

1 **§104. Apportionment**

2 (b) Division Among Programs of State's Share of Base

3 Apportionment.-The Secretary shall distribute the amount of
4 the base apportionment apportioned to a State for a fiscal year
5 under subsection (c) among the national highway performance
6 program, the surface transportation block grant program, the
7 highway safety improvement program, the congestion
8 mitigation and air quality improvement program, the national
9 highway freight program, the carbon reduction program under
10 section 175, to carry out subsection (c) of the PROTECT
11 program under section 176, and to carry out section 134 as
12 follows:

13 (1) National highway performance program.-For the
14 national highway performance program,
15 ~~59.0771195921461~~ 53.71 percent of the amount
16 remaining after distributing amounts under ~~paragraphs~~
17 ~~(4), (5), and (6)~~ (paragraphs (4), (5), (9), and (10)).

18 (2) Surface transportation block grant program.-For the
19 surface transportation block grant program,
20 ~~28.7402203421251~~ 31.07 percent of the amount
21 remaining after distributing amounts under ~~paragraphs~~
22 ~~(4), (5), and (6)~~ (paragraphs (4), (5), (9), and (10)).

23 (3) Highway safety improvement program.-For the
24 highway safety improvement program,
25 ~~6.70605141316253~~ 7.61 percent of the amount
26 remaining after distributing amounts under ~~paragraphs~~
27 ~~(4), (5), and (6)~~ (paragraphs (4), (5), (9), and (10)).

1 (4) Congestion mitigation and air quality improvement
2 program.-

3 (A) In general.-For the congestion mitigation and
4 air quality improvement program, an amount
5 determined for the State under subparagraphs
6 (B) and (C).

7 (B) Total amount.-The total amount for the
8 congestion mitigation and air quality
9 improvement program for all States shall be-

10 (i) \$2,536,490,803 for fiscal year 2022;

11 (ii) \$2,587,220,620 for fiscal year 2023;

12 (iii) \$2,638,965,032 for fiscal year 2024;

13 (iv) \$2,691,744,332 for fiscal year 2025;

14 and

15 (v) \$2,745,579,213 for fiscal year 2026.

16 (C) State share.-For each fiscal year, the
17 Secretary shall distribute among the States the
18 total amount for the congestion mitigation and
19 air quality improvement program under
20 subparagraph (B) so that each State receives an
21 amount equal to the proportion that-

22 (i) the amount apportioned to the State
23 for the congestion mitigation and air
24 quality improvement program for fiscal
25 year 2020; bears to

1 (ii) the total amount of funds apportioned
2 to all States for that program for fiscal
3 year 2020.

4 (5) National highway freight program.-

5 (A) In general.-For the national highway freight
6 program under section 167, the Secretary shall
7 set aside from the base apportionment
8 determined for a State under subsection (c) an
9 amount determined for the State under
10 subparagraphs (B) and (C).

11 (B) Total amount.-The total amount set aside for
12 the national highway freight program for all
13 States shall be-

14 (i) \$1,373,932,519 for fiscal year 2022;

15 (ii) \$1,401,411,169 for fiscal year 2023;

16 (iii) \$1,429,439,392 for fiscal year 2024;

17 (iv) \$1,458,028,180 for fiscal year 2025;

18 and

19 (v) \$1,487,188,740 for fiscal year 2026.

20 (C) State share.-For each fiscal year, the
21 Secretary shall distribute among the States the
22 total set-aside amount for the national highway
23 freight program under subparagraph (B) so that
24 each State receives the amount equal to the
25 proportion that-

- 1 (i) the total base apportionment
2 determined for the State under
3 subsection (c); bears to
4 (ii) the total base apportionments for all
5 States under subsection (c).

6 (6) Metropolitan planning.-

7 (A) In general.-To carry out section 134, an
8 amount determined for the State under
9 subparagraphs (B) and (C).

10 ~~(B) Total amount.-The total amount for~~
11 ~~metropolitan planning for all States shall be-~~

12 ~~(i) \$438,121,139 for fiscal year 2022;~~

13 ~~(ii) \$446,883,562 for fiscal year 2023;~~

14 ~~(iii) \$455,821,233 for fiscal year 2024;~~

15 ~~(iv) \$464,937,657 for fiscal year 2025; and~~

16 ~~(v) \$474,236,409 for fiscal year 2026.~~

17 ~~(B) The total amount for metropolitan planning~~
18 ~~for all States each fiscal year shall be 2.5 percent~~
19 ~~of the amount remaining after distributing~~
20 ~~amounts under paragraph (4), (5), (9), and (10)~~

21 (C) State share.-For each fiscal year, the
22 Secretary shall distribute among the States the
23 total amount to carry out section 134 under
24 subparagraph (B) so that each State receives an
25 amount equal to the proportion that-

1 (i) the amount apportioned to the State to
2 carry out section 134 for fiscal year 2020;
3 bears to

4 (ii) the total amount of funds apportioned
5 to all States to carry out section 134 for
6 fiscal year 2020.

7 (7) Carbon reduction program.-For the carbon reduction
8 program under section 175, ~~2.56266964565637~~ 2.39
9 percent of the amount remaining after distributing
10 amounts under ~~paragraphs (4), (5), and (6)~~ (paragraphs
11 (4), (5), (9), and (10)).

12 (8) PROTECT formula program.-To carry out subsection
13 (c) of the PROTECT program under section 176,
14 ~~2.91393900690991~~ 2.72 percent of the amount
15 remaining after distributing amounts under ~~paragraphs~~
16 ~~(4), (5), and (6)~~ (paragraphs (4), (5), (9), and (10)).

17 (9) Strengthening Bridges Formula Program.-

18 (A) In General.- For the strengthening bridges
19 formula program under section 180, the
20 Secretary shall set aside from the base
21 apportionment determined for a State under
22 subsection (c) an amount determined for the
23 State under subparagraphs (B) and (C).

24 (B) Total Amount.- The total amount set aside for
25 the strengthening bridges formula program for all
26 States shall be \$5,500,000,000 for each fiscal
27 year between 2027 and 2031.

