

sisted of subsecs. (a) to (g) relating to definitions, authority of Secretary, application for grants, apportionment of funds, additional requirements, and availability of funds.

1998—Pub. L. 105 - 178, § 3008(a), amended section catchline and text generally. Prior to amendment, text read as follows:

‘(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants under this section to be used only for capital projects (including capital maintenance items).

‘(b) APPLICATION OF OTHER SECTIONS.—(1) Sections 5307(a) - (d), (h) - (J), and (n) and 5336(a) - (c), (f), (g), and (j) of this title apply to amounts made available under section 5338(a) of this title to carry out this section.

‘(2) Sections 5307(e) and 5336(d) of this title apply to grants under this section.’

Subsec. (e)(2). Pub. L. 105 - 178, § 3008(c), as added by Pub. L. 105 - 206, substituted ‘35 percent’ for ‘\$50,000,000’.

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105 - 206 effective simultaneously with enactment of Pub. L. 105 - 178 and to be treated as included in Pub. L. 105 - 178 at time of enactment, and provisions of Pub. L. 105 - 178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105 - 206 to be treated as not enacted, see section 9016 of Pub. L. 105 - 206, set out as a note under section 101 of Title 23, Highways.

NATIONAL FUEL CELL BUS TECHNOLOGY DEVELOPMENT PROGRAM

Pub. L. 109 - 59, title III, § 3045, Aug. 10, 2005, 119 Stat. 1705, provided that:

‘(a) ESTABLISHMENT.—The Secretary [of Transportation] shall establish a national fuel cell bus technology development program (in this section referred to as the ‘program’) to facilitate the development of commercially viable fuel cell bus technology and related infrastructure.

‘(b) GENERAL AUTHORITY.—The Secretary may enter into grants, contracts, and cooperative agreements with no more than 3 geographically diverse nonprofit organizations and recipients under chapter 53 of title 49, United States Code, to conduct fuel cell bus technology and infrastructure projects under the program.

‘(c) GRANT CRITERIA.—In selecting applicants for grants under the program, the Secretary shall consider the applicant’s—

‘(1) ability to contribute significantly to furthering fuel cell technology as it relates to transit bus operations, including hydrogen production, energy storage, fuel cell technologies, vehicle systems integration, and power electronics technologies;

‘(2) financing plan and cost share potential;

‘(3) fuel cell technology to ensure that the program advances different fuel cell technologies, including hydrogen-fueled and methanol-powered liquid-fueled fuel cell technologies, that may be viable for public transportation systems; and

‘(4) other criteria that the Secretary determines are necessary to carry out the program.

‘(d) COMPETITIVE GRANT SELECTION.—The Secretary shall conduct a national solicitation for applications for grants under the program. Grant recipients shall be selected on a competitive basis. The Secretary shall give priority consideration to applicants that have successfully managed advanced transportation technology projects, including projects related to hydrogen and fuel cell public transportation operations for a period of not less than 5 years.

‘(e) FEDERAL SHARE.—The Federal share of costs of the program shall be provided from funds made available to carry out this section. The Federal share of the cost of a project carried out under the program shall not exceed 50 percent of such cost.

‘(f) GRANT REQUIREMENTS.—A grant under this section shall be subject to—

‘(1) all terms and conditions applicable to a grant made under section 5309 of title 49, United States Code; and

‘(2) such other terms and conditions as are determined by the Secretary.’

CLEAN FUEL VEHICLES

Pub. L. 105 - 178, title III, § 3036, June 9, 1998, 112 Stat. 387, provided that:

‘(a) STUDY.—The Comptroller General shall conduct a study of the various low and zero emission fuel technologies for transit vehicles, including compressed natural gas, liquefied natural gas, biodiesel fuel, battery, alcohol based fuel, hybrid electric, fuel cell, and clean diesel to determine—

‘(1) the status of the development and use of such technologies;

‘(2) the environmental benefits of such technologies under the Clean Air Act [42 U.S.C. 7401 et seq.]; and

‘(3) the cost of such technologies and any associated equipment.

‘(b) REPORT.—Not later than January 1, 2000, the Comptroller General shall transmit 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 results of the study, together with recommendations for incentives to encourage the use of low and zero emission fuel technology for transit vehicles.’

§ 5309. Capital investment grants

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) ALTERNATIVES ANALYSIS.—The term ‘alternatives analysis’ means a study conducted as part of the transportation planning process required under sections 5303 and 5304, which includes—

(A) an assessment of a wide range of public transportation alternatives designed to address a transportation problem in a corridor or subarea;

(B) sufficient information to enable the Secretary to make the findings of project justification and local financial commitment required under this section;

(C) the selection of a locally preferred alternative; and

(D) the adoption of the locally preferred alternative as part of the long-range transportation plan required under section 5303.

(2) MAJOR NEW FIXED GUIDEWAY CAPITAL PROJECT.—The term ‘major new fixed guideway capital project’ means a new fixed guideway capital project for which the Federal assistance provided or to be provided under this section is \$75,000,000 or more.

(3) NEW FIXED GUIDEWAY CAPITAL PROJECT.—The term ‘new fixed guideway capital project’ means a minimum operable segment of a capital project for a new fixed guideway system or extension to an existing fixed guideway system.

(b) GENERAL AUTHORITY.—The Secretary may make grants under this section to assist State and local governmental authorities in financing—

(1) new fixed guideway capital projects under subsections (d) and (e), including the acquisition of real property, the initial acquisition of rolling stock for the systems, the acquisition of rights-of-way, and relocation, for fixed

guideway corridor development for projects in the advanced stages of alternatives analysis or preliminary engineering;

(2) capital projects to modernize existing fixed guideway systems;

(3) capital projects to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities, including programs of bus and bus-related projects for assistance to subrecipients that are public agencies, private companies engaged in public transportation, or private nonprofit organizations; and

(4) the development of corridors to support new fixed guideway capital projects under subsections (d) and (e), including protecting rights-of-way through acquisition, construction of dedicated bus and high occupancy vehicle lanes and park and ride lots, and other nonvehicular capital improvements that the Secretary may decide would result in increased public transportation usage in the corridor.

(c) GRANT REQUIREMENTS.—

(1) IN GENERAL.—The Secretary may not approve a grant for a project under this section unless the Secretary determines that—

(A) the project is part of an approved transportation plan and program of projects required under sections 5303, 5304, and 5306; and

(B) the applicant has, or will have—

(i) the legal, financial, and technical capacity to carry out the project, including safety and security aspects of the project;

(ii) satisfactory continuing control over the use of the equipment or facilities; and

(iii) the capability and willingness to maintain the equipment or facilities.

(2) CERTIFICATION.—An applicant that has submitted the certifications required under subparagraphs (A), (B), (C), and (H) of section 5307(d)(1) shall be deemed to have provided sufficient information upon which the Secretary may make the determinations required under this subsection.

(3) GRANTEE REQUIREMENTS.—The Secretary shall require that any grant awarded under this section to a recipient be subject to all terms, conditions, requirements, and provisions that the Secretary determines to be necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in the value of real property resulting from the project assisted under this section.

(d) MAJOR CAPITAL INVESTMENT GRANTS OF \$75,000,000 OR MORE.—

(1) FULL FUNDING GRANT AGREEMENT.—

(A) IN GENERAL.—A major new fixed guideway capital project shall be carried out through a full funding grant agreement.

(B) CRITERIA.—The Secretary shall enter into a full funding grant agreement, based on the evaluations and ratings required under this subsection, with each grantee receiving assistance for a major new fixed guideway capital project that—

(i) is authorized for final design and construction; and

(ii) has been rated as medium, medium-high, or high, in accordance with paragraph (5)(B).

(2) APPROVAL OF GRANTS.—The Secretary may approve a grant under this section for a major new fixed guideway capital project only if the Secretary, based upon evaluations and considerations set forth in paragraph (3), determines that the project is—

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

(B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, operating efficiencies, economic development effects, and public transportation supportive land use policies and future patterns; and

(C) supported by an acceptable degree of local financial commitment (including evidence of stable and dependable financing sources) to construct, maintain, and operate the system or extension, and maintain and operate the entire public transportation system without requiring a reduction in existing public transportation services or level of service to operate the proposed project.

(3) EVALUATION OF PROJECT JUSTIFICATION.—In making the determinations under paragraph (2)(B) for a major capital investment grant, the Secretary shall analyze, evaluate, and consider—

(A) the results of the alternatives analysis and preliminary engineering for the proposed project;

(B) the reliability of the forecasting methods used to estimate 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 and other benefits achieved through compact land use development, such as positive impacts on the capacity, utilization, or longevity of other surface transportation assets and facilities;

(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 transportation corridor;

(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 subsection.

(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 contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases;

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

(iii) local resources are available to recapitalize and operate the overall proposed public transportation system, including essential feeder bus and other services necessary to achieve the projected ridership levels without requiring a reduction in existing public transportation services or level of service to operate the proposed project.

(B) EVALUATION CRITERIA.—In assessing the stability, reliability, and availability of proposed sources of local financing under paragraph (2)(C), the Secretary shall consider—

(i) the reliability of the forecasting methods used to estimate costs and utilization made by the recipient and the contractors to the recipient;

(ii) existing grant commitments;

(iii) the degree to which financing sources are dedicated to the proposed purposes;

(iv) any debt obligation that exists, or is proposed by the recipient, for the proposed project or other public transportation purpose; and

(v) the extent to which the project has a local financial commitment that exceeds the required non-Federal share of the cost of the project.

(C) CONSIDERATION OF FISCAL CAPACITY OF STATE AND LOCAL GOVERNMENTS.—If the Secretary gives priority to financing projects under this subsection that include more than the non-Federal share required under subsection (h), the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

(5) PROJECT ADVANCEMENT AND RATINGS.—

(A) PROJECT ADVANCEMENT.—A proposed project under this subsection shall not advance from alternatives analysis to preliminary engineering or from preliminary engineering to final design and construction unless the Secretary determines that the project meets the requirements of this section and there is a reasonable likelihood that the project will continue to meet such requirements.

