



Public Transportation Safety Legislation

The Administration and Congress have proposed legislation to require the Federal Transit Administration (FTA) federally regulate the safety of our nation’s public transportation systems in the Public Transportation Safety Program Act of 2010 and the Public Transportation Safety Act of 2010. Below is a side-by-side which outlines the Administration’s proposal, the proposal put forth by the Senate, and the views of the American Public Transportation Association (APTA).

	Administration	S. 3638	APTA
<p>► Federal Oversight of Safety</p>	<ul style="list-style-type: none"> -Authorizes the Secretary to promulgate regulations and issue orders for the safe operation of rail fixed guideway systems and bus, and to take into account cost/benefit analysis. -Requires Secretary to develop safety standards for rail fixed guideway systems -Provides for an enhanced State Safety Oversight (SSO) system and allows States the ability to “opt-out” of direct oversight, in which case the FTA would perform direct oversight functions. -The Secretary may conduct investigations, audits, examine and test equipment and public transportation system personnel, make reports and issue directives, issue subpoenas and take depositions, require production of documents and prescribe recordkeeping requirements, as well as engage in accident and incident investigation and prevention. 	<ul style="list-style-type: none"> -Authorizes the Secretary to develop a national safety plan that includes: safety performance criteria for all modes, a definition of “state of good repair” for public transportation systems, minimum safety performance standards for vehicles that are not regulated by other agencies, and takes into consideration recommendations the National Transportation Safety Board (NTSB) and the public transportation industry. -Requires States to establish and implement SSO programs for rail fixed guideway, and requires all FTA grantees to implement a local safety plan. -Requires the Secretary to oversee the activities of each State Safety Oversight Agency (SSOA), to perform triennial audits of each SSOA and to issue regulations governing SSOAs. -The Secretary may conduct investigations, inspections, audits, and testing, can make reports and issue directives, can issue subpoenas and take depositions, require production of documents and prescribe recordkeeping requirements, investigate accidents and provide guidance on prevention. 	<ul style="list-style-type: none"> -Effective safety oversight of public transportation requires a collaborative effort between Federal, State and local agency partners. -New Federal standards program should build upon consensus based industry standards and should be further developed with input from the industry. -The existing SSO framework should be retained and current SSOA’s should be improved and provided with the tools necessary to ensure the performance of adequate safety oversight functions.

<p>► National Safety Plan</p>	<p>Administration</p> <p>-The Secretary must implement a public transportation safety program for the design, construction, and revenue service operation of rail fixed guideway public transportation systems that receive federal transit assistance. -This proposal does not apply to rail fixed guideway systems already regulated by the FRA.</p> <p>-The proposal also leaves the option open for the Secretary to provide a similar safety program for public transportation bus systems that receive federal transit assistance.</p> <p>--No requirement for a public transportation agency safety plan .</p>	<p>S. 3638</p> <p>-Requires the Secretary to create and implement a national public transportation safety program which includes: safety performance criteria for all modes of public transportation, a definition of “State of Good Repair” (SOGR), and safety performance standards for vehicles, with input from federal and industry stakeholders.</p> <p>-Also requires the Secretary to create a safety certificate training program.</p>	<p>APTA</p> <p>-APTA supports the concept of a National Safety Plan, however, rail systems regulated by the FRA or other Federal agencies should not be regulated by the FTA.</p>
<p>► Public Transportation Agency Safety Plan</p>	<p>-Requires that 1 year after the effective date of a final rule issuance, all public transportation agencies implement a safety plan that: is approved by their Board of Directors or equivalent, includes methods to identify and evaluate safety risks and strategies to minimize exposure to risks, process and timeline for an annual safety plan review and update, assignment of a trained safety officer with a direct line of reporting and comprehensive safety training for all operations personnel.</p> <p>-The current safety plan requirement, as pursuant to part 659 title 49, is to remain in effect as an interim plan until the legislation is enacted.</p>	<p>-Requires that 1 year after the effective date of a final rule issuance, all public transportation agencies implement a safety plan that: is approved by their Board of Directors or equivalent, includes methods to identify and evaluate safety risks and strategies to minimize exposure to risks, process and timeline for an annual safety plan review and update, assignment of a trained safety officer with a direct line of reporting and comprehensive safety training for all operations personnel.</p> <p>-The current safety plan requirement, as pursuant to part 659 title 49, is to remain in effect as an interim plan until the legislation is enacted.</p>	<p>-APTA has created and has a longstanding policy of promoting and recommending the usage of its system safety manual for bus, commuter rail and rail transit, and supports the requirement for public transportation agencies to be in conformance with these plans.</p> <p>-There are, however, concerns regarding this provision. Under the Rail Safety Improvement Act of 2008, commuter railroads regulated by the Federal Railroad Administration are required to establish and implement passenger rail system safety plans. The FRA and passenger rail systems are currently in the process of finalizing regulation requiring system safety plans.</p> <p>-In instances where a public transportation agency operates both rail fixed guideway and FRA regulated passenger rail operations, there could be confusion as to which safety plan to employ.</p> <p>-Any public transportation safety legislation must FTA and FRA to coordinate these efforts on the Federal level so that commuter railroads are only required to prepare one safety plan.</p>