1 (C) State Share.- Notwithstanding subparagraph
2 (D), for each fiscal year, after the setting aside
3 funds as required by section 180(e), the
4 Secretary shall distribute among the States the
5 remaining amount for the strengthening bridges
6 formula program under subparagraph (B) so that
7 each State receives the amount equal to the
8 proportion that –

9 (i) the total cost of replacing or
10 rehabilitating all bridges classified in poor
11 condition in such State; bears to

12 (ii) the total cost of replacing or
13 rehabilitating all bridges classified in poor
14 condition in all States.

15 (D) Determination of costs.- For purposes of
16 subparagraph (C), the Secretary shall determine
17 replacement and rehabilitation costs based on
18 the average unit costs of bridges from 2021
19 through 2024, as submitted by States to the
20 Federal Highway Administration as required by
21 section 144(b)(5).

22 (E) Minimum Amount.- The minimum amount
23 that the Secretary apportions to a State in a
24 fiscal year under this program shall be
25 \$45,000,000.

26 (10) Regional Transportation Planning.-

1 (A) In General.- To carry out section 135(n) of this
2 title, an amount determined for the State under
3 subparagraphs (C) of this subsection.

4 (B) Total Amount.- The total amount to carry out
5 section 135(n) of this title for all States shall be
6 \$150,000,000 for each fiscal year between 2027
7 and 2031.

8 (C) Distribution Among The States.- For each
9 fiscal year, the Secretary shall distribute the
10 amounts authorized to carry out section 135(n)
11 of this title among the States in the same
12 proportion as the amount distributed to the State
13 share under subsection (b) of this section.

14 (D) Administration.- Up to 5 percent of the
15 amounts provided to each State may be used by
16 the State to administer this program.

17 **§133. Surface transportation block grant program**

18 (d) Allocations of Apportioned Funds to Areas Based on
19 Population.-

20 (1) Calculation.-Of the funds apportioned to a State
21 under section 104(b)(2) (after the set aside of funds
22 under subsection (h))-

23 (A) 55 percent for each of fiscal years 2022
24 through 2026 shall be obligated under this
25 section, in proportion to their relative shares of
26 the population of the State-

1 (i) in urbanized areas of the State with an
2 urbanized area population of over
3 200,000;

4 (ii) in urbanized areas of the State with an
5 urbanized area population of not less
6 than 50,000 and not more than 200,000;

7 (iii) in urban areas of the State with a
8 population not less than 5,000 and not
9 more than 49,999; and

10 (iv) in other areas of the State with a
11 population less than 5,000; and

12 (B) the remainder may be obligated in any area of
13 the State.

14 (2) Metropolitan areas.-Funds attributed to an
15 urbanized area under paragraph (1)(A)(i) may be
16 obligated in the metropolitan area established under
17 section 134 that encompasses the urbanized area.

18 (3) Local consultation.-

19 (A) Consultation with metropolitan planning
20 organizations.-For purposes of clause (ii) of
21 paragraph (1)(A), a State shall-

22 (i) establish a process to consult with all
23 metropolitan planning organizations in
24 the State that represent an urbanized area
25 described in that clause; and

1 (ii) describe how funds allocated for areas
2 described in that clause will be allocated
3 equitably among the applicable
4 urbanized areas during the period of fiscal
5 years 2022 through 2026.

6 (B) Consultation with regional transportation
7 planning organizations.-For purposes of clauses
8 (iii) and (iv) of paragraph (1)(A), before obligating
9 funding attributed to an area with a population
10 less than 50,000, a State shall consult with the
11 regional transportation planning organizations
12 that represent the area, if any.

13 (C) Consultation with Local Governments.- For
14 purposes of clauses (iii) and (iv) of paragraph
15 (1)(A), before obligating funding attributed to an
16 area with a population of less than 50,000 that is
17 not represented by a regional transportation
18 planning organization, a State shall consult with
19 local governments in that area and may partner
20 with nonpartisan, statewide organizations
21 representing local governments and their
22 elected leaders in order to facilitate such
23 consultation.

24 (4) Distribution among urbanized areas of over 200,000
25 population.-

26 (A) In general.-Except as provided in
27 subparagraph (B), the amount of funds that a
28 State is required to obligate under paragraph

1 (1)(A)(i) shall be obligated in urbanized areas
2 described in paragraph (1)(A)(i) based on the
3 relative population of the areas.

4 (B) Other factors.-The State may obligate the
5 funds described in subparagraph (A) based on
6 other factors if the State and the relevant
7 metropolitan planning organizations jointly apply
8 to the Secretary for the permission to base the
9 obligation on other factors and the Secretary
10 grants the request.

11 (5) Applicability of planning requirements.-Programming
12 and expenditure of funds for projects under this section
13 shall be consistent with sections 134 and 135.

14 **§180. Strengthening bridges formula program**

15 (a) Establishment.- The Secretary shall establish a program
16 in accordance with this section to provide funding for
17 bridge projects.

18 (b) Eligible Uses.- Funds apportioned to a State under this
19 section may be obligated for the construction,
20 replacement, rehabilitation, preservation, and
21 protection of highway bridges on public roads.

22 (c) Suballocation of Apportioned Funds.-

23 (1) Calculation.- Of the funds apportioned to a State
24 under section 104(b)(9) (after the set aside of
25 funds under subsection (e)), the State shall
26 obligate-

1 (A) 25 percent in the following areas in
2 proportion to their relative shares of the
3 population of the State-

4 (i) in urbanized areas of the
5 State with an urbanized
6 population of over 200,000;

7 (ii) in urbanized areas of the
8 State with an urbanized
9 population of not less than
10 50,000 and not more than
11 200,000;

12 (iii) in urban areas of the State
13 with a population of not
14 less than 5,000 and not
15 more than 49,999; and

16 (iv) in other areas of the State
17 with a population less than
18 5,000; and

19 (B) the remainder may be obligated in any area
20 of the State.

21 (2) Treatment of Funds.- Funds made available to
22 carry out this section shall be administered as if
23 apportioned under Section 104(e) and Section
24 104(i) of Title 23, United States Code (as
25 amended).

