

# TITLE 23—HIGHWAYS

*This title was enacted by Pub. L. 85-767, §1, Aug. 27, 1958, 72 Stat. 885*

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## AMENDMENTS

1998—Pub. L. 105-178, title V, § 5101(1), June 9, 1998, 112 Stat. 422, added item for chapter 5.  
 1966—Pub. L. 89-564, title I, § 102(b)(3), Sept. 9, 1966, 80 Stat. 735, added item for chapter 4.

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23a .....	Rep.

<sup>1</sup> So in original. Does not conform to chapter heading.

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42 .....	Rep.
43 .....	Rep.
44 .....	Rep.
45 .....	Elim.
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169 (last proviso) .....	Elim.
170 .....	305
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173 .....	120 note
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175 .....	Elim.

CITATION

Section 1 of Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 885, provided in part that this title may be cited as "Title 23, United States Code, §—".

REPEALS

Section 2 of Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 919, repealed the sections or parts of sections of the Revised Statutes or Statutes at Large covering provisions codified in this title.

CONSTRUCTION

Section 3 of Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 921, provided that:

"(a) If any provision of title 23, as enacted by section 1 of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the title and the application of the provision to other persons or circumstances shall not be affected thereby.

"(b) The provisions of this Act shall be subject to Reorganization Plan Numbered 5 of 1950 (64 Stat. 1263) [set out in the Appendix to Title 5, Government Organization and Employees]."

SAVINGS PROVISION

Section 4 of Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 921, provided that: "Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions under section 2 of this Act."

RECODIFICATION OF TITLE 23

Pub. L. 104-59, title III, §357(a), Nov. 28, 1995, 109 Stat. 625, provided that: "The Secretary [of Transportation] shall, by March 31, 1997, prepare and submit to Congress a draft legislative proposal of necessary technical and conforming amendments to title 23, United States Code, and related laws."

Pub. L. 102-240, title I, §1066, Dec. 18, 1991, 105 Stat. 2006, provided that the Secretary of Transportation was to have prepared, by Oct. 1, 1993, a proposed recodification of title 23, United States Code, and related laws for submission to Congress for consideration, prior to repeal by Pub. L. 104-59, title III, §357(b), Nov. 28, 1995, 109 Stat. 625.

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 16 section 3172; title 40 sections 345c, 818; title 40 App. sections 201, 214; title 42 sections 7506, 7509; title 49 sections 5303, 5304, 5305, 5306, 5334, 22301, 31102.

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## AMENDMENTS

1999—Pub. L. 106-159, title I, §102(b), Dec. 9, 1999, 113 Stat. 1753, struck out item 110 “Uniform transferability of Federal-aid highway funds”, added item 126, and made technical amendment to item 163.

1998—Pub. L. 105-178, title I, §§1103(l)(5), 1226(d), 1405(b), 1406(b), as added by Pub. L. 105-206, title IX, §§9002(c)(1), 9003(a), 9005(a), July 22, 1998, 112 Stat. 834, 837, 843, struck out item 126 “Diversion” and item 150 “Allocation of urban system funds”, and added items 154 and 164.

Pub. L. 105-178, title I, §§1104(b), 1105(b), 1106(c)(2)(A), 1114(b)(1), 1203(n), 1219(b), 1301(d)(2), 1303(b), 1305(d), 1310(b), 1403(b), 1404(b), 1503(b)(1), 1601(c), June 9, 1998, 112 Stat. 129, 131, 136, 154, 179, 221, 226, 227, 229, 235, 240, 241, 250, 256, added item for subchapter I, substituted “Minimum guarantee” for “Programs” in item 105, “Project approval and oversight” for “Plans, specifications, and estimates” in item 106, “Advance acquisition of real property” for “Advance acquisition of rights-of-way” in item 108, and “Revenue aligned budget authority” for “Project agreements” in item 110, added item 110 relating to uniform transferability of Federal-aid highway funds, substituted “High priority projects program” for “Certification acceptance” in item 117, made technical amendment to item 134, struck out item 139 “Additions to Interstate System”, substituted “Highway use tax evasion projects” for “Economic growth center development highways” in item 143, “Proceeds from the sale or lease of real property” for “Income from airspace rights-of-way” in item 156, and “Safety incentive grants for use of seat belts” for “Minimum allocation” in item 157, and added items 162 and 163, item for subchapter II, and items 181 to 189.

1995—Pub. L. 104-59, title II, §205(d)(2), title III, §§311(c), 320(b), Nov. 28, 1995, 109 Stat. 577, 584, 590, substituted “Payments” for “Payment” and “and other debt instrument financing” for “retirement” in item 122, struck out item 154 “National maximum speed limit”, and added item 161.

1991—Pub. L. 102-240, title I, §§1007(a)(2), 1008(c), 1009(e)(2), 1014(b), 1016(f)(3), 1024(c)(1), 1025(b), 1031(a)(2), Dec. 18, 1991, 105 Stat. 1930, 1933, 1934, 1942, 1946, 1962, 1965, 1973, substituted “Program efficiencies” for “Authorizations” in item 102, substituted “maintenance program” for “System resurfacing” in item 119, added item 133, substituted “Metropolitan planning” for “Transportation planning in certain urban areas” in item 134, substituted “Statewide planning” for “Traffic operations improvement programs” in item 135, substituted “Congestion mitigation and air quality improvement program” for “Truck lanes” in item 149, and added items 153 and 160.

Pub. L. 102-143, title III, §333(b), (c), Oct. 28, 1991, 105 Stat. 947, added item 159 and repealed Pub. L. 101-516, §333(b), which added former item 159. See 1990 Amendment note below.

1990—Pub. L. 101-516, title III, §333(b), Nov. 5, 1990, 104 Stat. 2186, which added item 159, was repealed by Pub. L. 102-143, title III, §333(c), Oct. 28, 1991, 105 Stat. 947. Section 333(d) of Pub. L. 102-143 provided that the amendments made by section 333 of Pub. L. 101-516 shall be treated as having not been enacted into law.

1987—Pub. L. 100-17, title I, §§113(d)(2), 114(e)(5), 125(b)(1), 126(b), 133(b)(1), Apr. 2, 1987, 101 Stat. 150, 153, 167, 171, substituted “Advance construction” for “Con-

struction by States in advance of apportionment” in item 115, and “Availability of funds” for “Availability of sums apportioned” in item 118, struck out “and width” after “Vehicle weight” in item 127, substituted “Carpool and vanpool projects” for identical words in item 146, “National bridge inspection program” for “Pavement marking demonstration program” in item 151, and “Income from airspace rights-of-way” for “Highways crossing Federal projects” in item 156.

1984—Pub. L. 98-363, §6(b), July 17, 1984, 98 Stat. 437, added item 158.

1983—Pub. L. 97-424, title I, §119(c), Jan. 6, 1983, 96 Stat. 2111, substituted “Nondiscrimination” for “Equal employment opportunity” in item 140.

Pub. L. 97-424, title I, §150(b), Jan. 6, 1983, 96 Stat. 2132, added item 157.

1978—Pub. L. 95-599, §§116(c), 124(b), 168(c), Nov. 6, 1978, 92 Stat. 2699, 2705, 2723, substituted “Interstate System resurfacing” for “Repealed” in item 119, “Highway bridge replacement and rehabilitation program” for “Special bridge replacement program” in item 144, “Hazard elimination program” for “Projects for high-hazard locations” in item 152, and “Repealed” for “Program for the elimination of roadside obstacles” in item 153.

1976—Pub. L. 94-280, title I, §§123(b), 128(b), 132(b), 139, May 5, 1976, 90 Stat. 439-441, 443, substituted item 135 “Traffic operations improvement programs” for “Urban area traffic operations improvement programs”; substituted item 146 “Repealed” for “Special urban high density traffic programs”; added item 156 “Highways crossing Federal projects”; and substituted item 111 “Agreements relating to use of and access to rights-of-way—Interstate System” for “Use of and access to rights-of-way—Interstate System” and substituted items 119 and 133 “Repealed” for “Administration of Federal-aid for highways in Alaska” and “Relocation assistance”, respectively.

1975—Pub. L. 93-643, §§107(b), 114(b), 115(b), Jan. 4, 1975, 88 Stat. 2284, 2286, 2287, substituted item 141 reading “Enforcement of requirements” for prior text reading “Real property acquisition policies”, and added items 154 and 155.

1973—Pub. L. 93-87, title I, §§116(b), 121(b), 123(b), 125(b), 126(b), 129(c), 142(b), 157(b), title II, §§205(b), 209(b), 210(b), Aug. 13, 1973, 87 Stat. 258, 261, 263, 264, 266, 272, 278, 285, 287, 288, substituted “Certification acceptance” for “Secondary road responsibilities” in item 117, “Public transportation” for “Urban highway public transportation” in item 142, and added items 145 to 153.

1970—Pub. L. 91-605, title I, §§111(b), 127(b), 134(b), title II, §204(b), Dec. 31, 1970, 84 Stat. 1720, 1731, 1734, 1742, added items 142, 143, 144, and substituted “Fringe and corridor parking facilities” for “Limitation on authorization of appropriations for certain purposes” in item 137.