(B) RATINGS.—In making a determination under subparagraph (A), the Secretary shall evaluate and rate the project on a 5-point scale (high, medium-high, medium, medium-low, or low) based on the results of the alternatives analysis, the project justification criteria, and the degree of local financial commitment, as required under this sub-

section. In rating the projects, the Secretary shall provide, in addition to the overall project rating, individual ratings for each of the criteria established by this subsection and shall give comparable, but not necessarily equal, numerical weight to each project justification criteria¹ in calculating the overall project rating.

(6) POLICY GUIDANCE.—

(A) PUBLICATION.—The Secretary shall publish policy guidance regarding the new fixed guideway capital project review and evaluation process and criteria—

(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 process and criteria, but not less frequently than once every 2 years.

(B) PUBLIC COMMENT AND RESPONSE.—The Secretary shall—

(i) invite public comment to the policy guidance published under subparagraph (A); and

(ii) publish a response to the comments received under clause (i).

(e) CAPITAL INVESTMENT GRANTS LESS THAN \$75,000,000.—

(1) IN GENERAL.—

(A) APPLICABILITY OF REQUIREMENTS.—Except as provided by subparagraph (B), a new fixed guideway capital project shall be subject to the requirements of this subsection if the Federal assistance provided or to be provided under this section for the project is less than \$75,000,000 and the total estimated net capital cost of the project is less than \$250,000,000.

(B) PROJECTS RECEIVING LESS THAN \$25,000,000 IN FEDERAL ASSISTANCE.—If the assistance provided under this section with respect to a new fixed guideway capital project is less than \$25,000,000, the requirements of this subsection shall not apply to the project until such date as the final regulation to be issued under paragraph (9) takes effect.

(2) SELECTION CRITERIA.—The Secretary may provide Federal assistance under this subsection with respect to a proposed project only if the Secretary finds that the project is—

(A) based on the results of planning and alternatives analysis;

(B) justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development; and

(C) supported by an acceptable degree of local financial commitment.

(3) PLANNING AND ALTERNATIVES.—In evaluating a project under paragraph (2)(A), the Secretary shall analyze and consider the results of planning and alternatives analysis for the project.

(4) PROJECT JUSTIFICATION.—For purposes of making the finding under paragraph (2)(B), the Secretary shall—

¹ So in original. Probably should be 'criteria'.

(A) determine the degree to which the project is consistent with local land use policies and is likely to achieve local developmental goals;

(B) determine the cost effectiveness of the project at the time of the initiation of revenue service;

(C) determine the degree to which the project will have a positive effect on local economic development;

(D) consider the reliability of the forecasting methods used to estimate costs and ridership associated with the project; and

(E) consider other factors that the Secretary determines appropriate to carry out this subsection.

(5) LOCAL FINANCIAL COMMITMENT.—

(A) IN GENERAL.—For purposes of paragraph (2)(C), the Secretary shall require that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable.

(B) CONSIDERATION OF FISCAL CAPACITY OF STATE AND LOCAL GOVERNMENTS.—If the Secretary gives priority to financing projects under this subsection that include more than the non-Federal share required under subsection (h), the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

(6) ADVANCEMENT OF PROJECT TO DEVELOPMENT AND CONSTRUCTION.—

(A) GENERAL RULE.—A proposed project under this subsection may advance from planning and alternatives analysis to project development and construction only if 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.

(B) EVALUATION.—In making the findings under subparagraph (A), the Secretary shall 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 by this subsection and shall give comparable, but not necessarily equal, numerical weight to each project justification criteria¹ in calculating the overall project rating.

(7) CONTENTS OF PROJECT CONSTRUCTION GRANT AGREEMENT.—A project construction grant agreement under this subsection shall specify the scope of the project to be constructed, the estimated net project cost of the project, the schedule under which the project shall be constructed, the maximum amount of funding to be obtained under this subsection, the proposed schedule for obligation of future Federal grants, and the sources of funding from other than the Government. The agreement may include a commitment on the part of the Secretary to provide funding for the project in future fiscal years.

(8) LIMITATION ON ENTRY INTO CONSTRUCTION GRANT AGREEMENT.—The Secretary may enter into a project construction grant agreement

for a project under this subsection only if the project is authorized for construction and has been rated as high, medium-high, or medium under this subsection.

(9) REGULATIONS.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall issue regulations establishing an evaluation and rating process for proposed projects under this subsection that is based on the results of project justification and local financial commitment, as required under this subsection.

(10) FIXED GUIDEWAY CAPITAL PROJECT.—In this subsection, the term ‘fixed guideway capital project’ includes a corridor-based bus capital project if—

(A) a substantial portion of the project operates in a separate right-of-way dedicated for public transit use during peak hour operations; or

(B) the project represents a substantial investment in a defined corridor as demonstrated by features such as park-and-ride lots, transit stations, bus arrival and departure signage, intelligent transportation systems technology, traffic signal priority, off-board fare collection, advanced bus technology, and other features that support the long-term corridor investment.

(11) IMPACT REPORT.—

(A) IN GENERAL.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2005, the Federal Transit Administration shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the methodology to be used in evaluating the land use and economic development impacts of non-fixed guideway or partial fixed guideway projects.

(B) CONTENTS.—The report submitted under subparagraph (A) shall address any qualitative and quantitative differences between fixed guideway and non-fixed guideway projects with respect to land use and economic development impacts.

(f) PREVIOUSLY ISSUED LETTER OF INTENT OR FULL FUNDING GRANT AGREEMENT.—Subsections (d) and (e) do not apply to projects for which the Secretary has issued a letter of intent or entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2005. Subsection (e) also does not apply to projects for which the Secretary has received an application for final design before such date of enactment.

(g) LETTERS OF INTENT, FULL FUNDING GRANT AGREEMENTS, AND EARLY SYSTEMS WORK AGREEMENTS.—

(1) LETTERS OF INTENT.—

(A) AMOUNTS INTENDED TO BE OBLIGATED.—The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a capital project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the fi-

financial participation of the Secretary in the project. When a letter is issued for fixed guideway projects, the amount shall be sufficient to complete at least an operable segment.

(B) TREATMENT.—The issuance of a letter under subparagraph (A) is deemed not to be an obligation under sections 1108(c), 1108(d), 1501, and 1502(a) of title 31 or an administrative commitment.

(2) FULL FUNDING GRANT AGREEMENTS.—

(A) TERMS.—The Secretary may make a full funding grant agreement with an applicant. The agreement shall—

- (i) establish the terms of participation by the Government in a project under this section;
- (ii) establish the maximum amount of Government financial assistance for the project;
- (iii) cover the period of time for completing the project, including a period extending beyond the period of an authorization; and
- (iv) make timely and efficient management of the project easier according to the law of the United States.

(B) SPECIAL FINANCIAL RULES.—

(i) IN GENERAL.—A full funding grant agreement under this paragraph obligates an amount of available budget authority specified in law and may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law.

(ii) STATEMENT OF CONTINGENT COMMITMENT.—The agreement shall state that the contingent commitment is not an obligation of the Government.

(iii) INTEREST AND OTHER FINANCING COSTS.—Interest and other financing costs of efficiently carrying out a part of the project within a reasonable time are a cost of carrying out the project under a full funding grant agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

(iv) COMPLETION OF OPERABLE SEGMENT.—The amount stipulated in an agreement under this paragraph for a fixed guideway project shall be sufficient to complete at least an operable segment.

(C) BEFORE AND AFTER STUDY.—

(i) IN GENERAL.—A full funding grant agreement under this paragraph shall require the applicant to conduct a study that—

- (I) describes and analyzes the impacts of the new fixed guideway capital project on transit services and transit ridership;
- (II) evaluates the consistency of predicted and actual project characteristics and performance; and

(III) identifies sources of differences between predicted and actual outcomes.

(ii) INFORMATION COLLECTION AND ANALYSIS PLAN.—

(I) SUBMISSION OF PLAN.—Applicants seeking an agreement under this paragraph shall submit a complete plan for the collection and analysis of information to identify the impacts of the new fixed guideway capital project and the accuracy of the forecasts prepared during the development of the project. Preparation of this plan shall be included in the full funding grant agreement as an eligible activity.

(II) CONTENTS OF PLAN.—The plan submitted under subclause (I) shall provide for—

(aa) the collection of data on the current transit system regarding transit service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics;

(bb) documentation of the predicted scope, service levels, capital costs, operating costs, and ridership of the project;

(cc) collection of data on the transit system 2 years after the opening of the new fixed guideway capital project, including analogous information on transit service levels and ridership patterns and information on the as-built scope and capital costs of the project; and

(dd) analysis of the consistency of predicted project characteristics with the after data.

(D) COLLECTION OF DATA ON CURRENT SYSTEM.—To be eligible for a full funding grant agreement under this paragraph, recipients shall have collected data on the current system, according to the plan 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 as an eligible activity.

(3) EARLY SYSTEM WORK AGREEMENTS.—

(A) CONDITIONS.—The Secretary may make an early systems work agreement with an applicant if a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary finds there is reason to believe—

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

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

(B) CONTENTS.—

(i) IN GENERAL.—A work agreement under this paragraph obligates an amount of available budget authority specified in law and shall provide for reimbursement of preliminary costs of carrying out the project, including land acquisition, timely procurement of system elements for which

specifications are decided, and other activities the Secretary decides are appropriate to make efficient, long-term project management easier.

(ii) PERIOD COVERED.—A work agreement under this paragraph shall cover the period of time the Secretary considers appropriate. The period may extend beyond the period of current authorization.

(iii) INTEREST AND OTHER FINANCING COSTS.—Interest and other financing costs of efficiently carrying out the work agreement within a reasonable time are a cost of carrying out the agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

(iv) FAILURE TO CARRY OUT PROJECT.—If an applicant does not carry out the project for reasons within the control of the applicant, the applicant shall repay all Government payments made under the work agreement plus reasonable interest and penalty charges the Secretary establishes in the agreement.

(4) LIMITATION ON AMOUNTS.—

(A) MAJOR CAPITAL INVESTMENT GRANTS CONTINGENT COMMITMENT AUTHORITY.—The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all outstanding letters of intent, full funding grant agreements, and early systems work agreements under this subsection for major new fixed guideway capital projects may be not more than the greater of the amount authorized under sections 5338(a)(3) and 5338(c) for such projects or an amount equivalent to the last 3 fiscal years of funding allocated under subsections (m)(1)(A) and (m)(2)(A)(ii) for such projects, less an amount the Secretary reasonably estimates is necessary for grants under this section for those of such projects that are not covered by a letter or agreement. The total amount covered by new letters and contingent commitments included in full funding grant agreements and early systems work agreements for such projects may be not more than a limitation specified in law.