26 (3) Project Selection.- A State shall only obligate
27 funding under this section for-

28 (A) In areas of more than 50,000, projects
29 that have been included on the

1 Transportation Improvement Program for
2 the metropolitan planning organization
3 representing that area;
4 (B) in areas under 50,000 that are covered by
5 a regional transportation planning
6 organization, projects that are identified
7 in cooperation with said regional
8 transportation planning organization; and
9 (C) in areas under 50,000 that are not
10 covered by a regional transportation
11 planning organization, projects that are
12 selected in consultation with local
13 governments in that area.
14 (4) In order to facilitate better consultation with
15 local governments to identify eligible projects,
16 the State may work with nonpartisan, statewide
17 organizations representing units of local
18 government and their elected officials.
19 (d) Applicability of Planning Requirements.- Programming
20 and expenditure of funds for projects under this section
21 shall be consistent with sections 134 and 135 of title 23,
22 United States Code.
23 (e) Set Asides.- The Secretary shall set aside-
24 (1) 3 percent of the funds available for this program
25 in each fiscal year to carry out section 202(d) of
26 title 23, United States Code; and
27 (2) Up to one-half of 1 percent of the amounts made
28 available for this program for the administration

1 and operations of the Federal Highway
2 Administration.
3 (f) Cost Share.-
4 (1) In General.- For funds made available from this
5 program, the Federal share shall be determined
6 in accordance with section 120 of title 23, United
7 States Code.
8 (2) Local, Off-System Bridge.- For funding for a
9 project used on an off-system bridge that is
10 owned by a local government or Tribe, the
11 Federal share shall be 100 percent.

12 **§148. Highway safety improvement program**

13 (a) Definitions.-In this section, the following definitions apply:

14 (1) High risk rural road.-The term "high risk rural road"
15 means any roadway functionally classified as a rural
16 major or minor collector or a rural local road with
17 significant safety risks, as defined by a State in
18 accordance with an updated State strategic highway
19 safety plan.
20 (2) Highway basemap.-The term "highway basemap"
21 means a representation of all public roads that can be
22 used to geolocate attribute data on a roadway.
23 (3) Highway safety improvement program.-The term
24 "highway safety improvement program" means projects,
25 activities, plans, and reports carried out under this
26 section.
27 (4) Highway safety improvement project.-

1 (A) In general.-The term "highway safety
2 improvement project" means strategies,
3 activities, and projects on a public road that are
4 consistent with a State strategic highway safety
5 plan and-

6 (i) correct or improve a hazardous road
7 location or feature; or

8 (ii) address a highway safety problem.

9 (B) Inclusions.-The term "highway safety
10 improvement project" only includes a project for
11 1 or more of the following:

12 (i) An intersection safety improvement
13 that provides for the safety of all road
14 users, as appropriate, including a
15 multimodal roundabout.

16 (ii) Pavement and shoulder widening
17 (including addition of a passing lane to
18 remedy an unsafe condition).

19 (iii) Installation of rumble strips or another
20 warning device, if the rumble strips or
21 other warning devices do not adversely
22 affect the safety or mobility of bicyclists
23 and pedestrians, including persons with
24 disabilities.

25 (iv) Installation of a skid-resistant surface
26 at an intersection or other location with a
27 high frequency of crashes.

- 1 (v) An improvement for pedestrian or
2 bicyclist safety or safety of persons with
3 disabilities.
- 4 (vi) Construction and improvement of a
5 railway-highway grade crossing safety
6 feature, including installation of
7 protective devices or a grade separation
8 project.
- 9 (vii) The conduct of a model traffic
10 enforcement activity at a railway-highway
11 crossing.
- 12 (viii) Construction or installation of
13 features, measures, and road designs to
14 calm traffic and reduce vehicle speeds.
- 15 (ix) Elimination of a roadside hazard.
- 16 (x) Installation, replacement, and other
17 improvement of highway signage and
18 pavement markings, or a project to
19 maintain minimum levels of
20 retroreflectivity, that addresses a highway
21 safety problem consistent with a State
22 strategic highway safety plan.
- 23 (xi) Installation of a priority control system
24 for emergency vehicles at signalized
25 intersections.

- 1 (xii) Installation of a traffic control or other
2 warning device at a location with high
3 crash potential.
- 4 (xiii) Transportation safety planning.
- 5 (xiv) Collection, analysis, and
6 improvement of safety data.
- 7 (xv) Planning integrated interoperable
8 emergency communications equipment,
9 operational activities, or traffic
10 enforcement activities (including police
11 assistance) relating to work zone safety.
- 12 (xvi) Installation of guardrails, barriers
13 (including barriers between construction
14 work zones and traffic lanes for the safety
15 of road users and workers), and crash
16 attenuators.
- 17 (xvii) The addition or retrofitting of
18 structures or other measures to eliminate
19 or reduce crashes involving vehicles and
20 wildlife.
- 21 (xviii) Installation of yellow-green signs
22 and signals at pedestrian and bicycle
23 crossings and in school zones.
- 24 (xix) Construction and operational
25 improvements on high risk rural roads.

- 1 (xx) Geometric improvements to a road
2 for safety purposes that improve safety.
- 3 (xxi) A road safety audit.
- 4 (xxii) Roadway safety infrastructure
5 improvements consistent with the
6 recommendations included in the
7 publication of the Federal Highway
8 Administration entitled "Highway Design
9 Handbook for Older Drivers and
10 Pedestrians" (FHWA–RD–01–103), dated
11 May 2001 or as subsequently revised and
12 updated.
- 13 (xxiii) Truck parking facilities eligible for
14 funding under section 1401 of the MAP–
15 21.
- 16 (xxiv) Systemic safety improvements.
- 17 (xxv) Installation of vehicle-to-
18 infrastructure communication
19 equipment.
- 20 (xxvi) Installation or upgrades of traffic
21 control devices for pedestrians and
22 bicyclists, including pedestrian hybrid
23 beacons and the addition of bicycle
24 movement phases to traffic signals.
- 25 (xxvii) Roadway improvements that
26 provide separation between pedestrians
27 and motor vehicles or between bicyclists

1 and motor vehicles, including medians,
2 pedestrian crossing islands, protected
3 bike lanes, and protected intersection
4 features.

5 (xxviii) A pedestrian security feature
6 designed to slow or stop a motor vehicle.

7 (xxix) A physical infrastructure safety
8 project not described in clauses (i)
9 through (xxviii).

10 (xxx) Any project that was eligible for
11 funding under section 24112 of the
12 Infrastructure Investment and Jobs Act
13 (23 U.S.C 402 note).