1968—Pub. L. 90-495, §§10(b), 12(b), 16(b), 22(b), 25(c), 35(b), Aug. 23, 1968, 82 Stat. 820, 822, 823, 827, 829, 836, added items 135, 139, 140, and 141 and substituted “Prevailing rate of wage” for “Prevailing rate of wage—Interstate System” in item 113 and “Construction by States in advance of apportionment” for “Construction by States in advance of apportionment—Interstate System” in item 115.

1966—Pub. L. 89-574, §§8(c)(2), 15(b), Sept. 13, 1966, 80 Stat. 769, 771, added items 137 and 138.

Pub. L. 89-564, title I, §102(b)(1), Sept. 9, 1966, 80 Stat. 734, struck out item 135 relating to highway safety programs.

1965—Pub. L. 89-285, title I, §102, title II, §202, Oct. 22, 1965, 79 Stat. 1030, 1032, substituted “Control of outdoor advertising” for “Areas adjacent to the Interstate System” in item 131, and added item 136.

Pub. L. 89-139, §4(b), Aug. 28, 1965, 79 Stat. 579, added item 135.

1962—Pub. L. 87-866, §§5(b), 9(b), Oct. 23, 1962, 76 Stat. 1147, 1148, added items 133 and 134.

1960—Pub. L. 86-657, §§4(b), 5(b), July 14, 1960, 74 Stat. 523, included ferries in item 129 and added item 132.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 206, 215, 322, 402, 405, 408, 410, 411 of this title.

## SUBCHAPTER I—GENERAL PROVISIONS

## AMENDMENTS

1998—Pub. L. 105-178, title I, §1503(b)(2), June 9, 1998, 112 Stat. 251, inserted subchapter heading.

**§ 101. Definitions and declaration of policy**

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

(1) APPORTIONMENT.—The term “apportionment” includes unexpended apportionments made under prior authorization laws.

(2) CARPOOL PROJECT.—The term “carpool project” means any project to encourage the use of carpools and vanpools, including provision of carpooling opportunities to the elderly and individuals with disabilities, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use for preferential parking for carpools.

(3) CONSTRUCTION.—The term “construction” means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a highway, including bond costs and other costs relating to the issuance in accordance with section 122 of bonds or other debt financing instruments and costs incurred by the State in performing Federal-aid project related audits that directly benefit the Federal-aid highway program. Such term includes—

(A) locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the National Oceanic and Atmospheric Administration of the Department of Commerce);

(B) resurfacing, restoration, and rehabilitation;

(C) acquisition of rights-of-way;

(D) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(E) elimination of hazards of railway grade crossings;

(F) elimination of roadside obstacles;

(G) improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and

(H) capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.

(4) COUNTY.—The term “county” includes corresponding units of government under any other name in States that do not have county organizations and, in those States in which the county government does not have jurisdic-

tion over highways, any local government unit vested with jurisdiction over local highways.

(5) FEDERAL-AID HIGHWAY.—The term “Federal-aid highway” means a highway eligible for assistance under this chapter other than a highway classified as a local road or rural minor collector.

(6) FEDERAL-AID SYSTEM.—The term “Federal-aid system” means any of the Federal-aid highway systems described in section 103.

(7) FEDERAL LANDS HIGHWAY.—The term “Federal lands highway” means a forest highway, public lands highway, park road, parkway, refuge road, and Indian reservation road that is a public road.

(8) FOREST DEVELOPMENT ROADS AND TRAILS.—The term “forest development roads and trails” means forest roads and trails under the jurisdiction of the Forest Service.

(9) FOREST HIGHWAY.—The term “forest highway” means a forest road under the jurisdiction of, and maintained by, a public authority and open to public travel.

(10) FOREST ROAD OR TRAIL.—The term “forest road or trail” means a road or trail wholly or partly within, or adjacent to, and serving the National Forest System that is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

(11) HIGHWAY.—The term “highway” includes—

(A) a road, street, and parkway;

(B) a right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure, sign, guardrail, and protective structure, in connection with a highway; and

(C) a portion of any interstate or international bridge or tunnel and the approaches thereto, the cost of which is assumed by a State transportation department, including such facilities as may be required by the United States Customs and Immigration Services in connection with the operation of an international bridge or tunnel.

(12) INDIAN RESERVATION ROAD.—The term “Indian reservation road” means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

(13) INTERSTATE SYSTEM.—The term “Interstate System” means the Dwight D. Eisenhower National System of Interstate and Defense Highways described in section 103(c).

(14) MAINTENANCE.—The term “maintenance” means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway.

(15) MAINTENANCE AREA.—The term “maintenance area” means an area that was designated as a nonattainment area, but was

later redesignated by the Administrator of the Environmental Protection Agency as an attainment area, under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

(16) NATIONAL HIGHWAY SYSTEM.—The term “National Highway System” means the Federal-aid highway system described in section 103(b).

(17) OPERATING COSTS FOR TRAFFIC MONITORING, MANAGEMENT, AND CONTROL.—The term “operating costs for traffic monitoring, management, and control” includes labor costs, administrative costs, costs of utilities and rent, and other costs associated with the continuous operation of traffic control, such as integrated traffic control systems, incident management programs, and traffic control centers.

(18) OPERATIONAL IMPROVEMENT.—The term “operational improvement”—

(A) means (i) a capital improvement for installation of traffic surveillance and control equipment, computerized signal systems, motorist information systems, integrated traffic control systems, incident management programs, and transportation demand management facilities, strategies, and programs, and (ii) such other capital improvements to public roads as the Secretary may designate, by regulation; and

(B) does not include resurfacing, restoring, or rehabilitating improvements, construction of additional lanes, interchanges, and grade separations, and construction of a new facility on a new location.

(19) PARK ROAD.—The term “park road” means a public road, including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles, that is located within, or provides access to, an area in the National Park System with title and maintenance responsibilities vested in the United States.

(20) PARKWAY.—The term “parkway”, as used in chapter 2 of this title, means a parkway authorized by Act of Congress on lands to which title is vested in the United States.

(21) PROJECT.—The term “project” means an undertaking to construct a particular portion of a highway, or if the context so implies, the particular portion of a highway so constructed or any other undertaking eligible for assistance under this title.

(22) PROJECT AGREEMENT.—The term “project agreement” means the formal instrument to be executed by the State transportation department and the Secretary as required by section 106.

(23) PUBLIC AUTHORITY.—The term “public authority” means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

(24) PUBLIC LANDS DEVELOPMENT ROADS AND TRAILS.—The term “public lands development roads and trails” means those roads and trails that the Secretary of the Interior determines are of primary importance for the development, protection, administration, and utilization of public lands and resources under the control of the Secretary of the Interior.

(25) PUBLIC LANDS HIGHWAY.—The term “public lands highway” means a forest road under the jurisdiction of and maintained by a public authority and open to public travel or any highway through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by a public authority and open to public travel.

(26) PUBLIC LANDS HIGHWAYS.—The term “public lands highways” means those main highways through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations, which are on the Federal-aid systems.

(27) PUBLIC ROAD.—The term “public road” means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

(28) REFUGE ROAD.—The term “refuge road” means a public road that provides access to or within a unit of the National Wildlife Refuge System and for which title and maintenance responsibility is vested in the United States Government.

(29) RURAL AREAS.—The term “rural areas” means all areas of a State not included in urban areas.

(30) SAFETY IMPROVEMENT PROJECT.—The term “safety improvement project” means a project that corrects or improves high hazard locations, eliminates roadside obstacles, improves highway signing and pavement marking, installs priority control systems for emergency vehicles at signalized intersections, installs or replaces emergency motorist aid call boxes, or installs traffic control or warning devices at locations with high accident potential.

(31) SECRETARY.—The term “Secretary” means Secretary of Transportation.

(32) STATE.—The term “State” means any of the 50 States, the District of Columbia, or Puerto Rico.

(33) STATE FUNDS.—The term “State funds” includes funds raised under the authority of the State or any political or other subdivision thereof, and made available for expenditure under the direct control of the State transportation department.

(34) STATE TRANSPORTATION DEPARTMENT.—The term “State transportation department” means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.

(35) TRANSPORTATION ENHANCEMENT ACTIVITIES.—The term “transportation enhancement activities” means, with respect to any project or the area to be served by the project, any of the following activities if such activity relates to surface transportation: provision of facilities for pedestrians and bicycles, provision of safety and educational activities for pedestrians and bicyclists, acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs (including the provision of tourist and welcome center facilities), landscaping and other scenic beautification, historic preservation, rehabilitation and operation of historic transportation buildings, structures, or facilities (including his-

toric railroad facilities and canals), preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails), control and removal of outdoor advertising, archaeological planning and research, environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity, and establishment of transportation museums.

(36) URBAN AREA.—The term “urban area” means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized area in each such State, or urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urban place designated by the Bureau of the Census, except in the case of cities in the State of Maine and in the State of New Hampshire.

(37) URBANIZED AREA.—The term “urbanized area” means an area with a population of 50,000 or more designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urbanized area within a State as designated by the Bureau of the Census.

(b) It is hereby declared to be in the national interest to accelerate the construction of the Federal-aid highway systems, including The Dwight D. Eisenhower System of Interstate and Defense Highways, since many of such highways, or portions thereof, are in fact inadequate to meet the needs of local and interstate commerce, for the national and civil defense.