(B) OTHER CONTINGENT COMMITMENT AUTHORITY.—The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all project construction grant agreements and early system work agreements under this subsection for small capital projects described in subsection (e) may be not more than the greater of the amount allocated under subsection (m)(2)(A)(i) for such projects or an amount equivalent to the last fiscal year of funding allocated under such subsection for such projects, less an amount the Secretary reasonably estimates is necessary for grants under this section for those of such projects that are not covered

by an agreement. The total amount covered by new contingent commitments included in project construction grant agreements and early systems work agreements for such projects may be not more than a limitation specified in law.

(C) INCLUSION OF CERTAIN COMMITMENTS.—Future obligations of the Government and contingent commitments made against the contingent commitment authority under section 3032(g)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 (106 Stat. 2125)² for the San Francisco BART to the Airport project for fiscal years 2002, 2003, 2004, 2005, and 2006 shall be charged against section 3032(g)(2) of that Act.

(D) APPROPRIATION REQUIRED.—An obligation may be made under this subsection only when amounts are appropriated for the obligation.

(5) NOTIFICATION OF CONGRESS.—At least 60 days before issuing a letter of intent or entering into a full funding grant agreement or project construction grant agreement under this section, the Secretary shall notify, in writing, the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project.

(h) GOVERNMENT'S SHARE OF NET PROJECT COST.—

(1) IN GENERAL.—Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net project cost. A grant for the project shall be for 80 percent of the net capital project cost, unless the grant recipient requests a lower grant percentage.

(2) ADJUSTMENT FOR COMPLETION UNDER BUDGET.—The Secretary may adjust the final net project cost of a new fixed guideway capital project evaluated under subsections (d) and (e) 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.—The Secretary may provide a higher grant percentage than requested by the grant recipient if—

(A) the Secretary determines that the net project cost of the project is not more than 10 percent higher than the net project cost estimated at the time the project was approved for advancement into preliminary engineering; and

(B) the ridership estimated for the project is not less than 90 percent of the ridership estimated for the project at the time the project was approved for advancement into preliminary engineering.

²See References in text note below.

(4) REMAINDER OF NET PROJECT COST.—The remainder of net project costs shall be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section, including paragraph (1) and subsections (d)(4)(B)(v) and (e)(5), shall be construed as authorizing the Secretary to require a non-Federal financial commitment for a project that is more than 20 percent of the net capital project cost.

(6) SPECIAL RULE FOR ROLLING STOCK COSTS.—In addition to amounts allowed pursuant to paragraph (1), a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the applicant satisfies the Secretary that only amounts other than amounts of the Government were used and that the purchase was made for use on the extension. A refund or reduction of the remainder may be made only if a refund of a proportional amount of the grant of the Government is made at the same time.

(7) LIMITATION ON APPLICABILITY.—This subsection does not apply to projects for which the Secretary has entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2005.

(i) UNDERTAKING PROJECTS IN ADVANCE.—

(1) IN GENERAL.—The Secretary may pay the Government's share of the net capital project cost to a State or local governmental authority that carries out any part of a project described in this section without the aid of amounts of the Government and according to all applicable procedures and requirements if—

(A) the State or local governmental authority applies for the payment;

(B) the Secretary approves the payment; and

(C) before carrying out the part of the project, the Secretary approves the plans and specifications for the part in the same way as other projects under this section.

(2) FINANCING COSTS.—

(A) IN GENERAL.—The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the State or local governmental authority to the extent proceeds of the bonds are expended in carrying out the part.

(B) LIMITATION ON AMOUNT OF INTEREST.—The amount of interest under this paragraph may not be more than the most favorable interest terms reasonably available for the project at the time of borrowing.

(C) CERTIFICATION.—The applicant shall certify, in a manner satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financial terms.

(j) AVAILABILITY OF AMOUNTS.—

(1) IN GENERAL.—An amount made available or appropriated under section 5338(a)(3)(C)(iii), 5338(a)(3)(C)(iv), 5338(b)(2)(E), or 5338(c) for replacement, rehabilitation, and purchase of buses and related equipment and construction of bus-related facilities or for new fixed guideway

capital projects shall remain available for 3 fiscal years, including the fiscal year in which the amount is made available or appropriated. Any of such amounts that are unobligated at the end of the 3-fiscal-year period may be used by the Secretary for any purpose under this section.

(2) USE OF DEOBLIGATED AMOUNTS.—An amount available under this section that is deobligated may be used for any purpose under this section.

(k) REPORTS ON NEW STARTS.—

(1) ANNUAL REPORT ON FUNDING RECOMMENDATIONS.—Not later than the first Monday in February of each year, the Secretary shall submit to the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate a report that includes—

(A) a proposal of allocations of amounts to be available to finance grants for new fixed guideway capital projects among applicants for these amounts;

(B) evaluations and ratings, as required under subsections (d) and (e), for each such project that is authorized by the Federal Public Transportation Act of 2005; and

(C) recommendations of such projects for funding based on the evaluations and ratings and on existing commitments and anticipated funding levels for the next 3 fiscal years based on information currently available to the Secretary.

(2) ANNUAL GAO REVIEW.—The Comptroller General shall—

(A) conduct an annual review of—

(i) the processes and procedures for evaluating, rating, and recommending new fixed guideway capital projects; and

(ii) the Secretary's implementation of such processes and procedures; and

(B) report to Congress on the results of such review by May 31 of each year.

(l) OTHER REPORTS.—

(1) BEFORE AND AFTER STUDY REPORTS.—Not later than the first Monday of August of each year, the Secretary shall submit to the committees referred to in subsection (k)(1) a report containing a summary of the results of the studies conducted under subsection (g)(2)(C).

(2) 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 to the committees referred to in subsection (k)(1) a report analyzing the consistency and accuracy of cost and ridership estimates made by each contractor to public transportation agencies developing new fixed guideway capital projects.

(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.

(C) CONSIDERATIONS.—In making comparisons under subparagraph (B), the Secretary shall consider factors having an impact on costs and ridership not under the control of the contractor. The Secretary shall also consider the role taken by each contractor in the development of the project.

(3) CONTRACTOR PERFORMANCE INCENTIVE REPORT.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2005, the Secretary shall submit to the committees referred to in subsection (k)(1) a report on the suitability of allowing contractors to public transportation agencies that undertake new fixed guideway capital projects under this section to receive performance incentive awards if a project is completed for less than the original estimated cost.

(m) ALLOCATING AMOUNTS.—

(1) FISCAL YEAR 2005.—Of the amounts made available or appropriated for fiscal year 2005 under section 5338(a)(3)—

(A) \$1,437,829,600 shall be allocated for new fixed capital projects under subsection (d);

(B) \$1,204,684,800 shall be allocated for capital projects for fixed guideway modernization; and

(C) \$669,600,000 shall be allocated for capital projects for buses and bus-related equipment and facilities.

(2) FISCAL YEARS 2006 THROUGH 2009.—The amounts made available or appropriated for fiscal years 2006 through 2009 under sections 5338(b) and 5338(c) shall be allocated as follows:

(A) CAPITAL INVESTMENT GRANTS.—Of the amounts appropriated under section 5338(c)—

(i) \$200,000,000 for each of fiscal years 2007 through 2009 shall be allocated for projects for new fixed guideway capital projects of less than \$75,000,000 in accordance with subsection (e); and

(ii) the remainder shall be allocated for major new fixed guideway capital projects in accordance with subsection (d).

(B) FIXED GUIDEWAY MODERNIZATION.—The amounts made available under section 5338(b)(2)(D) shall be allocated for capital projects for fixed guideway modernization.

(C) BUSES AND BUS-RELATED EQUIPMENT AND FACILITIES.—The amounts made available under section 5338(b)(2)(E) shall be allocated for capital projects for buses and bus-related equipment and facilities.

(3) FIXED GUIDEWAY MODERNIZATION.—The amounts made available for fixed guideway modernization under section 5338(b)(2)(D) for fiscal year 2006 and each fiscal year thereafter shall be allocated in accordance with section 5337.

(4) PRELIMINARY ENGINEERING AND ALTERNATIVES ANALYSIS.—Not more than 8 percent of

the allocation described in paragraph (1)(A) may be expended on alternatives analysis and preliminary engineering.

(5) PRELIMINARY ENGINEERING.—Not more than 8 percent of the allocation described in paragraph (2)(A) may be expended on preliminary engineering.

(6) FUNDING FOR FERRY BOATS.—Of the amounts 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 for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals;

(B) \$15,000,000 shall be available in each of fiscal years 2006 through 2009 for capital projects in Alaska and Hawaii for new fixed guideway ferry systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals; and

(C) \$5,000,000 shall be available for 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 (42 U.S.C. 3121 note) for docks, waterfront development projects, and related transportation infrastructure.

(7) BUS AND BUS FACILITY GRANTS.—The amounts made available under paragraphs (1)(C) and (2)(C) shall be allocated as follows:

(A) FERRY BOAT SYSTEMS.—\$10,000,000 shall be available in each of fiscal years 2006 through 2009 for ferry boats or ferry terminal facilities. Of such funds, the following amounts shall be set aside for each fiscal year:

(i) \$2,500,000 for the San Francisco Water Transit Authority.

(ii) \$2,500,000 for the Massachusetts Bay Transportation Authority Ferry System.

(iii) \$1,000,000 for the Camden, New Jersey Ferry System.

(iv) \$1,000,000 for the Governor's Island, New York Ferry System³

(v) \$1,000,000 for the Philadelphia Penn's Landing Ferry Terminal.

(vi) \$1,000,000 for the Staten Island Ferry.

(vii) \$650,000 for the Maine State Ferry Service, Rockland.

(viii) \$350,000 for the Swans Island, Maine Ferry Service.

(B) FUEL CELL BUS PROGRAM.—The following amounts shall be set aside for the national fuel cell bus technology development program under section 3045 of the Federal Public Transportation Act of 2005:

(i) \$11,250,000 for fiscal year 2006.

(ii) \$11,500,000 for fiscal year 2007.

(iii) \$12,750,000 for fiscal year 2008.