14 (d) Allocations of Apportioned Funds Based on Population.-

15 (1) Calculation.- Of the funds apportioned to a State
16 under section 104(b)(3)-

17 (A) 25 percent shall be obligated under this
18 section, in proportion to their relative shares of
19 the population of the State-

20 (i) in urbanized areas of the State with an
21 urbanized area population of over
22 200,000;

23 (ii) in urbanized areas of the State with an
24 urbanized area population of not less
25 than 50,000 and not more than 200,000;

1 (iii) in urban areas of the State with a
2 population not less than 5,000 and not
3 more than 49,999; and

4 (iv) in other areas of the State with a
5 population less than 5,000; and

6 (B) the remainder may be obligated in any area of
7 the State.

8 (2) Project Selection.- A State shall only obligate funding
9 under this section for-

10 (A) in areas of more than 50,000, projects that
11 have been included on the Transportation
12 Improvement Program for the metropolitan
13 planning organization representing that area;

14 (B) in areas under 50,000 that are covered by a
15 regional transportation planning organization,
16 projects that are identified in cooperation with
17 said regional transportation planning
18 organization; and

19 (C) in areas under 50,000 that are not covered by
20 a regional transportation planning organization,
21 projects that are selected in consultation with
22 local governments in that area.

23 (3) Consultation.- In order to facilitate better
24 consultation with local governments to identify eligible
25 projects, the State may work with nonpartisan,
26 statewide organizations representing units of local
27 government and their elected officials.

1 (4) Applicability of Planning Requirements.-
2 Programming and expenditure of funds for projects
3 under this section shall be consistent with sections 134
4 and 135 of title 23, United States Code.

5 (e d) Updates to Strategic Highway Safety Plans.-

6 (1) Establishment of requirements.-

7 (A) In general.-Not later than 1 year after the date
8 of enactment of the MAP-21, the Secretary shall
9 establish requirements for regularly recurring
10 State updates of strategic highway safety plans.

11 (B) Contents of updated strategic highway safety
12 plans.-In establishing requirements under this
13 subsection, the Secretary shall ensure that
14 States take into consideration, with respect to
15 updated strategic highway safety plans-

16 (i) the findings of road safety audits;

17 (ii) the locations of fatalities and serious
18 injuries;

19 (iii) the locations that do not have an
20 empirical history of fatalities and serious
21 injuries, but possess risk factors for
22 potential crashes;

23 (iv) rural roads, including all public roads,
24 commensurate with fatality data;

1 (v) motor vehicle crashes that include
2 fatalities or serious injuries to pedestrians
3 and bicyclists;
4 (vi) the cost-effectiveness of
5 improvements;
6 (vii) improvements to rail-highway grade
7 crossings; and
8 (viii) safety on all public roads, including
9 non-State-owned public roads and roads
10 on tribal land.

11 (2) Approval of updated strategic highway safety plans.-

12 (A) In general.-Each State shall-

13 (i) update the strategic highway safety
14 plans of the State in accordance with the
15 requirements established by the
16 Secretary under this subsection; and
17 (ii) submit the updated plans to the
18 Secretary, along with a detailed
19 description of the process used to update
20 the plan.

21 (B) Requirements for approval.-The Secretary
22 shall not approve the process for an updated
23 strategic highway safety plan unless-

24 (i) the updated strategic highway safety
25 plan is consistent with the requirements

1 of this subsection and subsection (a)(13);
2 and
3 (ii) the process used is consistent with the
4 requirements of this subsection.

5 (3) Penalty for failure to have an approved updated
6 strategic highway safety plan.-If a State does not have
7 an updated strategic highway safety plan with a process
8 approved by the Secretary by August 1 of the fiscal year
9 beginning after the date of establishment of the
10 requirements under paragraph (1), the State shall not be
11 eligible to receive any additional limitation pursuant to
12 the redistribution of the limitation on obligations for
13 Federal-aid highway and highway safety construction
14 programs that occurs after August 1 for each
15 succeeding fiscal year until the fiscal year during which
16 the plan is approved.

17 (f e) Eligible Projects.-

18 (1) In general.-Funds apportioned to the State under
19 section 104(b)(3) may be obligated to carry out-

20 (A) any highway safety improvement project on
21 any public road or publicly owned bicycle or
22 pedestrian pathway or trail;

23 (B) as provided in subsection (h g); or

24 (C) any project to maintain minimum levels of
25 retroreflectivity with respect to a public road,
26 without regard to whether the project is included

1 in an applicable State strategic highway safety
2 plan.

3 (2) Use of other funding for safety.-

4 (A) Effect of section.-Nothing in this section
5 prohibits the use of funds made available under
6 other provisions of this title for highway safety
7 improvement projects.

8 (B) Use of other funds.-States are encouraged to
9 address the full scope of the safety needs and
10 opportunities of the States by using funds made
11 available under other provisions of this title
12 (except a provision that specifically prohibits
13 that use).

14 (3) Flexible funding for specified safety projects.-

15 (A) In general.-To advance the implementation of
16 a State strategic highway safety plan, a State
17 may use not more than 10 percent of the
18 amounts apportioned to the State under section
19 104(b)(3) for a fiscal year to carry out specified
20 safety projects.

21 (B) Rule of construction.-Nothing in this
22 paragraph requires a State to revise any State
23 process, plan, or program in effect on the date of
24 enactment of this paragraph.

25 (C) Effect of paragraph.-

1 (i) Requirements.-A project carried out
2 under this paragraph shall be subject to
3 all requirements under this section that
4 apply to a highway safety improvement
5 project.

6 (ii) Other apportioned programs.-Nothing
7 in this paragraph prohibits the use of
8 funds made available under other
9 provisions of this title for a specified
10 safety project that is a noninfrastructure
11 project.

12 (g f) Data Improvement.-

13 (1) Definition of data improvement activities.-In this
14 subsection, the following definitions apply:

15 (A) In general.-The term "data improvement
16 activities" means a project or activity to further
17 the capacity of a State to make more informed
18 and effective safety infrastructure investment
19 decisions.