It is hereby declared that the prompt and early completion of The Dwight D. Eisenhower System of Interstate and Defense Highways, so named because of its primary importance to the national defense and hereafter referred to as the “Interstate System”, is essential to the national interest and is one of the most important objectives of this Act. It is the intent of Congress that the Interstate System be completed as nearly as practicable over the period of availability of the forty years’ appropriations authorized for the purpose of expediting its construction, reconstruction, or improvement, inclusive of necessary tunnels and bridges, through the fiscal year ending September 30, 1996, under section 108(b) of the Federal-Aid Highway Act of 1956 (70 Stat. 374), and that the entire system in all States be brought to simultaneous completion. Insofar as possible in consonance with this objective, existing highways located on an interstate route shall be used to the extent that such use is practicable, suitable, and feasible, it being the intent that local needs, to the extent practicable, suitable, and feasible, shall be given equal consideration with the needs of interstate commerce.

It is further declared that since the Interstate System is now in the final phase of completion

it shall be the national policy that increased emphasis be placed on the construction and reconstruction of the other Federal-aid systems in accordance with the first paragraph of this subsection, in order to bring all of the Federal-aid systems up to standards and to increase the safety of these systems to the maximum extent.

(c) It is the sense of Congress that under existing law no part of any sums authorized to be appropriated for expenditure upon any Federal-aid system which has been apportioned pursuant to the provisions of this title shall be impounded or withheld from obligation, for purposes and projects as provided in this title, by any officer or employee in the executive branch of the Federal Government, except such specific sums as may be determined by the Secretary of the Treasury, after consultation with the Secretary of Transportation, are necessary to be withheld from obligation for specific periods of time to assure that sufficient amounts will be available in the Highway Trust Fund to defray the expenditures which will be required to be made from such fund.

(d) No funds authorized to be appropriated from the Highway Trust Fund shall be expended by or on behalf of any Federal department, agency, or instrumentality other than the Federal Highway Administration unless funds for such expenditure are identified and included as a line item in an appropriation Act and are to meet obligations of the United States heretofore or hereafter incurred under this title attributable to the construction of Federal-aid highways or highway planning, research, or development, or as otherwise specifically authorized to be appropriated from the Highway Trust Fund by Federal-aid highway legislation.

(e) It is the national policy that to the maximum extent possible the procedures to be utilized by the Secretary and all other affected heads of Federal departments, agencies, and instrumentalities for carrying out this title and any other provision of law relating to the Federal highway programs shall encourage the substantial minimization of paperwork and inter-agency decision procedures and the best use of available manpower and funds so as to prevent needless duplication and unnecessary delays at all levels of government.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 885; Pub. L. 86-70, §21(e)(1), June 25, 1959, 73 Stat. 146; Pub. L. 86-624, §17(a), July 12, 1960, 74 Stat. 415; Pub. L. 87-866, §6(a), Oct. 23, 1962, 76 Stat. 1147; Pub. L. 88-423, §3, Aug. 13, 1964, 78 Stat. 397; Pub. L. 89-574, §4(a), Sept. 13, 1966, 80 Stat. 767; Pub. L. 90-495, §§4(a), 8, 15, Aug. 23, 1968, 82 Stat. 816, 819, 822; Pub. L. 91-605, title I, §§104(a), 106(a), 107, 117(d), 130, 141, Dec. 31, 1970, 84 Stat. 1714, 1716, 1718, 1724, 1732, 1737; Pub. L. 93-87, title I, §§105, 106(a), 107, 108, 152(1), Aug. 13, 1973, 87 Stat. 253-255, 276; Pub. L. 93-643, §102(b), Jan. 4, 1975, 88 Stat. 2281; Pub. L. 94-280, title I, §§107(a), 108, May 5, 1976, 90 Stat. 430, 431; Pub. L. 95-599, title I, §106, Nov. 6, 1978, 92 Stat. 2693; Pub. L. 97-424, title I, §§126(c), 159, Jan. 6, 1983, 96 Stat. 2115, 2135; Pub. L. 100-17, title I, §§102(b)(3), 108, 109, 133(b)(2), (3), Apr. 2, 1987, 101 Stat. 135, 146, 171; Pub. L. 101-427, Oct. 15, 1990, 104 Stat. 927; Pub. L. 102-240, title I, §§1001(g), 1005, 1006(g)(1), 1007(c), Dec. 18, 1991, 105 Stat. 1916, 1922, 1927,

1931; Pub. L. 104-59, title III, §§301(b), 311(b), Nov. 28, 1995, 109 Stat. 578, 583; Pub. L. 105-178, title I, §1201, June 9, 1998, 112 Stat. 164.)

## REFERENCES IN TEXT

This Act, referred to in subsec. (b), is Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 885, as amended, which revised, codified, and reenacted this title. For complete classification of this Act to the Code, see Tables.

Section 108(b) of the Federal-Aid Highway Act of 1956 (70 Stat. 374), referred to in subsec. (b), is section 108(b) of act June 29, 1956, ch. 462, 70 Stat. 378, which is set out below.

## AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178 inserted heading and amended text of subsec. (a) generally, alphabetizing, numbering, and inserting headings for terms defined, inserting definitions of “maintenance area” and “refuge road”, and substituting definition of “State transportation department” for definition of “State highway department”.

1995—Subsec. (a). Pub. L. 104-59, §311(b), in first sentence of definition of “construction”, inserted “bond costs and other costs relating to the issuance in accordance with section 122 of bonds or other debt financing instruments,” after “highway, including”.

Pub. L. 104-59, §301(b)(1), in definition of “project”, inserted before period at end “or any other undertaking eligible for assistance under this title”.

Pub. L. 104-59, §301(b)(2), added provision defining “operating costs for traffic monitoring, management, and control” and struck out former provision defining “startup costs for traffic management and control” which read as follows: “The term ‘startup costs for traffic management and control’ means initial costs (including labor costs, administration costs, cost of utilities, and rent) for integrated traffic control systems, incident management programs, and traffic control centers.”

1991—Subsec. (a). Pub. L. 102-240, §1006(g)(1), added provision defining “Federal-aid highways” and struck out former provision which read as follows: “The term ‘Federal-aid highways’ means highways located on one of the Federal-aid systems described in section 103 of this title.”

Pub. L. 102-240, §1005(a), in definition of “highway safety improvement project”, inserted “installs priority control systems for emergency vehicles at signalized intersections” after “marking,”.

Pub. L. 102-240, §1005(d)(3), in definition of “Indian reservation roads”, struck out “, including roads on the Federal-aid systems,” after “public roads”.

Pub. L. 102-240, §1005(d)(4), in definition of “park road”, inserted “, including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles” before “that is located”.

Pub. L. 102-240, §1005(b), inserted provision defining “urbanized area” and struck out former provision which read as follows: “The term ‘urbanized area’ means an area so designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall, as a minimum, encompass the entire urbanized area within a State as designated by the Bureau of the Census.”

Pub. L. 102-240, §1005(c), inserted provision defining “National Highway System” and struck out former provision defining “Federal-aid primary system” which read as follows: “The term ‘Federal-aid primary system’ means the Federal-aid highway system described in subsection (b) of section 103 of this title.”

Pub. L. 102-240, §1005(d)(1), (2), struck out provisions defining “Federal-aid secondary system” and “Federal-aid urban system” which read as follows:

“The term ‘Federal-aid secondary system’ means the Federal-aid highway system described in subsection (c) of section 103 of this title.

“The term ‘Federal-aid urban system’ means the Federal-aid highway system described in subsection (d) of section 103 of this title.”

Pub. L. 102-240, §1005(e), in definition of “Interstate System”, inserted “Dwight D. Eisenhower” before “National”.

Pub. L. 102-240, §1005(g), inserted provisions defining “startup costs for traffic management and control”, “carpool project”, “public authority” and “public lands highway”.

Pub. L. 102-240, §1005(f), inserted provision defining “operational improvement”.

Pub. L. 102-240, §1007(c), inserted provision defining “transportation enhancement activities”.

Subsec. (b). Pub. L. 102-240, §1001(g), substituted “forty” for “thirty-seven” and “1996” for “1993” in second par.

1990—Subsec. (b). Pub. L. 101-427 substituted “The Dwight D. Eisenhower System of Interstate and Defense Highways” for “the National System of Interstate and Defense Highways” in first two pars.

1987—Subsec. (a). Pub. L. 100-17, §108, in definition of “construction”, inserted “elimination of roadside obstacles,” after “grade crossings.”.

Pub. L. 100-17, §133(b)(2), substituted definition of “forest road or trail” for “forest or trail”.

Pub. L. 100-17, §109, in definition of “highway safety improvement project”, inserted “installs or replaces emergency motorist-aid call boxes,” after “pavement marking.”.

Pub. L. 100-17, §133(b)(3), amended definition of “park road” generally. Prior to amendment, definition read as follows: “The term ‘park road’ means a public road that is located within or provides access to an area in the national park system.”

Subsec. (b). Pub. L. 100-17, §102(b)(3), substituted “thirty-seven years” for “thirty-four years” and “1993” for “1990” in second par.

1983—Subsec. (a). Pub. L. 97-424, §126(c)(1), substituted provision that “park road” means a public road that is located within or provides access to an area in the national park system, for provision that “park roads and trails” means those roads or trails, including the necessary bridges, located in national parks or monuments, now or hereafter established, or in other areas administered by the National Park Service of the Department of the Interior (excluding parkways authorized by Acts of Congress) and also including approach roads to national parks or monuments authorized by the Act of January 31, 1931 (46 Stat. 1053), as amended.