(iv) \$13,500,000 for fiscal year 2009.

(C) PROJECTS NOT IN URBANIZED AREAS.—Not less than 5.5 percent shall be available in each fiscal year for projects that are not in urbanized areas.

(D) INTERMODAL TERMINALS.—Not less than \$35,000,000 shall be available in each fiscal

³ So in original. Probably should be followed by a period.

year for intermodal terminal projects, including the intercity bus portion of such projects.

(E) BUS TESTING.—\$3,000,000 shall be available in each fiscal year for bus testing under section 5318.

(8) BUS AND BUS FACILITY GRANT CONSIDERATIONS.—In making grants under paragraphs (1)(C) and (2)(C), the Secretary shall consider the age and condition of buses, bus fleets, related equipment, and bus-related facilities.

(Pub. L. 103 – 272, § 1(d), July 5, 1994, 108 Stat. 800; Pub. L. 104 – 287, § 5(9), (12), Oct. 11, 1996, 110 Stat. 3389; Pub. L. 102 – 240, title III, § 3049(a), as added Pub. L. 105 – 130, § 8, Dec. 1, 1997, 111 Stat. 2559; Pub. L. 105 – 178, title III, § 3009(a), (c) – (h)(1), (3)(D), (i) – (k), June 9, 1998, 112 Stat. 352 – 357; Pub. L. 105 – 206, title IX, § 9009(g), (h)(3), July 22, 1998, 112 Stat. 855, 856; Pub. L. 106 – 69, title III, § 347, Oct. 9, 1999, 113 Stat. 1024; Pub. L. 106 – 346, § 101(a) [title III, § 380], Oct. 23, 2000, 114 Stat. 1356, 1356A – 42; Pub. L. 106 – 554, § 1(a)(4) [div. A, § 1101], Dec. 21, 2000, 114 Stat. 2763, 2763A – 201; Pub. L. 108 – 88, § 8(a), Sept. 30, 2003, 117 Stat. 1121; Pub. L. 108 – 202, § 9(a), Feb. 29, 2004, 118 Stat. 484; Pub. L. 108 – 224, § 7(a), Apr. 30, 2004, 118 Stat. 632; Pub. L. 108 – 263, § 7(a), June 30, 2004, 118 Stat. 704; Pub. L. 108 – 271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 108 – 280, § 7(a), July 30, 2004, 118 Stat. 882; Pub. L. 108 – 310, § 8(a), Sept. 30, 2004, 118 Stat. 1154; Pub. L. 109 – 14, § 7(a), May 31, 2005, 119 Stat. 330; Pub. L. 109 – 20, § 7(a), July 1, 2005, 119 Stat. 352; Pub. L. 109 – 35, § 7(a), July 20, 2005, 119 Stat. 386; Pub. L. 109 – 37, § 7(a), July 22, 2005, 119 Stat. 401; Pub. L. 109 – 40, § 7(a), July 28, 2005, 119 Stat. 417; Pub. L. 109 – 59, title III, § 3011(a), Aug. 10, 2005, 119 Stat. 1573; Pub. L. 110 – 244, title II, § 201(d), June 6, 2008, 122 Stat. 1610.)

HISTORICAL AND REVISION NOTES
PUB. L. 103 – 272

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5309(a) (1) – (5).	49 App.:1602(a)(1)(A).	July 9, 1964, Pub. L. 88 – 365, § 3(a)(1)(A), 78 Stat. 303; May 25, 1967, Pub. L. 90 – 19, § 20(a), 81 Stat. 25; Oct. 15, 1970, Pub. L. 91 – 453, § 2(2), 84 Stat. 962; Nov. 26, 1974, Pub. L. 93 – 503, §§ 102, 104, 106, 88 Stat. 1566, 1571, 1572; Nov. 6, 1978, Pub. L. 95 – 599, § 302(a), 92 Stat. 2735; Jan. 6, 1983, Pub. L. 97 – 424, § 313, 96 Stat. 2152.
	49 App.:1602(a)(1)(B), (C), (D) (1st, 3d sentences).	July 9, 1964, Pub. L. 88 – 365, § 3(a)(1)(B) – (D), (2)(B), (3), 78 Stat. 303; May 25, 1967, Pub. L. 90 – 19, § 20(a), 81 Stat. 25; Oct. 15, 1970, Pub. L. 91 – 453, § 2(2), 84 Stat. 962; Nov. 26, 1974, Pub. L. 93 – 503, §§ 102, 104, 106, 88 Stat. 1566, 1571, 1572; restated Nov. 6, 1978, Pub. L. 95 – 599, § 302(a), 92 Stat. 2735, 2736.
5309(a)(6).....	49 App.:1602(a)(1)(E).	July 9, 1964, Pub. L. 88 – 365, § 3(a)(1)(E), 78 Stat. 303; May 25, 1967, Pub. L. 90 – 19, § 20(a), 81 Stat. 25; Oct. 15, 1970, Pub. L. 91 – 453, § 2(2), 84 Stat. 962; Nov. 26, 1974, Pub. L. 93 – 503, §§ 102, 104, 106, 88 Stat. 1566, 1571, 1572; Nov. 6, 1978, Pub. L. 95 – 599, § 302(a), 92 Stat. 2736; restated Dec. 18, 1991, Pub. L. 102 – 240, § 3006(a), 105 Stat. 2089.
5309(b)(1)	49 App.:1602(b) (1st sentence).	July 9, 1964, Pub. L. 88 – 365, § 3(b), 78 Stat. 303; May 25, 1967, Pub. L. 90 – 19, § 20(a), 81 Stat. 25; restated Oct. 15, 1970, Pub. L. 91 – 453, § 2(2), 84 Stat. 963; Nov. 6, 1978, Pub. L. 95 – 599, § 302(b), 92 Stat. 2737.
5309(b)(2)	49 App.:1602(a)(2)(B).	
5309(b)(3)	49 App.:1602(b) (8th, last sentences).	
5309(b)(4), (5).	49 App.:1602(b) (2d – 6th sentences).	
5309(c)	49 App.:1602(a)(5).	July 9, 1964, Pub. L. 88 – 365, 78 Stat. 302, § 3(a)(5); added Jan. 6, 1983, Pub. L. 97 – 424, § 304(b), 96 Stat. 2149.
5309(d)	49 App.:1602(a)(2)(A).	July 9, 1964, Pub. L. 88 – 365, § 3(a)(2)(A), 78 Stat. 303; May 25, 1967, Pub. L. 90 – 19, § 20(a), 81 Stat. 25; Oct. 15, 1970, Pub. L. 91 – 453, § 2(2), 84 Stat. 962; Nov. 26, 1974, Pub. L. 93 – 503, §§ 102, 104, 106, 88 Stat. 1566, 1571, 1572; Nov. 6, 1978, Pub. L. 95 – 599, § 302(a), 92 Stat. 2736; Jan. 6, 1983, Pub. L. 97 – 424, § 304(a), 96 Stat. 2149; restated Apr. 2, 1987, Pub. L. 100 – 17, § 309(e), 101 Stat. 227.
5309(e)(1)	49 App.:1602(a)(3). 49 App.:1602 (note).	Apr. 2, 1987, Pub. L. 100 – 17, § 303(b), 101 Stat. 223.
5309(e) (2) – (7).	49 App.:1602(i).	July 9, 1964, Pub. L. 88 – 365, 78 Stat. 302, § 3(i); added Apr. 2, 1987, Pub. L. 100 – 17, § 303(a), 101 Stat. 223; restated Dec. 18, 1991, Pub. L. 102 – 240, § 3010, 105 Stat. 2093.
5309(f)(1)	49 App.:1602(a)(1)(D) (last sentence).	
5309(f)(2)	49 App.:1602(a)(1)(D) (2d sentence).	
5309(g)	49 App.:1602(a)(4).	July 9, 1964, Pub. L. 88 – 365, § 3(a)(4), 78 Stat. 303; May 25, 1967, Pub. L. 90 – 19, § 20(a), 81 Stat. 25; Oct. 15, 1970, Pub. L. 91 – 453, § 2(2), 84 Stat. 962; Nov. 26, 1974, Pub. L. 93 – 503, §§ 102, 104, 106, 88 Stat. 1566, 1571, 1572; restated Nov. 6, 1978, Pub. L. 95 – 599, § 302(a), 92 Stat. 2735, 2736.
5309(h)	49 App.:1603(a).	July 9, 1964, Pub. L. 88 – 365, § 4(a), 78 Stat. 304; May 25, 1967, Pub. L. 90 – 19, § 20(a), 81 Stat. 25; Aug. 1, 1968, Pub. L. 90 – 448, § 704(a), 82 Stat. 535; Oct. 15, 1970, Pub. L. 91 – 453, § 3(a), 84 Stat. 965; Aug. 13, 1973, Pub. L. 93 – 87, § 301(a), 87 Stat. 295; Nov. 26, 1974, Pub. L. 93 – 503, § 103(b), 88 Stat. 1571; Nov. 6, 1978, Pub. L. 95 – 599, § 303(b), 92 Stat. 2737; Jan. 6, 1983, Pub. L. 97 – 424, § 302(b), 96 Stat. 2141; Dec. 18, 1991, Pub. L. 102 – 240, § 3006(f), (g), 105 Stat. 2089.
5309(i)	49 App.:1602(c) (2d, last sentences).	July 9, 1964, Pub. L. 88 – 365, § 3(c), 78 Stat. 303; May 25, 1967, Pub. L. 90 – 19, § 20(a), 81 Stat. 25; restated Oct. 15, 1970, Pub. L. 91 – 453, § 2(2), 84 Stat. 964.
5309(j)	49 App.:1602(b) (7th sentence).	
5309(k)	49 App.:1602(c) (1st	