20 (B) Inclusions.-The term "data improvement
21 activities" includes a project or activity-

22 (i) to create, update, or enhance a
23 highway basemap of all public roads in a
24 State;

25 (ii) to collect safety data, including data
26 identified as part of the model inventory
27 for roadway elements, for creation of or

1 use on a highway basemap of all public
2 roads in a State;
3 (iii) to store and maintain safety data in an
4 electronic manner;
5 (iv) to develop analytical processes for
6 safety data elements;
7 (v) to acquire and implement roadway
8 safety analysis tools; and
9 (vi) to support the collection,
10 maintenance, and sharing of safety data
11 on all public roads and related systems
12 associated with the analytical usage of
13 that data.

14 (2) Model inventory of roadway elements.-The Secretary
15 shall-

16 (A) establish a subset of the model inventory of
17 roadway elements that are useful for the
18 inventory of roadway safety; and

19 (B) ensure that States adopt and use the subset
20 to improve data collection.

21 (h g) Special Rules.-

22 (1) High-risk rural road safety.-If the fatality rate on rural
23 roads in a State increases over the most recent 2-year
24 period for which data are available, that State shall be
25 required to obligate in the next fiscal year for projects on
26 high risk rural roads an amount equal to at least 200

1 percent of the amount of funds the State received for
2 fiscal year 2009 for high risk rural roads under
3 subsection (g f) of this section, as in effect on the day
4 before the date of enactment of the MAP-21.

5 (2) Older drivers.-If traffic fatalities and serious injuries
6 per capita for drivers and pedestrians over the age of 65
7 in a State increases during the most recent 2-year
8 period for which data are available, that State shall be
9 required to include, in the subsequent Strategic
10 Highway Safety Plan of the State, strategies to address
11 the increases in those rates, taking into account the
12 recommendations included in the publication of the
13 Federal Highway Administration entitled "Highway
14 Design Handbook for Older Drivers and Pedestrians"
15 (FHWA-RD-01-103), and dated May 2001, or as
16 subsequently revised and updated.

17 (3) Vulnerable road user safety.-If the total annual
18 fatalities of vulnerable road users in a State represents
19 not less than 15 percent of the total annual crash
20 fatalities in the State, that State shall be required to
21 obligate not less than 15 percent of the amounts
22 apportioned to the State under section 104(b)(3) for the
23 following fiscal year for highway safety improvement
24 projects to address the safety of vulnerable road users.

25 (i h) Reports.-

26 (1) In general.-A State shall submit to the Secretary a
27 report that-

1 (A) describes progress being made to implement
2 highway safety improvement projects under this
3 section;

4 (B) assesses the effectiveness of those
5 improvements; and

6 (C) describes the extent to which the
7 improvements funded under this section have
8 contributed to reducing-

9 (i) the number and rate of fatalities on all
10 public roads with, to the maximum extent
11 practicable, a breakdown by functional
12 classification and ownership in the State;

13 (ii) the number and rate of serious injuries
14 on all public roads with, to the maximum
15 extent practicable, a breakdown by
16 functional classification and ownership in
17 the State; and

18 (iii) the occurrences of fatalities and
19 serious injuries at railway-highway
20 crossings.

21 (2) Contents; schedule.-The Secretary shall establish
22 the content and schedule for the submission of the
23 report under paragraph (1).

24 (3) Transparency.-The Secretary shall make strategic
25 highway safety plans submitted under subsection (d)
26 and reports submitted under this subsection available
27 to the public through-

1 (A) the website of the Department; and

2 (B) such other means as the Secretary
3 determines to be appropriate.

4 (4) Discovery and admission into evidence of certain
5 reports, surveys, and information.-Notwithstanding any
6 other provision of law, reports, surveys, schedules, lists,
7 or data compiled or collected for any purpose relating
8 to this section, shall not be subject to discovery or
9 admitted into evidence in a Federal or State court
10 proceeding or considered for other purposes in any
11 action for damages arising from any occurrence at a
12 location identified or addressed in the reports, surveys,
13 schedules, lists, or other data.

14 (j i) State Performance Targets.-If the Secretary determines that
15 a State has not met or made significant progress toward
16 meeting the safety performance targets of the State
17 established under section 150(d), the State shall-

18 (1) use obligation authority equal to the apportionment
19 of the State for the prior year under section 104(b)(3)
20 only for highway safety improvement projects under this
21 section until the Secretary determines that the State
22 has met or made significant progress toward meeting
23 the safety performance targets of the State; and

24 (2) submit annually to the Secretary, until the Secretary
25 determines that the State has met or made significant
26 progress toward meeting the safety performance targets
27 of the State, an implementation plan that-

1 (A) identifies roadway features that constitute a
2 hazard to road users;
3 (B) identifies highway safety improvement
4 projects on the basis of crash experience, crash
5 potential, or other data-supported means;
6 (C) describes how highway safety improvement
7 program funds will be allocated, including
8 projects, activities, and strategies to be
9 implemented;
10 (D) describes how the proposed projects,
11 activities, and strategies funded under the State
12 highway safety improvement program will allow
13 the State to make progress toward achieving the
14 safety performance targets of the State; and
15 (E) describes the actions the State will undertake
16 to meet the safety performance targets of the
17 State.

18 (k j) Federal Share of Highway Safety Improvement Projects.-
19 Except as provided in sections 120 and 130, the Federal share
20 of the cost of a highway safety improvement project carried out
21 with funds apportioned to a State under section 104(b)(3) shall
22 be 90 percent.

23 (l k) Data Collection on Unpaved Public Roads.-

24 (1) In general.-A State may elect not to collect
25 fundamental data elements for the model inventory of
26 roadway elements on public roads that are gravel roads
27 or otherwise unpaved if-

1 (A) the State does not use funds provided to
2 carry out this section for a project on any such
3 roads until the State completes a collection of
4 the required model inventory of roadway
5 elements for the applicable road segment; and

6 (B) the State demonstrates that the State
7 consulted with affected Indian tribes before
8 ceasing to collect data with respect to such
9 roads that are included in the National Tribal
10 Transportation Facility Inventory under section
11 202(b)(1) of this title.

12 (2) Rule of construction.-Nothing in this subsection may
13 be construed to allow a State to cease data collection
14 related to serious injuries or fatalities.

15 (m t) Vulnerable Road User Safety Assessment.-

16 (1) In general.-Not later than 2 years after the date of
17 enactment of this subsection, each State shall
18 complete a vulnerable road user safety assessment.