<p>► Standards</p>	<p>Administration</p> <p>-Authorizes Secretary to develop federal safety standards for rail fixed guideway and bus transit in consultation with the National Transportation Safety Board (NTSB) and the Department of Homeland Security (DHS).</p>	<p>S. 3638</p> <p>- Authorizes Secretary to develop federal safety standards for all modes of public transportation with consideration paid to:</p> <ul style="list-style-type: none"> -National Transportation Safety Board (NTSB) recommendations, - input from the Department of Homeland Security (DHS) Secretary, -standards developed by and recommendations of best practices from the public transportation industry (APTA, ASME, etc.) 	<p>APTA</p> <p>-The existing APTA Rail Transit Standards program which was created using hundreds of industry experts volunteering thousands of hours should be used as the backbone of the new federal program.</p> <p>-APTA is an officially recognized Standards Development Organization (SDO) that has developed more than 170 voluntary consensus based industry standards, including 96 rail transit safety standards, funded in part, with nearly \$3 million in grants from the FTA.</p>
<p>► Preemption</p>	<p>-Permits States to enact differing and more stringent standards than what is called for in the federal safety program.</p>	<p>-Ensures safety shall be nationally uniform and does not permit States to enact or continue in force of law an order which is more stringent than that which is promulgated by the Secretary unless the Secretary determines:</p> <ul style="list-style-type: none"> -it has a safety benefit, -is not incompatible with federal law, -and does not unreasonably burden interstate commerce. 	<p>-Any national public transportation safety program must remain focused on established federal priorities.</p> <p>-Federal preemption of state and local standards is necessary to preclude the adoption of differing standards and to allow the FTA to properly apply its expertise to the priorities of a national safety program.</p> <p>-Consistent with the Federal Railroad Administration's (FRA) safety program, accommodations for standards for unique local safety conditions should be allowed on a case by case basis, as determined by the Secretary.</p>
<p>► State Safety Oversight (SSO) Program</p>	<p>-Provides framework for States with rail fixed guideway systems to establish or enhance existing SSO's, that require, at minimum, compliance with federally issued regulations and policies.</p> <p>-Two options are afforded to States for safety oversight: the Secretary may delegate an appropriate State entity to carry State Safety Oversight Agency (SSOA) responsibilities, or, a State may opt-out of providing this service in which case the FTA will provide direct safety oversight.</p>	<p>-Requires that 3 years after the final regulation becomes effective, a State shall have in effect a State safety oversight program for rail fixed guideway public transportation systems (that are not regulated by the FRA) that is approved by the Secretary which:</p> <ul style="list-style-type: none"> (A) assumes responsibility for overseeing rail fixed guideway public transportation safety; (B) adopts and enforces Federal law on rail fixed guideway public transportation safety; and, (C) establishes a State safety oversight 	<p>-APTA supports a strong SSOA program that can provide effective rail fixed guideway safety oversight.</p> <p>-States which choose not to operate SSO's should be permitted to opt-out of oversight duties and allow the FTA to assume these responsibilities.</p> <p>-States with small safety oversight programs should be permitted to join together to form a single interstate joint oversight agency capable of overseeing the safety of systems in those states.</p>