HISTORICAL AND REVISION NOTES—CONTINUED
PUB. L. 103 – 272

HISTORICAL AND REVISION NOTES—CONTINUED
PUB.L. 103 – 272

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5309(<i>l</i>)	49 App.:1603(d).	July 9, 1964, Pub. L. 88 – 365, 78 Stat. 302, § 4(d); added Dec. 18, 1991, Pub. L. 102 – 240, § 3006(h)(2), 105 Stat. 2090.
5309(m)(1) ..	49 App.:1602(k)(1).	July 9, 1964, Pub. L. 88 – 365, 78 Stat. 302, § 3(k)(1); added Apr. 2, 1987, Pub. L. 100 – 17, § 305, 101 Stat. 224; restated Dec. 18, 1991, Pub. L. 102 – 240, § 3006(d)(1), 105 Stat. 2089.
5309(m)(2) ..	49 App.:1602(k)(3).	July 9, 1964, Pub. L. 88 – 365, 78 Stat. 302, § 3(k)(3); added Dec. 18, 1991, Pub. L. 102 – 240, § 3006(d)(2), 105 Stat. 2089.
5309(m)(3) ..	49 App.:1602(j).	July 9, 1964, Pub. L. 88 – 365, 78 Stat. 302, § 3(j); added Apr. 2, 1987, Pub. L. 100 – 17, § 304, 101 Stat. 223.
5309(m)(4) ..	49 App.:1602(k)(2).	July 9, 1964, Pub. L. 88 – 365, 78 Stat. 302, § 3(k)(2); added Apr. 2, 1987, Pub. L. 100 – 17, § 305, 101 Stat. 224.
5309(n)	49 App.:1602(<i>l</i>).	July 9, 1964, Pub. L. 88 – 365, 78 Stat. 302, § 3(<i>l</i>); added Apr. 2, 1987, Pub. L. 100 – 17, § 306(a), 101 Stat. 224; Dec. 18, 1991, Pub. L. 102 – 240, § 3006(e), 105 Stat. 2089.
5309(<i>o</i>)	49 App.:1602(n).	July 9, 1964, Pub. L. 88 – 365, 78 Stat. 302, § 3(n); added Oct. 6, 1992, Pub. L. 102 – 388, § 502(d), 106 Stat. 1566.

In subsection (a), before clause (1), the words ‘in accordance with the provisions of this chapter’ are omitted as surplus. The words ‘and on such terms and conditions as the Secretary may prescribe’ and 49 App.:1602(a)(1)(D) (3d sentence) are omitted as unnecessary because of section 5334(a) of the revised title and 49:322(a). The words ‘(directly, through the purchase of securities or equipment trust certificates, or otherwise)’ and ‘and agencies thereof’ are omitted as surplus. In clause (1), the word ‘detailed’ is omitted as surplus. In clause (2), the words ‘capital projects’ are substituted for ‘the acquisition, construction, reconstruction, and improvement of facilities and equipment for use, by operation or lease or otherwise, in mass transportation service’ for clarity and consistency in this section. The words ‘Eligible facilities and equipment may include personal property such as buses and other rolling stock, and rail and bus facilities, and real’ are omitted as surplus. The text of 49 App.:1602(a)(1)(B) (last sentence) is omitted as obsolete because former 49 App.:1604(a)(4) is executed and is not included in this restatement. In clause (3), the words ‘the capital costs of’ are added for clarity and consistency in this section. The words ‘highway and’ are omitted as surplus.

In subsection (b)(1), the word ‘finance’ is omitted as surplus.

In subsection (b)(2), the words ‘for real property acquisition’ are omitted as surplus. The words ‘for an approved project’ are added for clarity and consistency. The words ‘which shall be in lieu of the determination required by subparagraph (A)’ , ‘real’ , and ‘connection with’ are omitted as surplus.

In subsection (b)(3), the word ‘comprehensive’ is omitted as surplus. The words ‘by the project’ are added for clarity. The words ‘a period of’ and ‘longer’ are omitted as surplus.

In subsection (b)(4), the words ‘a period not exceeding’ and ‘Each agreement shall provide that’ are omitted as surplus. The words ‘shall be made within the 10-year period’ are substituted for ‘shall not be later than 10 years following the fiscal year in which the agreement is made’ to eliminate unnecessary words. The words ‘if any, over the original cost of the real property’ are omitted as surplus. The words ‘deposit in’ are substituted for ‘credit to’ for consistency

in the revised title and with other titles of the United States Code.

In subsection (b)(5), the word ‘actual’ is omitted as surplus. The words ‘deposited in’ are substituted for ‘credited to’ for consistency in the revised title and with other titles of the Code.

In subsection (c), before clause (1), the words ‘grant or loan’ are substituted for ‘assistance’ for consistency in the revised section. In clause (1), the words ‘rail carrier’ are substituted for ‘railroad’ for consistency in the revised title and with other titles of the Code.

In subsection (d), before clause (1), the words ‘Except as provided in subsections (b)(2) and (e) of this section’ are added for clarity. In clause (1), the words ‘through operation or lease or otherwise’ are omitted as surplus.

In subsection (e)(2), before clause (A), the word ‘existing’ is added for clarity and consistency.

In subsection (e)(6)(C), the words ‘Part A of title I of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102 – 240, 105 Stat. 1915)’ are substituted for ‘the Federal-Aid Highway Act of 1991’ because the Federal-Aid Highway Act of 1991 was title I of H.R. 1531, that was not enacted into law but contained predecessor provisions to Part A of title I of H.R. 2950, enacted into law as the Intermodal Surface Transportation Efficiency Act of 1991.

In subsection (f)(1), the words ‘or entity’ are omitted as surplus.

In subsection (f)(2), before clause (A), the words ‘for a project under subsection (a)(5) of this section’ are added for clarity. In clause (B), the words ‘whether publicly or privately owned’ are omitted as surplus.

In subsection (g)(1)(A), the words ‘The letter shall be regarded as an intention to obligate’ are omitted as surplus.

In subsection (g)(1)(D), the words ‘pursuant to such a letter of intent’ are omitted as surplus.

In subsection (g)(2)(A)(i), the words ‘and conditions’ are omitted as being included in ‘terms’.

In subsection (g)(4), the word ‘issued’ is omitted as surplus. The text of 49 App.:1602(a)(4)(E) (3d sentence) is omitted as executed. The text of 49 App.:1602(a)(4)(E) (4th and last sentences) is omitted as obsolete.

In subsection (h), the words ‘nature and extent of’ are omitted as surplus. The words ‘net project cost’ are substituted for ‘what portion of the cost of a project to be assisted under section 1602 of this Appendix cannot be reasonably financed from revenues— which portion shall hereinafter be called ‘net project cost’ because of the definition of ‘net project cost’ in section 5302(a) of the revised title. The words ‘Except as provided in paragraph (2) of this subsection’ are added for clarity. The words ‘Such remainder may be provided in whole or in part from other than public sources and any public or private’ , ‘solely’ , and ‘at any time’ are omitted as surplus. The words ‘shall be deemed’ are omitted as unnecessary since the text is a statement of a legal conclusion.

In subsection (i), before clause (1), the words ‘Except for a loan under subsection (b) of this section’ are added for clarity. The words ‘made under this section’ and ‘at a rate’ are omitted as surplus. In clause (1), the word ‘market’ is omitted as surplus. In clause (2), the words ‘under the program’ are omitted as surplus.

In subsection (j), the words ‘loan and interest’ are substituted for ‘principal and accrued interest on the loan then outstanding’ to eliminate unnecessary words.

In subsection (m)(1)(B) and (3), the word ‘existing’ is added for clarity and consistency.

In subsection (m)(1), before clause (A), the words ‘Subject to paragraph (3)’ are omitted as surplus. The reference to fiscal year 1992 is omitted as obsolete.

In subsection (m)(3), before clause (A), the words ‘Not later than 30 days after April 2, 1987’ are omitted as executed. The words ‘prepare and’ are omitted as surplus. The text of 49 App.:1602(j)(1) is omitted as obsolete because 49 App.:1602(k)(1) was restated by section 3006(d)(1) of the Intermodal Surface Transportation Ef-

iciency Act of 1991 (Public Law 102 - 240, 105 Stat. 2089) and clause (D) was not carried forward.

In subsection (m)(4), the text of 49 App.:1602(k)(2)(B) is omitted as expired.

In subsection (n)(2), the words ‘ ‘Subject to the provisions of this paragraph’ ’, ‘ ‘the Federal share of which the Secretary is authorized to pay under this subsection’ ’, and ‘ ‘actually’ ’ are omitted as surplus.

PUB. L. 104 - 287, § 5(12)(A)

This amends 49:5309(a) to clarify the restatement of 49 App.:1602(a)(1) by section 1 of the Act of July 5, 1994 (Public Law 103 - 272, 108 Stat. 800).

PUB. L. 104 - 287, § 5(12)(B)

This amends 49:5309(e)(4)(B) to correct an erroneous cross-reference.

PUB. L. 104 - 287, § 5(12)(C)

This amends 49:5309(m)(1)(A) to make a conforming amendment.

REFERENCES IN TEXT

The date of enactment of the Federal Public Transportation Act of 2005, referred to in subsecs. (d)(6)(A)(i), (e)(9), (11)(A), (f), (h)(7), and (j)(2)(A), (3), is the date of enactment of title III of Pub. L. 109 - 59, which was approved Aug. 10, 2005.

The National Environmental Policy Act of 1969, referred to in subsec. (g)(3)(A), is Pub. L. 91 - 190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

Section 3032(g)(2) of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (g)(4)(C), is section 3032(g)(2) of Pub. L. 102 - 240, title III, Dec. 18, 1991, 105 Stat. 2125, which is not classified to the Code.

The Federal Public Transportation Act of 2005, referred to in subsec. (k)(1)(B), is title III of Pub. L. 109 - 59, Aug. 10, 2005, 119 Stat. 1544. For complete classification of this Act to the Code, see Short Title of 2005 Amendment note set out under section 5101 of this title and Tables.

Section 307(e) of the Denali Commission Act of 1998, referred to in subsec. (m)(6)(C), is section 307(e) of title III of div. C of Pub. L. 105 - 277, which is set out as a note under section 3121 of Title 42, The Public Health and Welfare.

Section 3045 of the Federal Public Transportation Act of 2005, referred to in subsec. (m)(7)(B), is section 3045 of Pub. L. 109 - 59, which is set out as a note under section 5308 of this title.

AMENDMENTS

2008—Subsec. (d)(5)(B). Pub. L. 110 - 244, § 201(d)(1), substituted ‘ ‘this subsection and shall give comparable, but not necessarily equal, numerical weight to each project justification criteria in calculating the overall project rating.’ ’ for ‘ ‘regulation.’ ’

Subsec. (e)(6)(B). Pub. L. 110 - 244, § 201(d)(2), substituted ‘ ‘subsection and shall give comparable, but not necessarily equal, numerical weight to each project justification criteria in calculating the overall project rating.’ ’ for ‘ ‘subsection.’ ’

Subsec. (m)(2)(A). Pub. L. 110 - 244, § 201(d)(3), substituted ‘ ‘Capital’ ’ for ‘ ‘Major capital’ ’ in heading.