19 (2) Contents.-A vulnerable road user safety assessment
20 under paragraph (1) shall include-

21 (A) a quantitative analysis of vulnerable road
22 user fatalities and serious injuries that-

23 (i) includes data such as location,
24 roadway functional classification, design
25 speed, speed limit, and time of day;

1 (ii) considers the demographics of the
2 locations of fatalities and serious injuries,
3 including race, ethnicity, income, and
4 age; and

5 (iii) based on the data, identifies areas as
6 "high-risk" to vulnerable road users; and

7 (B) a program of projects or strategies to reduce
8 safety risks to vulnerable road users in areas
9 identified as high-risk under subparagraph
10 (A)(iii).

11 (3) Use of data.-In carrying out a vulnerable road user
12 safety assessment under paragraph (1), a State shall
13 use data from the most recent 5-year period for which
14 data is available.

15 (4) Requirements.-In carrying out a vulnerable road user
16 safety assessment under paragraph (1), a State shall-

17 (A) take into consideration a safe system
18 approach; and

19 (B) consult with local governments, metropolitan
20 planning organizations, and regional
21 transportation planning organizations that
22 represent a high-risk area identified under
23 paragraph (2)(A)(iii).

24 (5) Update.-A State shall update the vulnerable road
25 user safety assessment of the State in accordance with
26 the updates required to the State strategic highway
27 safety plan under subsection (d).

1 (6) Requirement for transportation system access.-The
2 program of projects developed under paragraph (2)(B)
3 may not degrade transportation system access for
4 vulnerable road users.

5 (7) Guidance.-

6 (A) In general.-Not later than 1 year after the date
7 of enactment of this subsection, the Secretary
8 shall develop guidance for States to carry out
9 this subsection.

10 (B) Consultation.-In developing the guidance
11 under this paragraph, the Secretary shall consult
12 with the States and relevant safety stakeholders.

13 **§126. Transferability of Federal-aid highway funds**

14 (a) In General.-Notwithstanding any other provision of law,
15 ~~subject to subsection (b) and (c) subject to subsection (b)~~, a
16 State may transfer from an apportionment under section
17 104(b) not to exceed 50 percent of the amount apportioned for
18 the fiscal year to any other apportionment of the State under
19 that section.

20 (b) Application to Certain Set-asides.-

21 (1) In general.-Funds that are subject to sections ~~104(d)~~,
22 ~~133(d)(1)(A), 135(n), 148(d)(1)(A), 175(e)(1)(A), and~~
23 ~~180(c)(1)(A) 104(d) and 133(d)(1)(A)~~ shall not be
24 transferred under this section.

1 (2) Funds transferred by states.-Funds transferred by a
2 State under this section of the funding set aside for a
3 State under section 133(h) for a fiscal year-

4 (A) may only come from the portion of those
5 funds that are available for obligation in any area
6 of the State under section 133(h); and

7 (B) may only be transferred if the Secretary
8 certifies that the State-

9 (i) held a competition in compliance with
10 the guidance issued to carry out section
11 133(h) and provided sufficient time for
12 applicants to apply;

13 (ii) offered to each eligible entity, and
14 provided on request of an eligible entity,
15 technical assistance; and

16 (iii) demonstrates that there were not
17 sufficiently suitable applications from
18 eligible entities to use the funds to be
19 transferred.

20 (c) Safety Funding.- Before transferring any funding
21 apportioned under section 104(b)(3), a State shall make those
22 funds available to local governments and regional planning
23 organizations through a competitive process.

24 (1) In General.- Projects funded through this process
25 must meet the requirements for funding under Section
26 104(b)(3) as outlined in section 148 of title 23, United
27 States Code.

1 (2) Open and Fair Competition.- Only after the Secretary
2 has certified that the State has held an open and fair
3 competition for the funds under 104(b)(3) shall a State
4 be able to transfer them under subsection (a) of this
5 section.

6 **§120. Federal share payable**

7 (c) Increased Federal Share.-

8 (1) Certain safety projects.-The Federal share payable
9 on account of any project for traffic control
10 signalization, maintaining minimum levels of
11 retroreflectivity of highway signs or pavement markings,
12 traffic circles (also known as "roundabouts"), safety rest
13 areas, pavement marking, shoulder and centerline
14 rumble strips and stripes, commuter carpooling and
15 vanpooling, rail-highway crossing closure, or
16 installation of traffic signs, traffic lights, guardrails,
17 impact attenuators, concrete barrier endtreatments,
18 breakaway utility poles, vehicle-to-infrastructure
19 communication equipment, or priority control systems
20 for emergency vehicles or transit vehicles at signalized
21 intersections may amount to 100 percent of the cost of
22 construction of such projects; except that not more
23 than 10 percent of all sums apportioned for all the
24 Federal-aid programs for any fiscal year in accordance
25 with section 104 of this title shall be used under this
26 subsection. In this subsection, the term "safety rest
27 area" means an area where motor vehicle operators can
28 park their vehicles and rest, where food, fuel, and

1 lodging services are not available, and that is located on
2 a segment of highway with respect to which the
3 Secretary determines there is a shortage of public and
4 private areas at which motor vehicle operators can park
5 their vehicles and rest.

6 (2) CMAQ projects.-The Federal share payable on
7 account of a project or program carried out under
8 section 149 with funds obligated in fiscal year 2008 or
9 2009, or both, shall be not less than 80 percent and, at
10 the discretion of the State, may be up to 100 percent of
11 the cost thereof.

12 (3) Innovative project delivery.-

13 (A) In general.-Except as provided in
14 subparagraph (C), the Federal share payable on
15 account of a project, program, or activity carried
16 out with funds apportioned under paragraph (1),
17 (2), (5)(D), or (6) of section 104(b) may, at the
18 discretion of the State, be up to 100 percent for
19 any such project, program, or activity that the
20 Secretary determines-

21 (i) contains innovative project delivery
22 methods that improve work zone safety
23 for motorists or workers and the quality of
24 the facility;

25 (ii) contains innovative technologies,
26 engineering or design approaches,
27 manufacturing processes, financing, or
28 contracting or project delivery methods

1 that improve the quality of, extend the
2 service life of, or decrease the long-term
3 costs of maintaining highways and
4 bridges;

5 (iii) accelerates project delivery while
6 complying with other applicable Federal
7 laws (including regulations) and not
8 causing any significant adverse
9 environmental impact; or

10 (iv) reduces congestion related to highway
11 construction.

