost increases for the transit subsidy program from 2017-2018. H.R. 6008 stipulates that individuals who opt to receive their transit benefit in the form of a digital network company benefit, shall only receive a subsidy equal to the average amount received by the employee in the 6-months prior to election of a transportation network company benefit. As a result, the total cost for an individual who opts to receive the digital network company benefit would be no greater than the existing cost of the individual's transit benefit subsidy. The Committee anticipates H.R. 6008 may encourage some new applicants for transit benefit subsidies. However, the number of individuals who opt to receive a transit subsidy who are not currently enrolled in the subsidy program, or receiving a parking benefit, is expected to be nominal. In addition, the need for thorough substantiation of all travel paid for by the subsidy will help to prevent unintended subsidization of non-commute travel.

## BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the



Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has not received a cost estimate for this bill from the Director of Congressional Budget Office, and instead has included a committee estimate in the section prior to this one.