Subsec. (m)(7)(B). Pub. L. 110 - 244, § 201(d)(4), substituted ‘ ‘section 3045’ ’ for ‘ ‘section 3039’ ’ in introductory provisions.

2005—Pub. L. 109 - 59 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (p) providing for grants and loans to assist State and local governmental authorities in financing capital projects related to fixed guideway systems, capital projects needed for an efficient and coordinated mass transportation system, the capital costs

of coordinating mass transportation with other transportation, the introduction of new technology, and mass transportation projects to meet the special needs of elderly individuals and individuals with disabilities.

Subsec. (m)(1). Pub. L. 109 - 40, § 7(a)(1), substituted ‘ ‘July 30, 2005’ ’ for ‘ ‘July 27, 2005’ ’ in introductory provisions.

Pub. L. 109 - 37, § 7(a)(1), substituted ‘ ‘July 27, 2005’ ’ for ‘ ‘July 21, 2005’ ’ in introductory provisions.

Pub. L. 109 - 35, § 7(a)(1), substituted ‘ ‘July 21, 2005’ ’ for ‘ ‘July 19, 2005’ ’ in introductory provisions.

Pub. L. 109 - 20, § 7(a)(1), substituted ‘ ‘July 19, 2005’ ’ for ‘ ‘June 30, 2005’ ’ in introductory provisions.

Pub. L. 109 - 14, § 7(a)(1), substituted ‘ ‘June 30, 2005’ ’ for ‘ ‘May 31, 2005’ ’ in introductory provisions.

Subsec. (m)(2)(B)(iii). Pub. L. 109 - 40, § 7(a)(2), substituted ‘ ‘JULY 30, 2005’ ’ for ‘ ‘JULY 27, 2005’ ’ in heading and ‘ ‘July 30, 2005’ ’ for ‘ ‘July 27, 2005’ ’ and ‘ ‘\$8,550,000’ ’ for ‘ ‘\$8,547,000’ ’ in text.

Pub. L. 109 - 37, § 7(a)(2), substituted ‘ ‘JULY 27, 2005’ ’ for ‘ ‘JULY 21, 2005’ ’ in heading and ‘ ‘July 27, 2005’ ’ for ‘ ‘July 21, 2005’ ’ and ‘ ‘\$8,547,000’ ’ for ‘ ‘\$8,424,000’ ’ in text.

Pub. L. 109 - 35, § 7(a)(2), substituted ‘ ‘JULY 21, 2005’ ’ for ‘ ‘JULY 19, 2005’ ’ in heading and ‘ ‘July 21, 2005’ ’ for ‘ ‘July 19, 2005’ ’ and ‘ ‘\$8,424,000’ ’ for ‘ ‘\$8,320,000’ ’ in text.

Pub. L. 109 - 20, § 7(a)(2), substituted ‘ ‘JULY 19, 2005’ ’ for ‘ ‘JUNE 30, 2005’ ’ in heading and ‘ ‘July 19, 2005’ ’ for ‘ ‘JUNE 30, 2005’ ’ and ‘ ‘\$8,320,000’ ’ for ‘ ‘\$7,800,000’ ’ in text.

Pub. L. 109 - 14, § 7(a)(2), substituted ‘ ‘JUNE 30, 2005’ ’ for ‘ ‘MAY 31, 2005’ ’ in heading and ‘ ‘June 30, 2005’ ’ for ‘ ‘MAY 31, 2005’ ’ and ‘ ‘\$7,800,000’ ’ for ‘ ‘\$6,933,333’ ’ in text.

Subsec. (m)(3)(B). Pub. L. 109 - 40, § 7(a)(3), substituted ‘ ‘\$2,470,000’ ’ for ‘ ‘\$2,465,754’ ’ and ‘ ‘July 30, 2005’ ’ for ‘ ‘July 27, 2005’ ’.

Pub. L. 109 - 37, § 7(a)(3), substituted ‘ ‘\$2,465,754’ ’ for ‘ ‘\$2,430,000’ ’ and ‘ ‘July 27, 2005’ ’ for ‘ ‘July 21, 2005’ ’.

Pub. L. 109 - 35, § 7(a)(3), substituted ‘ ‘\$2,430,000’ ’ for ‘ ‘\$2,400,000’ ’ and ‘ ‘July 21, 2005’ ’ for ‘ ‘July 19, 2005’ ’.

Pub. L. 109 - 20, § 7(a)(3), substituted ‘ ‘\$2,400,000’ ’ for ‘ ‘\$2,250,000’ ’ and ‘ ‘July 19, 2005’ ’ for ‘ ‘June 30, 2005’ ’.

Pub. L. 109 - 14, § 7(a)(3), substituted ‘ ‘\$2,250,000’ ’ for ‘ ‘\$2,000,000’ ’ and ‘ ‘June 30, 2005’ ’ for ‘ ‘May 31, 2005’ ’.

Subsec. (m)(3)(C). Pub. L. 109 - 40, § 7(a)(4), substituted ‘ ‘\$41,506,850’ ’ for ‘ ‘\$41,095,900’ ’ and ‘ ‘July 30, 2005’ ’ for ‘ ‘July 27, 2005’ ’.

Pub. L. 109 - 37, § 7(a)(4), substituted ‘ ‘\$41,095,900’ ’ for ‘ ‘\$40,500,000’ ’ and ‘ ‘July 27, 2005’ ’ for ‘ ‘July 21, 2005’ ’.

Pub. L. 109 - 35, § 7(a)(4), substituted ‘ ‘\$40,500,000’ ’ for ‘ ‘\$40,000,000’ ’ and ‘ ‘July 21, 2005’ ’ for ‘ ‘July 19, 2005’ ’.

Pub. L. 109 - 20, § 7(a)(4), substituted ‘ ‘\$40,000,000’ ’ for ‘ ‘\$37,500,000’ ’ and ‘ ‘July 19, 2005’ ’ for ‘ ‘June 30, 2005’ ’.

Pub. L. 109 - 14, § 7(a)(4), substituted ‘ ‘\$37,500,000’ ’ for ‘ ‘\$33,333,333’ ’ and ‘ ‘June 30, 2005’ ’ for ‘ ‘May 31, 2005’ ’.

2004—Subsec. (m)(1). Pub. L. 108 - 310, § 8(a)(1), inserted ‘ ‘and for the period of October 1, 2004, through May 31, 2005’ ’ after ‘ ‘2004’ ’ in introductory provisions.

Pub. L. 108 - 280, § 7(a)(1)(A), struck out ‘ ‘2003 and for the period of October 1, 2003, through July 31,’ ’ before ‘ ‘2004’ ’ in introductory provisions.

Pub. L. 108 - 263, § 7(a)(1)(A), substituted ‘ ‘July 31, 2004’ ’ for ‘ ‘June 30, 2004’ ’ in introductory provisions.

Pub. L. 108 - 224, § 7(a)(1)(A), substituted ‘ ‘June 30, 2004’ ’ for ‘ ‘April 30, 2004’ ’ in introductory provisions.

Pub. L. 108 - 202, § 9(a)(1)(A), substituted ‘ ‘April 30, 2004’ ’ for ‘ ‘February 29, 2004’ ’ in introductory provisions.

Subsec. (m)(1)(A). Pub. L. 108 - 280, § 7(a)(1)(B), substituted ‘ ‘, except for fiscal year 2004 during which \$1,206,506,000 will be available’ ’ for ‘ ‘, except for the period beginning on October 1, 2003, and ending on July 31, 2004, during which \$999,489,679 will be available’ ’.

Pub. L. 108 - 263, § 7(a)(1)(A), (B), substituted ‘ ‘July 31, 2004’ ’ for ‘ ‘June 30, 2004’ ’ and ‘ ‘\$999,489,679’ ’ for ‘ ‘\$899,540,711’ ’.

Pub. L. 108 - 224, § 7(a)(1)(B), substituted ‘ ‘June 30, 2004, during which \$899,540,711 will be available’ ’ for ‘ ‘April 30, 2004, during which \$699,642,775 will be available’ ’.

Pub. L. 108 - 202, § 9(a)(1)(B), inserted ‘ ‘, except for the period beginning on October 1, 2003, and ending on April 30, 2004, during which \$699,642,775 will be available’ ’ after ‘ ‘modernization’ ’.

Subsec. (m)(1)(B). Pub. L. 108 - 280, § 7(a)(1)(C), substituted ' , except for fiscal year 2004 during which \$1,323,794,000 will be available ' for ' , except for the period beginning on October 1, 2003, and ending on July 31, 2004, during which \$1,096,653,013 will be available '.

Pub. L. 108 - 263, § 7(a)(1)(A), (C), substituted ' July 31, 2004 ' for ' June 30, 2004 ' and ' \$1,096,653,013 ' for ' \$986,987,712 '.

Pub. L. 108 - 224, § 7(a)(1)(C), substituted ' June 30, 2004, during which \$986,987,712 will be available ' for ' April 30, 2004, during which \$767,657,109 will be available '.

Pub. L. 108 - 202, § 9(a)(1)(C), inserted ' , except for the period beginning on October 1, 2003, and ending on April 30, 2004, during which \$767,657,109 will be available ' before the semicolon.

Subsec. (m)(1)(C). Pub. L. 108 - 280, § 7(a)(1)(D), substituted ' , except for fiscal year 2004 during which \$607,200,000 will be available ' for ' , except for the period beginning on October 1, 2003, and ending on July 31, 2004, during which \$503,014,600 will be available '.

Pub. L. 108 - 263, § 7(a)(1)(A), (D), substituted ' July 31, 2004 ' for ' June 30, 2004 ' and ' \$503,014,600 ' for ' \$452,713,140 '.

Pub. L. 108 - 224, § 7(a)(1)(D), which directed the amendment of subpar. (C) without providing closing quotation marks designating the provisions to be inserted, was executed by substituting ' 2003, and ending on June 30, 2004, during which \$452,713,140 will be available ' for ' 2003 and ending on April 30, 2004, during which \$352,110,220 will be available ' , to reflect the probable intent of Congress.