12 (B) Examples.-Projects, programs, and activities
13 described in subparagraph (A) may include the
14 use of-

15 (i) prefabricated bridge elements and
16 systems and other technologies to reduce
17 bridge construction time;

18 (ii) innovative construction equipment,
19 materials, or techniques, including the
20 use of in-place recycling technology and
21 digital 3-dimensional modeling
22 technologies;

23 (iii) innovative contracting methods,
24 including the design-build and the
25 construction manager-general contractor
26 contracting methods and alternative
27 bidding;

- 1 (iv) intelligent compaction equipment;
- 2 (v) innovative pavement materials that
- 3 have a demonstrated life cycle of 75 or
- 4 more years, are manufactured with
- 5 reduced greenhouse gas emissions, and
- 6 reduce construction-related congestion
- 7 by rapidly curing;
- 8 (vi) contractual provisions that provide
- 9 safety contingency funds to incorporate
- 10 safety enhancements to work zones prior
- 11 to or during roadway construction
- 12 activities; or
- 13 (vii) contractual provisions that offer a
- 14 contractor an incentive payment for early
- 15 completion of the project, program, or
- 16 activity, subject to the condition that the
- 17 incentives are accounted for in the
- 18 financial plan of the project, when
- 19 applicable.

20 (C) Limitations.-

- 21 (i) In general.-In each fiscal year, a State
- 22 may use the authority under
- 23 subparagraph (A) for up to 10 percent of
- 24 the combined apportionments of the
- 25 State under paragraphs (1), (2), (5)(D), and
- 26 (6) of section 104(b). (ii) Federal share
- 27 increase.-The Federal share payable on
- 28 account of a project, program, or activity

1 described in subparagraph (A) may be
2 increased by up to 5 percent of the total
3 project cost.

4 (4) Pooled funding.-Notwithstanding any other provision
5 of law, the Secretary may waive the non-Federal share
6 of the cost of a project or activity under section
7 502(b)(6) that is carried out with amounts apportioned
8 under section 104(b)(2) after considering appropriate
9 factors, including whether-

10 (A) decreasing or eliminating the non-Federal
11 share would best serve the interests of the
12 Federal-aid highway program; and

13 (B) the project or activity addresses national or
14 regional high priority research, development,
15 and technology transfer problems in a manner
16 that would benefit multiple States or
17 metropolitan planning organizations.

18 (5) Metropolitan Planning Funds.- The Federal share
19 payable for activities authorized by section 134 of title
20 23 and apportioned under section 104(b)(6) of title 23
21 shall be 100 percent.

22 **§134. Metropolitan transportation planning**

23 (o) Limitation on Statutory Construction.-Nothing in this
24 section shall be construed to confer on a metropolitan
25 planning organization the authority to impose legal
26 requirements on any transportation facility, provider, or project
27 not eligible under this title or chapter 53 of title 49.

1 ~~-(p) Funding.-Funds apportioned under section 104(b)(6)~~
2 ~~or section 5305(g) of title 49 shall be available to carry out this~~
3 ~~section.~~

4 (p) Funding.-

5 (1) In General.- Funds apportioned under section
6 104(b)(6) or section 5305(g) of title 49 shall be available
7 to carry out this section.

8 (2) Direct Recipient Status.- Not less than 180 after the
9 passage of this Act, the Secretary shall establish a
10 process whereby a metropolitan planning agency may
11 qualify to become direct recipient of Federal Funding,
12 such process shall –

13 (A) be restricted to determining the technical and
14 financial capabilities for an metropolitan
15 planning organization to receive and be able to
16 appropriately manage Federal funding and
17 funding requirements; and

18 (B) occur concurrently to the recertification
19 process through which metropolitan planning
20 organizations have their abilities reconfirmed
21 under this section.

22 (3) Suballocation of Federal Planning Funds.- When the
23 Secretary annually apportions funds to States under
24 section 104(b)(6), the Secretary shall directly sub-
25 allocate obligation authority and all associated
26 responsibilities to metropolitan planning organizations
27 that have become direct recipients for funding allocated

1 under 104(b)(6) of this title or section 5305(g) of title 49,
2 United States Code.

3 (q) Continuation of Current Review Practice.-Since plans and
4 TIPs described in this section are subject to a reasonable
5 opportunity for public comment, since individual projects
6 included in plans and TIPs are subject to review under the
7 National Environmental Policy Act of 1969 (42 U.S.C. 4321 et
8 seq.), and since decisions by the Secretary concerning plans
9 and TIPs described in this section have not been reviewed
10 under that Act as of January 1, 1997, any decision by the
11 Secretary concerning a plan or TIP described in this section
12 shall not be considered to be a Federal action subject to review
13 under that Act.

14 (r) Bi-State Metropolitan Planning Organization.-

15 (1) Definition of bi-state mpo region.-In this subsection,
16 the term "Bi-State MPO Region" has the meaning given
17 the term "region" in subsection (a) of Article II of the
18 Lake Tahoe Regional Planning Compact (Public Law 96-
19 551; 94 Stat. 3234).

20 (2) Treatment.-For the purpose of this title, the Bi-State
21 MPO Region shall be treated as-

22 (A) a metropolitan planning organization;

23 (B) a transportation management area under
24 subsection (k); and

25 (C) an urbanized area, which is comprised of a
26 population of 145,000 in the State of California

1 and a population of 65,000 in the State of
2 Nevada.

3 (3) Suballocated funding.-

4 (A) Planning.-In determining the amounts under
5 subparagraph (A) of section 133(d)(1) that shall
6 be obligated for a fiscal year in the States of
7 California and Nevada under clauses (i), (ii), and
8 (iii) of that subparagraph, the Secretary shall, for
9 each of those States-

10 (i) calculate the population under each of
11 those clauses;

12 (ii) decrease the amount under section
13 133(d)(1)(A)(iii) by the population
14 specified in paragraph (2) of this
15 subsection for the Bi-State MPO Region in
16 that State; and

17 (iii) increase the amount under section
18 133(d)(1)(A)(i) by the population specified
19 in paragraph (2) of this subsection for the
20 Bi-State MPO Region in that State.