Pub. L. 97-424, §126(c)(2), substituted “The term ‘Indian reservation roads’ means public roads, including roads” for “The term ‘Indian reservation roads and bridges’ means roads and bridges, including roads and bridges” before “on the Federal-aid systems”.

Pub. L. 97-424, §126(c)(3), inserted provision defining “Federal lands highways”.

Pub. L. 97-424, §159, in definition of “construction”, inserted provision that it also includes costs incurred by the State in performing Federal-aid project related audits which directly benefit the Federal-aid highway program.

1978—Subsec. (a). Pub. L. 95-599, §106(a), in definition of “construction” inserted provision relating to capital improvements.

Pub. L. 95-599, §106(b)(1), in definition of “forest road or trail”, inserted provisions requiring contingency or service to the National Forest System and necessity for the protection, administration, and utilization thereof.

Pub. L. 95-599, §106(b)(2), defined “forest development roads or trails” in terms of a forest road or trail under the jurisdiction of the Forest Service rather than in terms of a forest road or trail of primary importance for the protection, administration, and utilization of the national forest or other areas under the jurisdiction of the Forest Service.

Pub. L. 95-599, §106(b)(3), defined “forest highway” in terms of a forest road under the jurisdiction of, and maintained by, a public authority and open to public

travel rather than in terms of a forest road which is of primary importance to the States, counties, or communities contingent to national forests and which is a Federal-aid system.

Pub. L. 95-599, §106(b)(4), inserted definition of "highway safety improvement project".

1976—Subsec. (a). Pub. L. 94-280, §108, defined "construction" to include resurfacing, restoration, and rehabilitation and "urban area" to exclude cities in the States of Maine and New Hampshire and inserted definition of "public road".

Subsec. (b). Pub. L. 94-280, §107(a), substituted provision for completion of the Interstate System over a thirty-four year period, through the fiscal year ending September 30, 1990, for a prior provision for such completion over a twenty-three period, through the fiscal year ending June 30, 1979.

1975—Subsec. (a). Pub. L. 93-643 defined "Indian reservation roads and bridges" to include roads and bridges on the Federal-aid systems.

1973—Subsec. (a). Pub. L. 93-87, §105(1), in definition of "construction", substituted "National Oceanic and Atmospheric Administration" for "Coast and Geodetic Survey" and extended definition to include improvements which directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas.

Pub. L. 93-87, §105(3), in definition of "Indian reservation roads and bridges", substituted "approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians" for "approval of the Federal Government on which Indians reside whom the Secretary of the Interior has determined to be eligible for services generally available to Indians under Federal laws specifically applicable to Indians".

Pub. L. 93-87, §152(1), in definition of "Secretary", substituted "Secretary of Transportation" for "Secretary of Commerce".

Pub. L. 93-87, §105(4), in definition of "urbanized area", provided for boundaries of the "urbanized area" to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary, and required such boundaries, as a minimum, to encompass the entire urbanized area within a State as designated by the Bureau of the Census.

Pub. L. 93-87, §105(2), in definition of "urban area", substituted "an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized area in each such State, or an urban place as designated by the Bureau of the Census having a population of five thousand or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary" for "an area including and adjacent to a municipality or other urban place having a population of five thousand or more, as determined by the latest available Federal census, within boundaries to be fixed by a State highway department subject to the approval of the Secretary", and required such boundaries, as a minimum, to encompass the entire urban place designated by the Bureau of the Census.

Subsec. (b). Pub. L. 93-87, §§106(a), 107, extended time for completion of the National System of Interstate and Defense Highways, substituting in second par. "twenty-three years" and "June 30, 1979" for "twenty years" and "June 30, 1976", and inserted third par. declaratory of national policy, since the Interstate System is now in the final phase of completion, that increased emphasis be placed on the construction and reconstruction of the other Federal-aid systems in accordance with the first par. of subsec. (b), in order to bring all of the Federal-aid systems up to standards and to increase the safety of these systems to the maximum extent.

Subsec. (e). Pub. L. 93-87, §108, added subsec. (e).

1970—Subsec. (a). Pub. L. 91-605, §§106(a), 117(d), 130, 141, inserted definitions of "urbanized area" and "Federal-aid urban system", substituted "subsection (e)" for "subsection (d)" in definition of "Interstate System", included within the costs of construction, under the definition of "construction", relocation assistance, acquisition of replacement housing sites, acquisition, and rehabilitation, relocation, and construction of replacement housing, and substituted "acquisition" for "costs" of rights-of-way, broadened definition of "Indian reservation roads and bridges" to include roads and bridges on State controlled Indian reservations, trust lands, and restricted Indian lands, as well as roads and bridges on such lands under Federal control, and inserted in definitions of "forest highway" and "public lands highways" provisions to ensure that these highways be on the Federal-aid systems.

Subsec. (b). Pub. L. 91-605, §104(a), substituted "twenty years" for "eighteen years" and "June 30, 1976" for "June 30, 1974".

Subsec. (c). Pub. L. 91-605, §107, substituted "any officer or employee in the executive branch of the Federal Government" for "any officer or employee of any department, agency, or instrumentality of the executive branch of the Federal Government" and "Highway Trust Fund" for "highway trust fund".

Subsec. (d). Pub. L. 91-605, §107, substituted provisions prohibiting expenditure of funds from the Highway Trust Fund by any department other than the Federal Highway Administration unless these funds are identified and included as a line item in an appropriation Act and are to meet obligations incurred under this title attributable to the construction of Federal aid highways or for planning, research, or development, or as otherwise specifically authorized to be appropriated from the Highway Trust Fund by Federal-aid highway legislation for provisions expressing essentially the same prohibitions but permitting expenditures to meet obligations incurred under this title attributable to Federal-aid highways, and contracted for in accordance with the Act of March 4, 1915, as amended [section 686 of Title 31, Money and Finance], relating to work or services not usually performed by the Federal Highway Administration, or relating to the furnishing of materials, supplies or equipment, and expenditures specifically identified in the budget and included in an appropriation Act.

1968—Subsec. (a). Pub. L. 90-495, §8, inserted "and other areas administered by the Forest Service" after "national forests" and "national forest" in definitions of "forest road or trail" and "forest development roads and trails".

Subsec. (b). Pub. L. 90-495, §4(a), substituted a reference to "eighteen years' appropriation" for reference to "sixteen years' appropriation" and substituted "June 30, 1974" for "June 30, 1972".

Subsecs. (c), (d). Pub. L. 90-495, §15, added subsecs. (c) and (d).

1966—Subsec. (b). Pub. L. 89-574 substituted a reference to "sixteen years' appropriation" for reference to "fifteen years' appropriation" and substituted "June 30, 1972" for "June 30, 1971".

1964—Subsec. (b). Pub. L. 88-423 substituted "fifteen years" for "thirteen years" and "June 30, 1971" for "June 30, 1969".

1962—Subsec. (a). Pub. L. 87-866 inserted definition of "public lands development roads and trails".

1960—Subsec. (a). Pub. L. 86-624 substituted "fifty States, the District of Columbia, or Puerto Rico" for "forty-nine States, the District of Columbia, Hawaii, or Puerto Rico" in definition of "State".

1959—Subsec. (a). Pub. L. 86-70 substituted "forty-nine States, the District of Columbia, Hawaii" for "forty-eight States, the District of Columbia, Hawaii, Alaska" in definition of "State".

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title IX, §9016, July 22, 1998, 112 Stat. 868, provided that: "This title [see Tables for classifica-



tion] and the amendments made by this title shall take effect simultaneously with the enactment of the Transportation Equity Act for the 21st Century [Pub. L. 105-178]. For purposes of all Federal laws, the amendments made by this title shall be treated as being included in the Transportation Equity Act for the 21st Century at the time of the enactment of such Act [June 9, 1998], and the provisions of such Act (including the amendments made by such Act) (as in effect on the day before the date of enactment of this Act [July 22, 1998]) that are amended by this title shall be treated as not being enacted."

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Section 147 of Pub. L. 91-605 provided that: "The amendments made by section 117 [enacting section 510 of this title, amending this section, and renumbering sections 511 and 512 of this title], 120 [amending provisions set out as a note under section 502 of this title], and 137 of this Act [amending section 506 of this title] shall not take effect if before the effective date of this Act [Dec. 31, 1970] the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 has been enacted into law." The Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, enacted as Pub. L. 91-646, 84 Stat. 1894, was approved Jan. 2, 1971, whereas this Act (Title I of Pub. L. 91-605) was approved Dec. 31, 1970, therefore the amendments made by sections 117, 120, and 137 of Title I of Pub. L. 91-605 took effect.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Section 37 of Pub. L. 90-495, as amended by Pub. L. 91-605, title I, §120, Dec. 31, 1970, 84 Stat. 1725, provided that:

"(a) Except as otherwise provided in subsection (b) of this section, this Act and the amendments made by this Act [enacting sections 135, 139, 140, 141, and 501 to 511 of this title, amending this section, sections 103, 104, 108, 112, 113, 115, 116, 120, 125, 128, 129, 131, 135, 136, 138, 205, 319, and 402 of this title, section 636 of Title 15, Commerce and Trade, and section 1653 of former Title 49, Transportation, repealing section 133 of this title, enacting provisions set out as notes under this section and sections 104, 108, 125, 134, 501, 502, and 510 of this title] shall take effect on the date of its enactment [Aug. 23, 1968], except that until July 1, 1970, sections 502, 505, 506, 507, and 508 of title 23, United States Code, as added by this Act, shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. Except as otherwise provided in subsection (b) of this section, after July 1, 1970, such sections shall be completely applicable to all States. Section 133 of title 23, United States Code, shall not apply to any State if sections 502, 505, 506, 507, and 508 of title 23, United States Code, are applicable in that State, and effective July 1, 1970, such section 133 is repealed.