	Administration	S. 3638 agency and determines staff needs and hires properly trained and federally certified safety personnel, and prohibits accepting any funding from public transportation agencies. -There is no opting out in favor of direct Federal oversight. Instead, States are required to take a direct role in the administration of rail fixed guideway public transportation safety oversight.	APTA
<p>► State Safety Oversight Agency (SSOA)</p>	<p>-Permits the Secretary to delegate to the appropriate State entity the power to conduct inspections, investigations, audits, examinations, and testing of a public transportation systems equipment, facilities, rolling stock operations and public transportation system personnel.</p> <p>-For multi-state public transportation authorities, the affected States must jointly ensure minimum safety standards and enforcement procedures are established and designated to an appropriate oversight entity.</p>	<p>-Vests SSOA's with the authority to request the Secretary take enforcement action for incidences of noncompliance with Federal safety laws.</p> <p>-The proposal seeks to require SSOA's that have the authority to require /review /approve /oversee and enforce public transportation system safety plans, has investigative and enforcement authority, provide audits triennially, and at least once a year provide safety report updates to the FTA, Governor of respective State and the Board of Directors or equivalent.</p> <p>-For multi-state public transportation authorities, the Secretary must approve the programs and the programs must be jointly established, implemented and designated to the appropriate oversight entity.</p>	<p>-APTA supports a strong SSO program that provides enforcement capabilities in the form of grant conditions, whereby a transit agency would be required to correct significant incidences of noncompliance that will effectively improve safety before being able to use federal monies for other purposes.</p>

<p>► Federal Enforcement Powers</p>	<p>Administration</p> <ul style="list-style-type: none"> -Imposes civil and criminal penalties as well as injunctions on those agencies and employees found to be in violation of the new federal safety standards program. -The courts are permitted to issue a temporary restraining order or preliminary or permanent injunctions. -Criminal penalties are to include up to 10 years imprisonment for any case which in which a person knowingly violates a regulation or order which results in death or bodily injury to another. -Civil penalties collected are to be deposited into the General Fund. -Emergency authority is provided to the Secretary to order restrictions and prohibitions that may be necessary to abate a safety situation. The order must describe the unsafe conditions or practices and must promulgate standards and procedures by which to restore safe conditions. Petitions for review of emergency actions are permitted, if the review is not completed within 30 days, the emergency authority action stops being effective unless the Secretary decides in writing the emergency safety situation still exists. 	<p>S. 3638</p> <ul style="list-style-type: none"> -Establishes a multi-tiered approach to enforcing penalties, including: <ul style="list-style-type: none"> -Issuing directives, requiring more frequent oversight, requiring more frequent reporting, imposing grant conditions on Federal funding, withholding Federal funding, imposing injunctions and ultimately issuing civil penalties which will be deposited into the Mass Transit Account of the Highway Trust Fund. -The Secretary must provide written notice to the recipient identifying the violation and providing adequate time for corrective actions prior to withholding any funds. -Funding restoration is permitted if/when corrective action is taken, for up to one full fiscal year after violation is issued, after which point funds will be redistributed to other eligible recipients. -Civil penalties are to be issued as a last resort. Written notice must be provided to the recipient before issuance and adequate time for corrective action must be provided. The Secretary must notify Congress before imposing civil fines and any monies collected are to be returned to the Mass Transit Account of the Highway Trust Fund. -The Secretary may request assistance from the US Attorney General for such actions as injunctive relief, civil penalty collection and/or subpoena enforcement. -A “Cost-Benefit Analysis” provision is included, requiring the Secretary to consider the costs and benefits of each penalty. 	<p>APTA</p> <ul style="list-style-type: none"> -Public transit agencies are public purpose, not-for-profit entities funded with taxpayer dollars and fares from riders. There is no profit from which to pay fines. A substantial fine would result in less revenue, which would lead to a reduction in service or higher fares, either of which would push riders to use less safe modes of travel. -The most effective method of providing enforcement is for the FTA to impose “grant conditions” on transit agencies, requiring significant safety issues be fixed prior to allowing an agency to access funds for regular needs and planned projects -In the event civil and/or criminal penalties are instituted, application must be limited to extreme situations where violations are proven to be wanton, repeated or in violation of a best efforts clause. -Transit agencies must be allowed adequate time to be brought into compliance, without penalty. -An appeals process should be established to ensure fairness in the dispensation of violations. -All monies collected should be redirected to the Mass Transit Account of the Highway Trust Fund.
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►Enforcement Powers of State Safety Oversight Agencies	Administration	S. 3638	APTA
<p>-Provides States which employ SSOA's with the authority to institute statutes and regulations to require compliance with the rail fixed guideway safety regulations and policies issued by the Secretary.</p> <p>-Provides a 100% federal grant funding States to carry out a State public transportation safety program.</p> <p>-No exact funding amounts are authorized in this proposal.</p>	<p>-Permits the Secretary to make grants to States to develop and carry out their SSO program if they submit a proposal to the Secretary for review and approval prior to implementing the plan.</p> <p>-There will be an 80-20 Federal/local cost share</p> <p>-If an SSO program is not being carried out appropriately, the Secretary shall: notify the SSO in writing of the inadequacies, provide time for the SSO to modify the State safety program and to resubmit it for approval.</p> <p>-If the modifications are insufficient, the Secretary shall provide written notice of the intent to withhold SSO funds and again allow time to resubmit an updated proposal.</p> <p>-The Senate proposal seeks to authorize \$60 million in funding to States to establish and implement SSOA's: -\$10 million for Fiscal Year 2011 -\$20 million for Fiscal Year 2012 -\$30 million for Fiscal Year 2013</p>	<p>-Vests SSO's with the authority to request the Secretary take enforcement actions against rail fixed-guideway public transportation systems for incidences of noncompliance.</p>	<p>-In order to achieve the goal of providing effective safety oversight, SSOA's must have at their disposal the ability to either enforce or request enforcement action be taken by the Secretary in incidences of noncompliance.</p> <p>-APTA supports a 100% Federal cost share to ensure that agencies who experiencing flat federal funding as well as a significant reduction in state and local monies as a result of declining sales tax revenues can meet this need Federal mandate.</p>
<p>►Grants for SSO Programs</p>	<p>-Proposes a 100% federal cost share for SSO program creation and implementation.</p>	<p>-Proposes an 80/20 cost sharing for implementing a State Safety Oversight Program.</p> <p>-The 20% local match may not come from a Federal source, from a public transportation agency or revenues earned by a public transportation agency.</p> <p>-The cost share is to require States to have a direct role and responsibility in ensuring the</p>	<p>-APTA supports a 100% Federal cost share to ensure that agencies who experiencing flat federal funding as well as a significant reduction in state and local monies as a result of declining sales tax revenues can meet this need Federal mandate.</p>
<p>►Cost Sharing</p>			