21 (B) STBGP set aside.-In determining the amounts
22 under paragraph (2) of section 133(h) that shall
23 be obligated for a fiscal year in the States of
24 California and Nevada, the Secretary shall, for
25 the purpose of that subsection, calculate the
26 populations for each of those States in a manner
27 consistent with subparagraph (A).

1 (s) Additional Uses of Metropolitan Planning Funding.- In
2 addition to carrying out the purposes of this section, funds
3 provided to States and metropolitan planning organizations as
4 apportioned under section 104 may be used for-

- 5 (1) fiscal administration of local projects;
- 6 (2) preliminary design;
- 7 (3) administrative and overhead costs, general
- 8 operating expenses, facilities and infrastructure costs;
- 9 (4) local technical assistance;
- 10 (5) housing studies directly linked to transportation;
- 11 (6) economic development studies directly linked to
- 12 transportation; and
- 13 (7) critical data procurement.

14 **§135. Statewide and nonmetropolitan transportation**
15 **planning**

16 (m) Designation of Regional Transportation Planning
17 Organizations.-

18 (1) In general.-To carry out the transportation planning
19 process required by this section, a State may establish
20 and designate regional transportation planning
21 organizations to enhance the planning, coordination,
22 and implementation of statewide strategic long-range
23 transportation plans and transportation improvement
24 programs, with an emphasis on addressing the needs of
25 nonmetropolitan areas of the State.

1 (2) Structure.-A regional transportation planning
2 organization shall be established as a
3 multijurisdictional organization of nonmetropolitan
4 local officials or their designees who volunteer for such
5 organization and representatives of local transportation
6 systems who volunteer for such organization.

7 (3) Requirements.-A regional transportation planning
8 organization shall establish, at a minimum-

9 (A) a policy committee, the majority of which
10 shall consist of nonmetropolitan local officials,
11 or their designees, and, as appropriate,
12 additional representatives from the State, private
13 business, transportation service providers,
14 economic development practitioners, and the
15 public in the region; and

16 (B) a fiscal and administrative agent, such as an
17 existing regional planning and development
18 organization, to provide professional planning,
19 management, and administrative support.

20 (4) Duties.-The duties of a regional transportation
21 planning organization shall include-

22 (A) developing and maintaining, in cooperation
23 with the State, regional long-range multimodal
24 transportation plans;

25 (B) developing a regional transportation
26 improvement program for consideration by the
27 State;

1 (C) fostering the coordination of local planning,
2 land use, and economic development plans with
3 State, regional, and local transportation plans
4 and programs;

5 (D) providing technical assistance to local
6 officials;

7 (E) participating in national, multistate, and State
8 policy and planning development processes to
9 ensure the regional and local input of
10 nonmetropolitan areas;

11 (F) providing a forum for public participation in
12 the statewide and regional transportation
13 planning processes;

14 (G) considering and sharing plans and programs
15 with neighboring regional transportation
16 planning organizations, metropolitan planning
17 organizations, and, where appropriate, tribal
18 organizations; and

19 (H) conducting other duties, as necessary, to
20 support and enhance the statewide planning
21 process under subsection (d).

22 (5) States without regional transportation planning
23 organizations.-If a State chooses not to establish or
24 designate a regional transportation planning
25 organization, the State shall consult with affected
26 nonmetropolitan local officials to determine projects
27 that may be of regional significance.

1 (n) Regional Transportation Planning Funding.-

2 (1) In General.- Not later than 180 days after the date of
3 enactment of this Act, the Secretary shall establish a
4 program to provide assistance to States to support
5 Regional Transportation Planning Organizations and
6 regional entities responsible for transportation planning
7 or economic development planning in nonmetropolitan
8 areas of the State in carrying out the duties contained in
9 subsection (m) of this section.

10 (2) Use of Funds.- Funds made available to States under
11 section 104(b)(9) of this title shall be utilized to-

12 (A) provide direct funding to federally designated
13 Regional Transportation Planning Organizations
14 to enable them to carry out the duties contained
15 in paragraph (m)(4) of this section; and

16 (B) undertake activities, including the
17 establishment of State-based pilot programs, to
18 provide assistance to regional entities
19 responsible for transportation planning or
20 economic development in nonmetropolitan
21 areas of the State to-

22 (i) increase the organizations
23 understanding statewide transportation
24 planning requirements;

25 (ii) provide technical assistance in
26 building organizational capacity and
27 developing transportation planning

1 expertise necessary to develop
2 multimodal long-range transportation
3 plans;
4 (iii) strengthening rural partnerships and
5 collaboration;
6 (iv) enhance project prioritization and
7 delivery;
8 (v) improve the overall statewide
9 transportation planning process and
10 respond to nonmetropolitan needs; and
11 (vi) secure Federal designation of regional
12 transportation planning organizations.

13 (3) Eligible Recipients.- Funding made available to
14 States under section 104(b)(9) of this title shall be made
15 available to-

16 (A) regional transportation planning
17 organizations as defined under section 134(b)(5);
18 and

19 (B) regional entities responsible for
20 transportation planning or economic
21 development planning in nonmetropolitan areas
22 of the State.

23 (4) Distribution of Funds Within States.-

24 (A) In General.- The amounts made available to
25 States to carry out this program under section

1 104(b)(9) of this title shall be distributed within
2 the State-

3 (i) among all Federally Designated
4 Regional Transportation Planning
5 Organization through a formula
6 developed by the State; and

7 (ii) to non-Federally designated regional
8 entities responsible for transportation
9 planning or economic development
10 planning in nonmetropolitan areas of the
11 State through a grant process allowing
12 regional entities to submit proposals for
13 funding that achieve the objectives of this
14 subsection.

15 (B) Secretarial Approval.- Both the formula
16 distribution developed by a State under clause (i)
17 of this paragraph and the grant process
18 undertaken by a State under clause (ii) of this
19 paragraph shall be approved by the Secretary.

20 (C) Minimum Allocation.- States receiving
21 funding under this paragraph shall provide each
22 federally designated regional transportation
23 planning organization not less than \$300,000 in
24 fiscal years 2027 through 2031 to carry out this
25 subsection.

26 (5) Federal Share.- The Federal share payable on
27 activities carried out with funds provided under this
28 program shall be 100 percent.