"(b) In the case of any State (1) which is required to amend its constitution to comply with sections 502, 505, 506, 507, and 508 of title 23, United States Code, and (2) which cannot submit the required constitutional amendment for ratification prior to July 1, 1970, the date of July 1, 1970, contained in subsection (a) of this section shall be extended to July 1, 1972."

#### EFFECTIVE DATE OF 1959 AMENDMENT

Section 21(e) of Pub. L. 86-70 provided that the amendments made by that section (amending this section and sections 104, 116, and 120 of this title) are effective July 1, 1959.

#### SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105-206, title IX, §9001, July 22, 1998, 112 Stat. 834, provided that: "This title [see Tables for classification] may be cited as the 'TEA 21 Restoration Act'."

Pub. L. 105-178, §1(a), June 9, 1998, 112 Stat. 107, provided that: "This Act [see Tables for classification] may be cited as the 'Transportation Equity Act for the 21st Century'."

Pub. L. 105-178, title I, §1501, June 9, 1998, 112 Stat. 241, provided that: "This chapter [chapter 1 (§§1501-1504) of subtitle E of title I of Pub. L. 105-178, enacting subchapter II of this chapter, amending section 301 of Title 49, Transportation, and enacting provisions set out as a note under section 181 of this title] may be cited as the 'Transportation Infrastructure Finance and Innovation Act of 1998'."

#### SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105-130, §1, Dec. 1, 1997, 111 Stat. 2552, provided that: "This Act [amending sections 104, 321, 326, and 410 of this title, sections 9503, 9504, and 9511 of Title 26, Internal Revenue Code, and sections 111, 5309, 5337, 5338, 30308, and 31104 of Title 49, Transportation, enacting provisions set out as notes under section 104 of this title and section 9503 of Title 26, and amending provisions set out as notes under this section and section 307 of this title] may be cited as the 'Surface Transportation Extension Act of 1997'."

#### SHORT TITLE OF 1995 AMENDMENT

Section 1(a) of Pub. L. 104-59 provided that: "This Act [enacting section 161 of this title, amending this section, sections 103, 104, 106, 109, 111, 112, 115, 116, 120, 122, 127, 129, 130, 131, 133, 134, 141, 144, 149, 152, 153, 217, 303, 306, 307, 323, 409, and 410 of this title, sections 1261 and 1262 of Title 16, Conservation, sections 7506 and 12186 of Title 42, The Public Health and Welfare, and sections 5316, 5331, 20140, 30308, 31112, 31136, 31306, and 45102 of Title 49, Transportation, repealing section 154 of this title, enacting provisions set out as notes preceding section 101 of this title and under this section, sections 104, 109, 130, 141, 153, 154, 307, 309, 401, and 408 of this title, section 403 of Title 16, section 7511a of Title 42, and section 31136 of Title 49, amending provisions set out as notes under this section and sections 104, 109, 127, 149, and 307 of this title, and repealing provisions set out as notes preceding section 101 of this title and under section 112 of this title] may be cited as the 'National Highway System Designation Act of 1995'."

#### SHORT TITLE OF 1987 AMENDMENT

Section 1(a) of Pub. L. 100-17 provided that: "This Act [enacting sections 151, 156, and 409 of this title, section 508 of Title 33, Navigation and Navigable Waters, section 4604 of Title 42, The Public Health and Welfare, and sections 1607a-2, 1619, 1620, and 1621 of former Title 49, Transportation, amending this section, sections 103, 104, 106, 109, 111, 112, 113, 114, 115, 116, 118, 119, 120, 121, 122, 123, 125, 127, 129, 130, 138, 140, 144, 152, 154, 157, 204, 210, 215, 217, 307, 315, 319, 321, 323, 401, 402, and 408 of this title, section 4607-11 of Title 16, Conservation, section 1761 of Title 18, Crimes and Criminal Procedure, sections 4041, 4051, 4052, 4071, 4081, 4221, 4481, 4482, 4483, 6156, 6412, 6420, 6421, 6427, and 9503 of Title 26, Internal Revenue Code, sections 494 and 1414 of Title 33, sections 4601, 4621, 4622, 4623, 4624, 4625, 4626, 4630, 4631, 4633, 4636, 4638, 4651, and 4655 of Title 42, sections 303 and 10922 of Title 49, and sections 1602, 1603, 1604, 1607, 1607a, 1607a-1, 1607c, 1608, 1612, 1613, 1614, 1617, 1655, 2311, 2314, and 2716 of former Title 49, repealing sections 211, 213, 219, and 322 of this title, sections 498a, 498b, 503 to 507, 526, 526a, 529, and 535d of Title 33, and sections 4634 and 4637 of Title 42, enacting provisions set out as notes under this section, sections 103, 104, 116, 120, 125, 127, 130, 144, 202, 307, 401, and 402 of this title, sections 1, 4052, and 4481 of Title 26, section 4601 of Title 42, section 10922 of Title 49, and sections 1601, 1602, 1608, and 2204 of former Title 49, amending provisions set out as notes under this section and sections 103, 104, 130, 141, 144, 146, and 401 of

this title, and repealing provisions set out as notes under sections 114, 130, and 217 of this title and section 526a of Title 33] may be cited as the ‘Surface Transportation and Uniform Relocation Assistance Act of 1987.’”

Section 101 of title I of Pub. L. 100-17 provided that: “This title [enacting sections 151, 156, and 409 of this title and section 508 of Title 33, Navigation and Navigable Waters, amending this section, sections 103, 104, 106, 109, 111, 112, 113, 114, 115, 116, 118, 119, 120, 121, 122, 123, 125, 127, 129, 130, 138, 140, 144, 152, 154, 157, 204, 210, 215, 217, 307, 315, 319, 321, 323, 401, and 402 of this title, section 1761 of Title 18, Crimes and Criminal Procedure, sections 494 and 1414 of Title 33, section 303 of Title 49, Transportation, and sections 1655, 2311, and 2716 of former Title 49, repealing sections 211, 213, 219, and 322 of this title and sections 498a, 498b, 503 to 507, 526, 526a, 529, and 535d of Title 33, enacting provisions set out as notes under this section and sections 103, 104, 116, 120, 125, 127, 130, 144, 202, 307, and 402 of this title, amending provisions set out as notes under this section and sections 103, 104, 130, 141, 144, and 146 of this title, and repealing provisions set out as notes under sections 114, 130, and 217 of this title and section 526a of Title 33] may be cited as the ‘Federal-Aid Highway Act of 1987.’”

#### SHORT TITLE OF 1983 AMENDMENTS

Section 1 of Pub. L. 97-424 provided: “That this Act [enacting section 157 of this title, sections 4051 to 4053 and 9503 of Title 26, Internal Revenue Code, and sections 1601c, 1607a, 1607a-1, 1617, 1618, and 2301 to 2315 of former Title 49, Transportation, amending section 713c-3 of Title 15, Commerce and Trade, sections 4607-11 and 1606a of Title 16, Conservation, sections 101, 101 notes, 103, 103 note, 105, 109, 112, 113, 114, 115, 116, 118, 119, 120, 122, 125, 127, 130 notes, 137, 139, 140, 141, 142, 144, 150, 152, 201, 202, 203, 204, 210, 214, 217, 218, 307, 307 note, 401 note, and 402 of this title, sections 39, 44E, 46, 48, 103, 165 note, 167, 168, 274, 851, 852, 874, 882, 3304 note, 3454, 4041, 4061, 4063, 4071, 4081, 4101, 4102, 4221, 4222, 4481, 4482, 4483, 6049, 6156, 6201, 6206, 6362, 6412, 6416, 6420, 6421, 6427, 6504, 6675, 7210, 7603, 7604, 7605, 7609, 7610, and 9502 of Title 26, section 1414 of Title 33, Navigation and Navigable Waters, sections 602 and 1382a of Title 42, The Public Health and Welfare, sections 1474, 1475, and 1479 of former Title 46, Shipping, section 1273 of Title 46, Appendix, sections 10927 note, 11909 and 11914 of Title 49, and sections 1602, 1603, 1604, 1607c, 1608, 1611, 1612, 1614, 2204, 2205, 2206 of former Title 49, repealing sections 101 notes, 104 note, and 206 to 209 of this title, sections 120 note, 4091 to 4094, and 6424 of Title 26, and sections 1602 note, 1604a, 1617, and 1618 of former Title 49, and enacting provisions set out as notes under this section, sections 103, 104, 105, 109, 111, 119, 120, 125, 144, 146, 154, 307, 401, and 408 of this title, section 713c-3 of Title 15, sections 1, 39, 46, 165, 274, 3304, 4041, 4051, 4061, 4071, 4081, 4481, 6012, 6427, and 9503 of Title 26, section 602 of Title 42, and sections 1601, 1612, and 2315 of former Title 49] may be cited as the ‘Surface Transportation Assistance Act of 1982.’”