Pub. L. 108 - 202, § 9(a)(1)(D), inserted ' , except for the period beginning on October 1, 2003 and ending on April 30, 2004, during which \$352,110,220 will be available ' after ' facilities '.

Subsec. (m)(2)(B)(i). Pub. L. 108 - 280, § 7(a)(2)(A), substituted ' 2004 ' for ' 2003 '.

Subsec. (m)(2)(B)(iii). Pub. L. 108 - 310, § 8(a)(2), added cl. (iii).

Pub. L. 108 - 280, § 7(a)(2)(B), struck out heading and text of cl. (iii). Text read as follows: ' Of the amounts made available under paragraph (1)(B), \$8,615,533 shall be available for the period beginning on October 1, 2003, and ending on July 31, 2004, for capital projects described in clause (i). '

Pub. L. 108 - 263, § 7(a)(2), inserted cl. (iii) and struck out heading and text of former cl. (iii). Prior to amendment, text read as follows: ' Of the amounts made available under paragraph (1)(B), \$7,753,980 shall be available for the period beginning on October 1, 2003, and ending on June 30, 2004, for capital projects described in clause (i). '

Pub. L. 108 - 224, § 7(a)(2), amended heading and text of cl. (iii) generally. Prior to amendment, text read as follows: ' Of the amounts made available under paragraph (1)(B), \$6,066,667 shall be available for the period beginning on October 1, 2003, and ending on April 30, 2004, for capital projects described in clause (i). '

Pub. L. 108 - 202, § 9(a)(2), amended heading and text of cl. (iii) generally. Prior to amendment, text read as follows: ' Of the amounts made available under paragraph (1)(B), \$4,333,333 shall be available for the period of October 1, 2003, through February 29, 2004, for capital projects described in clause (i). '

Subsec. (m)(3)(B). Pub. L. 108 - 310, § 8(a)(3), inserted ' (and \$2,000,000 shall be available for the period October 1, 2004, through May 31, 2005) ' after ' 2004 '.

Pub. L. 108 - 280, § 7(a)(3), substituted ' 2004 ' for ' 2003 (and \$2,485,250 shall be available for the period October 1, 2003, through July 31, 2004) '.

Pub. L. 108 - 263, § 7(a)(3), substituted ' \$2,485,250 ' for ' \$2,236,725 ' and ' July 31, 2004 ' for ' June 30, 2004 '.

Pub. L. 108 - 224, § 7(a)(3), substituted ' \$2,236,725 ' for ' \$1,750,000 ' and ' June 30, 2004 ' for ' April 30, 2004 '.

Pub. L. 108 - 202, § 9(a)(3), substituted ' \$1,750,000 ' for ' \$1,250,000 ' and ' April 30, 2004 ' for ' February 29, 2004 '.

Subsec. (m)(3)(C). Pub. L. 108 - 310, § 8(a)(4), inserted ' , and \$33,333,333 shall be available for the period October 1, 2004, through May 31, 2005, ' after ' 2004 '.

Pub. L. 108 - 280, § 7(a)(4), substituted ' 1999 through 2004 ' for ' 1999 through 2003 ' and ' \$50,000,000 ' for

' \$41,420,833 ' , and ' fiscal year 2004 ' for ' the period October 1, 2003, through July 31, 2004 '.

Pub. L. 108 - 263, § 7(a)(4), substituted ' \$41,420,833 ' for ' \$37,278,750 ' and ' July 31, 2004 ' for ' June 30, 2004 '.

Pub. L. 108 - 224, § 7(a)(4), substituted ' \$37,278,750 ' for ' \$28,994,583 ' and ' June 30, 2004 ' for ' April 30, 2004 '.

Pub. L. 108 - 202, § 9(a)(4), substituted ' \$28,994,583 shall be transferred to and administered under section 5309 for buses and bus facilities ' for ' \$20,833,334 shall be available ' and ' April 30, 2004 ' for ' February 29, 2004 '.

Subsec. (o)(3). Pub. L. 108 - 271 substituted ' Government Accountability Office ' for ' General Accounting Office ' in introductory provisions.

2003—Subsec. (m)(1). Pub. L. 108 - 88, § 8(a)(1), inserted ' and for the period of October 1, 2003, through February 29, 2004 ' after ' 2003 '.

Subsec. (m)(2)(B). Pub. L. 108 - 88, § 8(a)(2), added cl. (iii).

Subsec. (m)(3)(B). Pub. L. 108 - 88, § 8(a)(3), inserted ' (and \$1,250,000 shall be available for the period October 1, 2003, through February 29, 2004) ' after ' 2003 '.

Subsec. (m)(3)(C). Pub. L. 108 - 88, § 8(a)(4), inserted ' (and \$20,833,334 shall be available for the period October 1, 2003, through February 29, 2004) ' after ' 2003 '.

2000—Subsec. (g)(4). Pub. L. 106 - 346 designated existing provisions as subpar. (A) and added subpars. (B) to (G).

Subsec. (g)(4)(D)(2). Pub. L. 106 - 554 struck out ' light ' before ' rail extension '.

1999—Subsec. (g)(1)(B). Pub. L. 106 - 69 inserted ' and the House and Senate Committees on Appropriations ' after ' Committee on Banking, Housing, and Urban Affairs of the Senate '.

1998—Pub. L. 105 - 178, § 3009(a), substituted ' Capital investment ' for ' Discretionary ' in section catchline.

Subsec. (a)(1)(E) to (H). Pub. L. 105 - 178, § 3009(c), added subpars. (E) and (F), redesignated former subpars. (F) and (G) as (G) and (H), respectively, and struck out former subpar. (E) which read as follows: ' transportation projects that enhance urban economic development or incorporate private investment, including commercial and residential development, because the projects—

(i) enhance the effectiveness of a mass transportation project and are related physically or functionally to that mass transportation project; or

(ii) establish new or enhanced coordination between mass transportation and other transportation; '

Subsec. (c). Pub. L. 105 - 178, § 3009(d), amended subsec. (c) generally, substituting ' [Reserved.] ' for former heading and text which read as follows:

(c) CONSIDERATION OF DECREASED COMMUTER RAIL TRANSPORTATION.—The Secretary of Transportation shall consider the adverse effect of decreased commuter rail transportation when deciding whether to approve a grant or loan under this section to acquire a rail line and all related facilities—

(1) owned by a rail carrier subject to reorganization under title 11; and

(2) used to provide commuter rail transportation. '

Subsec. (e). Pub. L. 105 - 178, § 3009(k)(1), as added by Pub. L. 105 - 206, § 9009(g), in par. (3)(C), substituted ' suburban sprawl ' for ' urban sprawl ' , and in par. (6), substituted ' or 'not recommended' , based ' for ' or not recommended ' , based ' in second sentence and inserted ' of the ' before ' criteria established ' in last sentence.

Pub. L. 105 - 178, § 3009(e), reenacted heading without change and amended text of subsec. (e) generally. Prior to amendment, subsec. (e) related to, in par. (1), applicability of subsection to projects, in par. (2), approval of grants or loans for capital projects, in par. (3), criteria for making approval decisions, in par. (4), issuance of guidelines on evaluation of alternatives, project justification, and degree of local financial commitment, in par. (5), advancement of project from alternatives analysis to preliminary engineering, in par. (6), exemptions from requirements of subsection, and in par. (7), requirement of full financing agreement.

Subsec. (f). Pub. L. 105 - 178, § 3009(h)(1), amended subsec. (f) generally, substituting ' [Reserved.] ' for former heading and text which read as follows:

(f) REQUIRED PAYMENTS AND ELIGIBLE COSTS OF PROJECTS THAT ENHANCE URBAN ECONOMIC DEVELOPMENT OR INCORPORATE PRIVATE INVESTMENT.—(1) Each grant or loan under subsection (a)(5) of this section shall require that a person making an agreement to occupy space in a facility pay a reasonable share of the costs of the facility through rental payments and other means.

(2) Eligible costs for a project under subsection (a)(5) of this section—

(A) include property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, and a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall; but

(B) do not include construction of a commercial revenue-producing facility or a part of a public facility not related to mass transportation.

Subsec. (g). Pub. L. 105–178, §3009(f)(1), substituted ‘Funding’ for ‘Financing’ in heading.

Subsec. (g)(1)(B). Pub. L. 105–178, §3009(f)(3), substituted ‘At least 60 days’ for ‘At least 30 days’ and ‘letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project’ for ‘issuance of the letter’ and inserted ‘or entering into a full funding grant agreement’ after ‘subparagraph (A) of this paragraph’.

Subsec. (g)(2)(A), (B), (3)(A)(i). Pub. L. 105–178, §3009(f)(2), substituted ‘full funding’ for ‘full financing’.

Subsec. (g)(4). Pub. L. 105–178, §3009(k)(2), as added by Pub. L. 105–206, §9009(g), substituted ‘5338(b) of this title for new fixed guideway systems and extensions to existing fixed guideway systems and the amount appropriated under section 5338(h)(5) or an amount equivalent to the last 2 fiscal years of funding authorized under section 5338(b) for new fixed guideway systems and extensions to existing fixed guideway systems’ for ‘5338(a) of this title to carry out this section or an amount equivalent to the total authorizations under section 5338(b) for new fixed guideway systems and extensions to existing fixed guideway systems for fiscal years 2002 and 2003’.

Pub. L. 105–178, §3009(f)(2), (4), substituted ‘full funding’ for ‘full financing’ before ‘grant agreements’ in two places and ‘an amount equivalent to the total authorizations under section 5338(b) for new fixed guideway systems and extensions to existing fixed guideway systems for fiscal years 2002 and 2003’ for ‘50 percent of the uncommitted cash balance remaining in the Mass Transit Account of the Highway Trust Fund (including amounts received from taxes and interest earned that are more than amounts previously obligated)’.

Subsec. (m). Pub. L. 105–178, §3009(k)(3), as added by Pub. L. 105–206, §9009(g), substituted ‘5338(b)’ for ‘5338’ in introductory provisions of par. (1), added par. (2) and struck out former par. (2) relating to limitation on amounts available for activities other than final design and construction, redesignated par. (4) as (3)(C), added pars. (3)(D) and (4), and struck out par. (5) relating to funding for ferry boat systems.