	Administration	S. 3638 safety of their rail fixed guideway systems.	APTA
<p>► Conflict of Interest Provision</p>	<p>-To prevent a conflict of issue from arising: -no State agency or public transportation agency can participate in establishing or carrying out the SSO oversight process; -no funds from a public transportation agency, or a State agency or local entity that operates a public transportation systems may be used to fund an SSO; -no funds awarded to an SSO to carry out their program can be allocated to a State agency/entity which operates a public transportation system and receives Federal transit assistance.</p>	<p>-To prevent a conflict of issues from arising: -requires the SSO is financially and legally independent from any public transportation agency; (*waiver, see below) -the SSO may not fund, promote or provide public transportation; -the SSO may not employ anyone who is also responsible for the administration of public transportation programs. *-The Senate bill also allows that at the request of an eligible State, the Secretary may waive and be exempt from SSO independence requirements. -The waiver exempts eligible systems from the requirement that SSOA's be legally and financially independent entities. -Eligible States are those that have public transportation systems in the revenue operation, design and construction phases that have fewer than 1,000,000 combined actual and projected rail fixed guideway revenue miles per year; or provide fewer than 10,000,000 combined actual and projected unlinked passenger trips per year.</p>	<p>-APTA supports the inclusion of a conflict of interest provision to ensure that oversight is protected from any and all concerns of impropriety. -APTA also supports the waiver provision included in the Senate proposal to allow Federal oversight to very small rail fixed guideway systems which provide limited service and do not have the capacity to establish and implement a separate oversight agency.</p>
<p>► Training</p>	<p>-Provides transit safety training that results in Federal certification for State Safety Oversight agency (SSO) employees and contractors who carry out and/or manage a State's public transportation safety program. -Training costs for the designated employees is eligible for 100% federal reimbursement.</p>	<p>-Establishes a public transportation safety training program for Federal and State employees and other designated personnel, as well as public transportation agency employees directly responsible for safety oversight. -This training program will result in federal certification. -Costs to train and certify designated public transportation safety professionals eligible for 100% federal reimbursement.</p>	<p>-To create a national pool of commonly and properly trained professionals, APTA strongly supports a federal transit safety training program that results in certification for Federal, State and transit agency employees. -APTA strongly supports full reimbursement for costs to train and certify Federal, State and public transportation agency safety and operations employees.</p>