Section 101 of title I of Pub. L. 97-424 provided that: “This title [enacting section 157 of this title, amending this section and sections 103, 105, 109, 112, 113, 114, 115, 116, 118, 119, 120, 122, 125, 127, 137, 139, 140, 142, 144, 150, 152, 201, 202, 203, 204, 210, 214, 217, 218, and 307 of this title, repealing sections 101 notes, 104 note, and 206 to 209 of this title, and enacting provisions set out as notes under this section, sections 103, 104, 105, 109, 111, 119, 120, 125, 144, and 146 of this title, and section 2315 of former Title 49, Transportation] may be cited as the ‘Highway Improvement Act of 1982.’”

Section 1 of Pub. L. 97-327, Oct. 15, 1982, 96 Stat. 1611, provided: “That this Act [amending section 144 of this title, provisions set out as notes under this section and section 130 of this title, and enacting provisions set out as notes under section 104 of this title] may be cited as the ‘Federal-Aid Highway Act of 1982.’”

#### SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97-134, § 13, Dec. 29, 1981, 95 Stat. 1703, provided that: “This Act [amending sections 104, 119, and 139 of

this title and enacting provisions set out as notes under this section and section 104 of this title] may be cited as the ‘Federal-Aid Highway Act of 1981.’”

#### SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95-599 provided: “That this Act [enacting sections 119, 146, and 407 of this title, and sections 1602-1, 1607, 1614, 1615, 1616, 1617 and 1618 of former Title 49, Transportation, amending this section, sections 103, 104, 105, 109, 111, 116, 118, 120, 122, 124, 125, 129, 131, 134, 141, 144, 148, 151, 152, 154, 155, 215, 217, 219, 320, 402, and 406 of this title, section 1418 of Title 15, Commerce and Trade, section 4607-11 of Title 16, Conservation, sections 39, 4041, 4061, 4071, 4081, 4481, 4482, 6156, 6412, 6421, 6427, 7210, 7603, 7604, 7605, 7609, and 7610 of Title 26, Internal Revenue Code, section 201 of Title 40, Appendix, Public Buildings, Property, and Works, sections 303, 1602, 1603, 1604, 1607b, 1607c, 1608, 1611, 1612, and 1613 of former Title 49, repealing section 153 of this title and sections 1607, 1607a, and 1614 of former Title 49, and enacting provisions set out as notes under this section, sections 103, 104, 109, 111, 120, 122, 124, 129, 130, 134, 135, 141, 142, 144, 146, 215, 217, 307, 320, 401, 402, and 403 of this title, section 6427 of Title 26, section 201 of Title 40, Appendix, section 5904 of Title 42, The Public Health and Welfare, section 883 of Title 46, Appendix, Shipping, and sections 1601, 1602, 1604, 1605, 1612, and 1653 of former Title 49] may be cited as the ‘Surface Transportation Assistance Act of 1978.’”

Section 101 of title I of Pub. L. 95-599 provided that: “This title [enacting sections 119 and 146 of this title, amending this section, sections 103, 104, 105, 109, 111, 116, 118, 120, 122, 124, 125, 129, 131, 134, 141, 144, 148, 151, 152, 155, 203, 215, 217, 219, 320, and 406 of this title, and section 201 of Title 40, Appendix, Public Buildings, Property and Works, repealing section 153 of this title and provisions set out as notes under this section and section 1605 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section, sections 103, 104, 109, 111, 120, 122, 124, 129, 130, 134, 135, 141, 142, 144, 146, 217, 307, and 320 of this title, section 201 of Title 40, Appendix, section 5904 of Title 42, section 883 of Title 46, Appendix, Shipping, and section 1653 of former Title 49, Transportation] may be cited as the ‘Federal-Aid Highway Act of 1978.’”

Section 501 of Pub. L. 95-599 provided that: “This title [amending section 4601-11 of Title 16, Conservation, sections 39, 4041, 4061, 4071, 4081, 4481, 4482, 6156, 6412, 6421, 6427, 7210, 7603, 7604, and 7605 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 120 and 307 of this title and section 6427 of Title 26] may be cited as the ‘Highway Revenue Act of 1978.’”

#### SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-280, title I, § 101, May 5, 1976, 90 Stat. 425, provided that: “This title [enacting section 156 of this title, amending this section and sections 103, 104, 106, 108, 117, 118, 121, 125, 127, 129, 131, 135, 138 to 140, 142, 147, 152, 153, 202, 203, 217, 219, 319, and 320 of this title, repealing sections 146 and 405 of this title, enacting provisions set out as notes under this section, sections 103, 104, 124, 134, 135, 215, 218, 319, and 320 of this title, and section 1605 of former Title 49, Transportation, and amending provisions set out as notes under this section, sections 120, 130, and 142 of this title, and section 1605 of former Title 49] may be cited as the ‘Federal-Aid Highway Act of 1976.’”

#### SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93-643, § 1, Jan. 4, 1975, 88 Stat. 2281, provided: “That this Act [enacting sections 141, 154, 155, 219, and 406, amending this section and sections 103, 115, 127, 129, 131, 136, 144, 208, 320, 322, 323, and 405, enacting provisions set out as notes under this section, sections 142, 217, and 320, amending provisions set out as notes under this section and sections 130 and 142, and repealing provisions set out as a note under this section] may be cited as the ‘Federal-Aid Highway Amendments of 1974.’”

## SHORT TITLE OF 1973 AMENDMENT

Pub. L. 93-87, title I, §101, Aug. 13, 1973, 87 Stat. 250, provided that: "This title [enacting sections 145 to 150, 217, 218, 323, and 324 of this title and section 1602a of former Title 49, Transportation, amending this section and sections 103 to 105, 108, 109, 114, 117, 121, 126, 129, 135, 140, 142, 143, 149, 207, 303, 307 to 310, 312, 314, and 320 of this title, and enacting provisions set out as notes under this section, sections 103, 104, 120, 130, 142, 218, 307, 319, and 320 of this title, and sections 1608 and 1637 of former Title 49] may be cited as the 'Federal-Aid Highway Act of 1973'."

## SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91-605, title I, §101, Dec. 31, 1970, 84 Stat. 1713, provided that: "This title [enacting sections 142, 143, 215, 216, 321, and 510 of this title, amending this section and sections 103, 104, 105, 106, 109, 120, 125, 128, 129, 131, 134, 135, 136, 139, 140, 303, 307, 320, 506, 511, 512 of this title and section 517 of Title 33, Navigation and Navigable Waters, and enacting provisions set out as notes under this section and sections 104, 120, 129, 131, 134, 215, 216, 303, 307, 320, and 510 of this title] may be cited as the 'Federal-Aid Highway Act of 1970'."

## SHORT TITLE OF 1968 AMENDMENT

Pub. L. 90-495, §1, Aug. 23, 1968, 82 Stat. 815, provided that: "This Act [enacting sections 135, 139, 140, and 141 of this title, amending this section, sections 103, 104, 108, 112, 113, 115, 116, 120, 125, 128, 129, 131, 135, 136, 138, 205, 319, 402, and 501 to 512 of this title, section 636 of Title 15, Commerce and Trade, section 1653 of former Title 49, Transportation, and provisions set out as a note under this section, repealing section 133 of this title and enacting provisions formerly set out as notes under this section and sections 104, 108, 125, 134, 501, 502, and 510 of this title] may be cited as the 'Federal-Aid Highway Act of 1968'."

## SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89-574, §1, Sept. 13, 1966, 80 Stat. 766, provided that: "This Act [enacting sections 120 and 138 of this title, amending this section and sections 104, 109, 118, 120, 125, 131, 136, 302, and 319 of this title, and enacting provisions set out as notes under this section and sections 106, 108, 125, 133, and 137 of this title] may be cited as the 'Federal-Aid Highway Act of 1966'."

## SHORT TITLE OF 1965 AMENDMENT

Pub. L. 89-285, §403, Oct. 22, 1965, 79 Stat. 1033, provided that: "This Act [enacting sections 136 of this title and provisions set out as notes under sections 131 and 135 of this title and amending sections 131 and 319 of this title] may be cited as the 'Highway Beautification Act of 1965'."

## SHORT TITLE OF 1964 AMENDMENT

Pub. L. 88-423 §1, Aug. 13, 1964, 78 Stat. 397, provided that: "This Act [amending this section and sections 104, 205, 209, and 320 of this title] may be cited as the 'Federal-Aid Highway Act of 1964'."

## SHORT TITLE OF 1963 AMENDMENT

Pub. L. 88-157, §1, Oct. 24, 1963, 77 Stat. 276, provided: "That this Act [amending sections 104, 106, 109, 121, 131, and 307 of this title] may be cited as the 'Federal-Aid Highway Amendments Act of 1963'."

## SHORT TITLE OF 1962 AMENDMENT

Pub. L. 87-866, §1, Oct. 23, 1962, 76 Stat. 1145, provided that: "This Act [enacting sections 133, 134 and 214 of this title, amending this section and sections 103, 104, 203, and 307 of this title, and enacting provisions set out as a note under section 307 of this title] may be cited as the 'Federal-Aid Highway Act of 1962'."

## SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87-61, title I, §101, June 29, 1961, 75 Stat. 122, provided that: "This Act [enacting section 6156 of Title

26, Internal Revenue Code, amending sections 111, 131 and 210 of this title and sections 4041, 4061, 4071, 4081, 4218, 4221, 4226, 4481, 4482, 6412, 6416, 6421, and 6601 of Title 26, enacting provisions set out as notes under this section and section 104 of this title and under section 4041 of Title 26, and amending provisions set out as notes under this section and section 120 of this title] may be cited as the 'Federal-Aid Highway Act of 1961'."

## SHORT TITLE OF 1960 AMENDMENT

Pub. L. 86-657, §1, July 14, 1960, 74 Stat. 522, provided that: "This Act [enacting section 132 of this title and amending sections 104, 114, 120, 129, 203, 205, 210, and 305 of this title] may be cited as the 'Federal Highway Act of 1960'."

## SHORT TITLE OF 1959 AMENDMENT

Pub. L. 86-342, title I, §101, Sept. 21, 1959, 73 Stat. 611, provided that: "This Act [amending sections 125, 131, 137, and 320 of this title, and sections 4041, 4081, 4082, 4226, 6412, 6416, and 6421 of Title 26, Internal Revenue Code, enacting notes set out under section 307 of this title and section 4082 of Title 26, and amending notes set out under this section and sections 104 and 120 of this title] may be cited as the 'Federal-Aid Highway Act of 1959'."

## SEPARABILITY

Section 36 of Pub. L. 90-495 provided that: "If any provision of this Act (including the amendments made by this Act) [enacting sections 135, 139, 140, 141, and 501-511 of this title, amending this section, sections 103, 104, 108, 112, 113, 115, 116, 120, 125, 128, 129, 131, 135, 136, 138, 205, 319, and 402 of this title, section 636 of Title 15, Commerce and Trade, section 1653 of former Title 49, Transportation, and provisions set out as a note under this section, repealing section 133 of this title, and enacting provisions set out as notes under this section and sections 104, 108, 125, 134, 501, 502, and 510 of this title] or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances shall not be affected thereby."

## TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of Commerce and other officers and offices of Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety transferred to and vested in Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created Department of Transportation. See section 102 of Title 49, Transportation, and Pub. L. 97-449, §2, Jan. 12, 1983, 96 Stat. 2439.

## NATIONAL CORRIDOR PLANNING AND DEVELOPMENT PROGRAM

Pub. L. 105-178, title I, §1118, June 9, 1998, 112 Stat. 161, provided that:

"(a) IN GENERAL.—The Secretary shall establish and implement a program to make allocations to States and metropolitan planning organizations for coordinated planning, design, and construction of corridors of national significance, economic growth, and international or interregional trade. A State or metropolitan planning organization may apply to the Secretary for allocations under this section.

"(b) ELIGIBILITY OF CORRIDORS.—The Secretary may make allocations under this section with respect to—

"(1) high priority corridors identified in section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. 102-240, 105 Stat. 2032]; and

"(2) any other significant regional or multistate highway corridor not described in whole or in part in paragraph (1) selected by the Secretary after consideration of—

"(A) the extent to which the annual volume of commercial vehicle traffic at the border stations or ports of entry of each State—

“(i) has increased since the date of enactment of the North American Free Trade Agreement Implementation Act (Public Law 103-182 [Dec. 8, 1993]); and

“(ii) is projected to increase in the future;

“(B) the extent to which commercial vehicle traffic in each State—

“(i) has increased since the date of enactment of the North American Free Trade Agreement Implementation Act (Public Law 103-182); and

“(ii) is projected to increase in the future;

“(C) the extent to which international truck-borne commodities move through each State;

“(D) the reduction in commercial and other travel time through a major international gateway or affected port of entry expected as a result of the proposed project including the level of traffic delays at at-grade highway crossings of major rail lines in trade corridors;

“(E) the extent of leveraging of Federal funds provided under this subsection, including—

“(i) use of innovative financing;

“(ii) combination with funding provided under other sections of this Act [see Tables for classification] and title 23, United States Code; and

“(iii) combination with other sources of Federal, State, local, or private funding including State, local, and private matching funds;

“(F) the value of the cargo carried by commercial vehicle traffic, to the extent that the value of the cargo and congestion impose economic costs on the Nation’s economy; and

“(G) encourage or facilitate major multistate or regional mobility and economic growth and development in areas underserved by existing highway infrastructure.

“(c) PURPOSES.—Allocations may be made under this section for 1 or more of the following purposes:

“(1) Feasibility studies.

“(2) Comprehensive corridor planning and design activities.

“(3) Location and routing studies.

“(4) Multistate and intrastate coordination for corridors described in subsection (b).

“(5) After review by the Secretary of a development and management plan for the corridor or a usable component thereof under subsection (b)—

“(A) environmental review; and

“(B) construction.

“(d) CORRIDOR DEVELOPMENT AND MANAGEMENT PLAN.—A State or metropolitan planning organization receiving an allocation under this section shall develop, and submit to the Secretary for review, a development and management plan for the corridor or a usable component thereof with respect to which the allocation is being made. Such plan shall include, at a minimum, the following elements:

“(1) A complete and comprehensive analysis of corridor costs and benefits.

“(2) A coordinated corridor development plan and schedule, including a timetable for completion of all planning and development activities, environmental reviews and permits, and construction of all segments.

“(3) A finance plan, including any innovative financing methods and, if the corridor is a multistate corridor, a State-by-State breakdown of corridor finances.

“(4) The results of any environmental reviews and mitigation plans.

“(5) The identification of any impediments to the development and construction of the corridor, including any environmental, social, political and economic objections.

In the case of a multistate corridor, the Secretary shall encourage all States having jurisdiction over any portion of such corridor to participate in the development of such plan.

“(e) APPLICABILITY OF TITLE 23.—Funds made available by section 1101 of this Act [set out in part as a

note below] to carry out this section and section 1119 [set out below] shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code.

“(f) COORDINATION OF PLANNING.—Planning with respect to a corridor under this section shall be coordinated with transportation planning being carried out by the States and metropolitan planning organizations along the corridor and, to the extent appropriate, with transportation planning being carried out by Federal land management agencies, by tribal governments, or by government agencies in Mexico or Canada.

“(g) STATE DEFINED.—In this section, the term ‘State’ has the meaning such term has under section 101 of title 23, United States Code.”

#### COORDINATED BORDER INFRASTRUCTURE PROGRAM

Pub. L. 105-178, title I, §1119, June 9, 1998, 112 Stat. 163, provided that:

“(a) GENERAL AUTHORITY.—The Secretary shall establish and implement a coordinated border infrastructure program under which the Secretary may make allocations to border States and metropolitan planning organizations for areas within the boundaries of 1 or more border States for projects to improve the safe movement of people and goods at or across the border between the United States and Canada and the border between the United States and Mexico.

“(b) ELIGIBLE USES.—Allocations to States and metropolitan planning organizations under this section may only be used in a border region for—

“(1) improvements to existing transportation and supporting infrastructure that facilitate cross-border vehicle and cargo movements;

“(2) construction of highways and related safety and safety enforcement facilities that will facilitate vehicle and cargo movements related to international trade;

“(3) operational improvements, including improvements relating to electronic data interchange and use of telecommunications, to expedite cross border vehicle and cargo movement;

“(4) modifications to regulatory procedures to expedite cross border vehicle and cargo movements;

“(5) international coordination of planning, programming, and border operation with Canada and Mexico relating to expediting cross border vehicle and cargo movements; and

“(6) activities of Federal inspection agencies.

“(c) SELECTION CRITERIA.—The Secretary shall make allocations under this section on the basis of—

“(1) expected reduction in commercial and other motor vehicle travel time through an international border crossing as a result of the project;

“(2) improvements in vehicle and highway safety and cargo security related to motor vehicles crossing a border with Canada or Mexico;

“(3) strategies to increase the use of existing, underutilized border crossing facilities and approaches;

“(4) leveraging of Federal funds provided under this section, including use of innovative financing, combination of such funds with funding provided under other sections of this Act [see Tables for classification], and combination with other sources of Federal, State, local, or private funding;

“(5) degree of multinational involvement in the project and demonstrated coordination with other Federal agencies responsible for the inspection of vehicles, cargo, and persons crossing international borders and their counterpart agencies in Canada and Mexico;

“(6) improvements in vehicle and highway safety and cargo security in and through the gateway or affected port of entry concerned;

“(7) the degree of demonstrated coordination with Federal inspection agencies;

“(8) the extent to which the innovative and problem solving techniques of the proposed project would be applicable to other border stations or ports of entry;

“(9) demonstrated local commitment to implement and sustain continuing comprehensive border or affected port of entry planning processes and improvement programs; and

“(10) such other factors as the Secretary determines are appropriate to promote border transportation efficiency and safety.

“(d) CONSTRUCTION OF TRANSPORTATION INFRASTRUCTURE FOR LAW ENFORCEMENT PURPOSES.—At the request of the Administrator of General Services, in consultation with the Attorney General, the Secretary may transfer, during the period of fiscal years 1998 through 2001, not more than \$10,000,000 of the amounts made available by section 1101 [set out in part as a note below] to carry out this section and section 1118 [set out above] to the Administrator of General Services for the construction of transportation infrastructure necessary for law enforcement in border States.