Pub. L. 105–178, §3009(g), reenacted heading without change and amended text of subsec. (m) generally, substituting provisions allocating amounts for fiscal years 1998 to 2003 for provisions allocating amounts for each fiscal year ending Sept. 30 from 1993 to 1997 and for period of Oct. 1, 1997 to Mar. 31, 1998.

Subsec. (n)(2). Pub. L. 105–178, §3009(h)(3)(D), as added by Pub. L. 105–206, §9009(h)(3), substituted ‘in a manner satisfactory’ for ‘in a way satisfactory’.

Subsec. (o). Pub. L. 105–178, §3009(i), added subsec. (o) relating to reports.

Subsec. (p). Pub. L. 105–178, §3009(j), added subsec. (p). 1997—Subsec. (m)(1). Pub. L. 102–240, §3049(a), as added by Pub. L. 105–130, inserted ‘’, and for the period of October 1, 1997, through March 31, 1998, after ‘1997’.

1996—Subsec. (a). Pub. L. 104–287, §5(12)(A), designated existing provisions as par. (1), redesignated former

pars. (1) to (7) as subpars. (A) to (G) of par. (1), respectively, and former subpars. (A) and (B) of par. (5) as subcls. (i) and (ii) of subpar. (E), respectively, and added par. (2).

Subsec. (e)(4)(B). Pub. L. 104–287, §5(12)(B), substituted ‘paragraph(2)’ for ‘paragraph(1)(B)’.

Subsec. (g)(1)(B). Pub. L. 104–287, §5(9), substituted ‘Transportation and Infrastructure’ for ‘Public Works and Transportation’.

Subsec. (m)(1)(A). Pub. L. 104–287, §5(12)(C), inserted ‘rail’ before ‘fixed guideway modernization’.

Subsec. (m)(3). Pub. L. 104–287, §5(9), substituted ‘Transportation and Infrastructure’ for ‘Public Works and Transportation’.

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105–206 effective simultaneously with enactment of Pub. L. 105–178 and to be treated as included in Pub. L. 105–178 at time of enactment, and provisions of Pub. L. 105–178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105–206 to be treated as not enacted, see section 9016 of Pub. L. 105–206, set out as a note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 5(12) of Pub. L. 104–287 effective July 5, 1994, see section 8(1) of Pub. L. 104–287, set out as a note under section 5303 of this title.

TRANSIT TUNNELS

Pub. L. 110–244, title II, §201(p), June 6, 2008, 122 Stat. 1615, provided that: ‘In carrying out section 5309(d)(3)(D) of title 49, United States Code, the Secretary of Transportation shall specifically analyze, evaluate, and consider—

(1) the congestion relief, improved mobility, and other benefits of transit tunnels in those projects which include a transit tunnel; and

(2) the associated ancillary and mitigation costs necessary to relieve congestion, improve mobility, and decrease air and noise pollution in those projects which do not include a transit tunnel, but where a transit tunnel was one of the alternatives analyzed.’

PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM

Pub. L. 109–59, title III, §3011(c), Aug. 10, 2005, 119 Stat. 1588, provided that:

(1) ESTABLISHMENT.—The Secretary [of Transportation] may establish and implement a pilot program to demonstrate the advantages and disadvantages of public-private partnerships for certain new fixed guideway capital projects.

(2) LIMITATION ON THE NUMBER OF FACILITIES.—The Secretary may permit the establishment of 3 public-private partnerships for new fixed guideway capital projects.

(3) ELIGIBILITY.—To be eligible to participate in the public-private partnership program, a recipient shall submit to the Secretary an application that contains, at a minimum, the following:

(A) An identification of the new fixed guideway capital project that has not entered into a full funding grant agreement or project construction grant agreement with the Federal Transit Administration.

(B) A schedule and finance plan for the construction of and operation of the proposed project.

(C) An analysis of the costs, benefits, and efficiencies of the proposed public-private partnership agreement.

(4) SELECTION CRITERIA.—The Secretary may approve the application of a recipient under this subsection if the Secretary determines that—

(A) State and local laws permit public-private agreements for all phases of project development, construction, and operation of the project;

(B) the recipient is unable to advance the project due to fiscal constraints; and

(C) the plan implementing the public-private partnership is justified.

‘(5) PROGRAM TERM.—The Secretary may approve an application of a recipient for a public-private partnership for fiscal years 2006 through 2009.’

‘(6) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act [Aug. 10, 2005], the Secretary shall transmit 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 containing an assessment of the costs, benefits, and efficiencies of a public-private partnership program for new fixed guideway capital projects.’

REPORT TO CONGRESS ON USE OF FUNDS UNDER
PUB. L. 105 – 178

Pub. L. 105 – 200, title IV, §403(b), July 16, 1998, 112 Stat. 670, provided that: ‘Not later than 2 years after the date of the enactment of this Act [July 16, 1998], the Secretary of Transportation, in consultation with the Secretary of Health and Human Services, shall submit to the Committees on Ways and Means and on Transportation and Infrastructure of the House of Representatives and the Committees on Finance and on Environment and Public Works of the Senate a report that—

‘(1) describes the manner in which funds made available under section 3037 of the Transportation Equity Act for the 21st Century [Pub. L. 105 – 178, set out as a note below] have been used;

‘(2) describes whether such uses of such funds has improved transportation services for low-income individuals; and

‘(3) contains such other relevant information as may be appropriate.’

DOLLAR VALUE OF MOBILITY IMPROVEMENTS

Pub. L. 105 – 178, title III, §3010, June 9, 1998, 112 Stat. 357, as amended by Pub. L. 105 – 206, title IX, §9009(i), July 22, 1998, 112 Stat. 856, provided that:

‘(a) IN GENERAL.—The Secretary [of Transportation] shall not consider the dollar value of mobility improvements, as specified in the report required under section 5309(o) (as added by this Act), in evaluating projects under section 5309 of title 49, United States Code, in developing regulations, or in carrying out any other duty of the Secretary.

‘(b) STUDY.—

‘(1) IN GENERAL.—The Comptroller General shall conduct a study of the dollar value of mobility improvements and the relationship of mobility improvements to the overall transportation justification of a new fixed guideway system or extension to an existing system.

‘(2) REPORT.—Not later than January 1, 2000, the Comptroller General shall transmit 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 results of the study under paragraph (1), including an analysis of the factors relevant to determining the dollar value of mobility improvements.’

JOB ACCESS AND REVERSE COMMUTE GRANTS

Pub. L. 105 – 178, title III, §3037, June 9, 1998, 112 Stat. 387, as amended by Pub. L. 105 – 206, title IX, §9009(w), July 22, 1998, 112 Stat. 862; Pub. L. 108 – 88, §8(j), Sept. 30, 2003, 117 Stat. 1124; Pub. L. 108 – 202, §9(j), Feb. 29, 2004, 118 Stat. 488; Pub. L. 108 – 224, §7(j), Apr. 30, 2004, 118 Stat. 636; Pub. L. 108 – 263, §7(j), June 30, 2004, 118 Stat. 707; Pub. L. 108 – 280, §7(j), July 30, 2004, 118 Stat. 884; Pub. L. 108 – 310, §8(j), Sept. 30, 2004, 118 Stat. 1157; Pub. L. 109 – 14, §7(k), May 31, 2005, 119 Stat. 333; Pub. L. 109 – 20, §7(k), July 1, 2005, 119 Stat. 355; Pub. L. 109 – 35, §7(k), July 20, 2005, 119 Stat. 388; Pub. L. 109 – 37, §7(k), July 22, 2005, 119 Stat. 403; Pub. L. 109 – 40, §7(k), July 28, 2005, 119 Stat. 420, which authorized the Secretary of Transportation to make access to jobs grants and reverse commute grants to assist qualified entities in financing eligible projects, was repealed by Pub. L. 109 – 59, title III, §3018(c), Aug. 10, 2005, 119 Stat. 1605, effective Oct. 1, 2005. See section 5316 of this title.

ENCOURAGEMENT OF ADVERSELY AFFECTED INDUSTRIES
TO COMPETE FOR CONTRACTS

Pub. L. 91 – 453, §10, Oct. 15, 1970, 84 Stat. 968, as amended by Pub. L. 102 – 240, title III, §3003(b), Dec. 18, 1991, 105 Stat. 2088, provided that: ‘The Secretary of Transportation shall in all ways (including the provision of technical assistance) encourage industries adversely affected by reductions in Federal Government spending on space, military, and other Federal projects to compete for the contracts provided for under sections 3 and 6 of the Federal Transit Act (49 U.S.C. 1602 and 1605) [now 49 U.S.C. 5309 and 5312], as amended by this Act.’

§ 5310. Formula grants for special needs of elderly individuals and individuals with disabilities

(a) GENERAL AUTHORITY.—

(1) GRANTS.—The Secretary may make grants to States and local governmental authorities under this section for public transportation capital projects planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities.

(2) SUBRECIPIENTS.—A State that receives a grant under this section may allocate the amounts provided under the grant to—

(A) a private nonprofit organization, if the public transportation service provided under paragraph (1) is unavailable, insufficient, or inappropriate; or

(B) a governmental authority that—

(i) is approved by the State to coordinate services for elderly individuals and individuals with disabilities; or

(ii) certifies that there are not any nonprofit organizations readily available in the area to provide the services described under paragraph (1).

(3) ACQUIRING PUBLIC TRANSPORTATION SERVICES.—A public transportation capital project under this section may include acquisition of public transportation services as an eligible capital expense.

(4) ADMINISTRATIVE EXPENSES.—A State or local governmental authority may use not more than 10 percent of the amounts apportioned to the State under this section to administer, plan, and provide technical assistance for a project funded under this section.

(b) APPORTIONMENT AND TRANSFERS.—

(1) FORMULA.—The Secretary shall apportion amounts made available to carry out this section under a formula the Secretary administers that considers the number of elderly individuals and individuals with disabilities in each State.

(2) TRANSFER OF FUNDS.—Any funds apportioned to a State under paragraph (1) 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.

(c) GOVERNMENT’S SHARE OF COSTS.—

(1) CAPITAL PROJECTS.—

(A) IN GENERAL.—A grant for a capital project under this section shall be for 80 percent of the net capital costs of the project, as determined by the Secretary.