	Administration	S. 3638	APTA
<p>► Safety Officers</p>	<p>-No requirement for direct reporting of safety officers.</p>	<p>-As a requirement of an agency's safety plan, a comprehensive training program for all operations personnel must be instituted. Costs to transit agencies to institute this program are not reimbursable. The intent is to create a "train the trainer" program whereby the Safety Officer will receive the Federal certification training and will then return to the public transportation agency and provide/assist in implementing the necessary agency staff training.</p> <p>-Requires public transit agencies have an adequately trained safety officer who reports directly to the General Manager, President or other top official</p>	<p>-APTA supports a direct line of safety information reporting, requiring the designated safety officer to report to the highest level of senior management to ensure significant safety issues are reported and communicated.</p>
<p>► Asset Management</p>	<p>-No requirement for an asset management program.</p>	<p>-Requires the Secretary establish and implement a national transit asset management system program. The program will be provided to agencies as a template which they can tailor to meet their unique and specific needs.</p> <p>-The program shall include metrics by which to define "state of good repair" (SOGR), the requirement for public transportation systems to develop capital asset inventories and condition assessments, and a requirement that each public transportation agency report on the condition and a description of the change in asset condition since the last report.</p> <p>-Requires the Secretary create analytical tools by which public transportation systems can estimate their capital investment needs and determine asset investment priorities</p> <p>-240 days after enactment a NPRM must be issued to implement this program.</p> <p>-Congress has authorized \$2 million per year for 3 years for this program.</p>	<p>-To ensure cash-strapped transit agencies can meet the asset management directive, APTA supports significant federal funding to carry out this program.</p> <p>-Additional funding is also necessary for the FTA to establish and implement a comprehensive asset management system.</p> <p>-Asset management programs are necessary to properly assess capital funding needs of an agency, however, this requirement should be considered in the context of a broader six year surface transportation authorization bill.</p>

<p>► Data Reporting</p>	<p>Administration</p> <p>-Allows for the Secretary to provide grants for research and development of every area of public transportation.</p>	<p>S. 3638</p> <p>-Requires FTA grant recipients to report to the National Transit Database (NTD) information relating to causes of reportable incidents, as defined by the Secretary, on their public transportation system and information relating to the condition and inventory of transit assets.</p> <p>-Requirement shall be made effective 2 years after the effective date of the rules issued.</p>	<p>APTA</p> <p>-There is a critical need for an improved and reliable national transit operations database that agencies and other industry practitioners can use to benchmark their operating performance, including trends in safety.</p> <p>-Federal safety priorities must also address the delivery of adequate resources to support and sustain research to close gaps in the body of knowledge to enhance safe transit operations.</p> <p>-Increased funding is necessary for the NTD to manage the increased data reporting requirements.</p>
<p>► Protection of Documents</p>	<p>-No provision for protection of documents.</p>	<p>-No provision for protection of documents.</p>	<p>-The FTA must have access to the best possible data and analysis of the risks inherent in any transportation system.</p> <p>-Instead of subpoena authority, a more effective method for ensuring access to information is to protect transit agency data and analysis from release, discovery or use in litigation.</p> <p>-Protection from public disclosure, notwithstanding state or local sunshine laws, and further protection of data from use in litigation, is vital to ensuring transit agencies undertake the critical analysis of risk necessary for continual improvement of transit safety, documenting that analysis, and providing the resulting data to the FTA for inclusion in a nationwide analysis.</p>