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

“(1) BORDER REGION.—The term ‘border region’ means the portion of a border State in the vicinity of an international border with Canada or Mexico.

“(2) BORDER STATE.—The term ‘border State’ means any State that has a boundary in common with Canada or Mexico.”

#### HIGHWAY ECONOMIC REQUIREMENT SYSTEM

Pub. L. 105-178, title I, §1213(a), June 9, 1998, 112 Stat. 199, provided that:

“(1) METHODOLOGY.—

“(A) EVALUATION.—The Comptroller General of the United States shall conduct an evaluation of the methodology used by the Department of Transportation to determine highway needs using the highway economic requirement system (in this subsection referred to as the ‘model’).

“(B) REQUIRED ELEMENT.—The evaluation shall include an assessment of the extent to which the model estimates an optimal level of highway infrastructure investment, including an assessment as to when the model may be overestimating or underestimating investment requirements.

“(C) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act [June 9, 1998], the Comptroller General shall submit to Congress a report on the results of the evaluation.

“(2) STATE INVESTMENT PLANS.—

“(A) STUDY.—In consultation with State transportation departments and other appropriate State and local officials, the Comptroller General of the United States shall conduct a study on the extent to which the model can be used to provide States with useful information for developing State transportation investment plans and State infrastructure investment projections.

“(B) REQUIRED ELEMENTS.—The study shall—

“(i) identify any additional data that may need to be collected beyond the data submitted, before the date of enactment of this Act, to the Federal Highway Administration through the highway performance monitoring system; and

“(ii) identify what additional work, if any, would be required of the Federal Highway Administration and the States to make the model useful at the State level.

“(C) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on the results of the study.”

#### SOUTHWEST BORDER TRANSPORTATION INFRASTRUCTURE

Pub. L. 105-178, title I, §1213(d), June 9, 1998, 112 Stat. 200, provided that:

“(1) ASSESSMENT.—The Secretary shall conduct a comprehensive assessment of the state of the transportation infrastructure on the southwest border between the United States and Mexico (in this subsection referred to as the ‘border’).

“(2) CONSULTATION.—In carrying out the assessment, the Secretary shall consult with—

“(A) the Secretary of State;

“(B) the Attorney General;

“(C) the Secretary of the Treasury;

“(D) the Commandant of the Coast Guard;

“(E) the Administrator of General Services;

“(F) the American Commissioner on the International Boundary Commission, United States and Mexico;

“(G) State agencies responsible for transportation and law enforcement in border States; and

“(H) municipal governments and transportation authorities in sister cities in the border area.

“(3) REQUIREMENTS.—In carrying out the assessment, the Secretary shall—

“(A) assess the flow of commercial and private traffic through designated ports of entry on the border;

“(B) assess the adequacy of transportation infrastructure in the border area, including highways, bridges, railway lines, and border inspection facilities;

“(C) assess the adequacy of law enforcement and narcotics abatement activities in the border area, as the activities relate to commercial and private traffic and infrastructure;

“(D) assess future demands on transportation infrastructure in the border area; and

“(E) make recommendations to facilitate legitimate cross-border traffic in the border area, while maintaining the integrity of the border.

“(4) REPORT.—Not later than 1 year after the date of enactment of this Act [June 9, 1998], the Secretary shall submit to Congress a report on the assessment conducted under this subsection, including any related legislative and administrative recommendations.”

#### TRANSPORTATION AND COMMUNITY AND SYSTEM PRESERVATION PILOT PROGRAM

Pub. L. 105-178, title I, §1221, June 9, 1998, 112 Stat. 221, provided that:

“(a) ESTABLISHMENT.—In cooperation with appropriate State, regional, and local governments, the Secretary shall establish a comprehensive initiative to investigate and address the relationships between transportation and community and system preservation and identify private sector-based initiatives.

“(b) RESEARCH.—

“(1) IN GENERAL.—In cooperation with appropriate Federal agencies, State, regional, and local governments, and other entities eligible for assistance under subsection (d), the Secretary shall carry out a comprehensive research program to investigate the relationships between transportation, community preservation, and the environment and the role of the private sector in shaping such relationships.

“(2) REQUIRED ELEMENTS.—The program shall provide for monitoring and analysis of projects carried out with funds made available to carry out subsections (c) and (d).

“(c) PLANNING.—

“(1) IN GENERAL.—The Secretary shall allocate funds made available to carry out this subsection to States, metropolitan planning organizations, and local governments to plan, develop, and implement strategies to integrate transportation and community and system preservation plans and practices.

“(2) PURPOSES.—The purposes of the allocations shall be—

“(A) to improve the efficiency of the transportation system;

“(B) to reduce the impacts of transportation on the environment;

“(C) to reduce the need for costly future investments in public infrastructure;

“(D) to provide efficient access to jobs, services, and centers of trade; and

“(E) to examine development patterns and identify strategies to encourage private sector development patterns which achieve the goals identified in subparagraphs (A) through (D).

“(3) CRITERIA.—In allocating funds made available to carry out this subsection, the Secretary shall give priority to applicants that—

“(A) propose projects for funding that address the purposes described in paragraph (2); and

“(B) demonstrate a commitment of non-Federal resources to the proposed projects.

“(4) ADDITIONAL CRITERIA.—In addition, the Secretary shall give consideration to applicants that demonstrate a commitment to public and private involvement, including involvement of nontraditional partners in the project team.

“(d) ALLOCATION OF FUNDS FOR IMPLEMENTATION.—

“(1) IN GENERAL.—The Secretary shall allocate funds made available to carry out this subsection to States, metropolitan planning organizations, and local governments to carry out projects to address transportation efficiency and community and system preservation.

“(2) CRITERIA.—In allocating funds made available to carry out this subsection, the Secretary shall give priority to applicants that—

“(A) have instituted preservation or development plans and programs that—

“(i) meet the requirements of title 23 and chapter 53 of title 49, United States Code; and

“(ii)(I) are coordinated with State and local adopted preservation or development plans;

“(II) are intended to promote cost-effective and strategic investments in transportation infrastructure that minimize adverse impacts on the environment; or

“(III) are intended to promote innovative private sector strategies.

“(B) have instituted other policies to integrate transportation and community and system preservation practices, such as—

“(i) spending policies that direct funds to high-growth areas;

“(ii) urban growth boundaries to guide metropolitan expansion;

“(iii) ‘green corridors’ programs that provide access to major highway corridors for areas targeted for efficient and compact development; or

“(iv) other similar programs or policies as determined by the Secretary;

“(C) have preservation or development policies that include a mechanism for reducing potential impacts of transportation activities on the environment;

“(D) examine ways to encourage private sector investments that address the purposes of this section; and

“(E) propose projects for funding that address the purposes described in subsection (c)(2).

“(3) EQUITABLE DISTRIBUTION.—In allocating funds to carry out this subsection, the Secretary shall ensure the equitable distribution of funds to a diversity of populations and geographic regions.

“(4) USE OF ALLOCATED FUNDS.—

“(A) IN GENERAL.—An allocation of funds made available to carry out this subsection shall be used by the recipient to implement the projects proposed in the application to the Secretary.

“(B) TYPES OF PROJECTS.—The allocation of funds shall be available for obligation for—

“(i) any project eligible for funding under title 23 or chapter 53 of title 49, United States Code; or

“(ii) any other activity relating to transportation and community and system preservation that the Secretary determines to be appropriate, including corridor preservation activities that are necessary to implement—

“(I) transit-oriented development plans;

“(II) traffic calming measures; or

“(III) other coordinated transportation and community and system preservation practices.

“(e) FUNDING.—

“(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the

Mass Transit Account) to carry out this section \$20,000,000 for fiscal year 1999 and \$25,000,000 for each of fiscal years 2000 through 2003.

“(2) CONTRACT AUTHORITY.—Funds authorized under this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.”

#### TRANSPORTATION ASSISTANCE FOR OLYMPIC CITIES

Pub. L. 105-178, title I, §1223, June 9, 1998, 112 Stat. 224, as amended by Pub. L. 105-206, title IX, §9003(j), July 22, 1998, 112 Stat. 842, provided that:

“(a) PURPOSE.—The purpose of this section is to authorize the provision of assistance for, and support of, State and local efforts concerning surface transportation issues necessary to obtain the national recognition and economic benefits of participation in the International Olympic movement, the International Paralympic movement, and the Special Olympics International movement by hosting international quadrennial Olympic and Paralympic events, and Special Olympics International events, in the United States.

“(b) PRIORITY FOR TRANSPORTATION PROJECTS RELATING TO OLYMPIC, PARALYMPIC, AND SPECIAL OLYMPIC EVENTS.—Notwithstanding any other provision of law, from funds available to carry out sections 118(c) and 144(g)(1) of title 23, United States Code, the Secretary may give priority to funding for a transportation project relating to an international quadrennial Olympic or Paralympic event, or a Special Olympics International event, if—

“(1) the project meets the extraordinary needs associated with an international quadrennial Olympic or Paralympic event or a Special Olympics International event; and

“(2) the project is otherwise eligible for assistance under sections 118(c) and 144(g)(1) of such title.

“(c) TRANSPORTATION PLANNING ACTIVITIES.—The Secretary may participate in—

“(1) planning activities of States and metropolitan planning organizations and transportation projects relating to an international quadrennial Olympic or Paralympic event, or a Special Olympics International event, under sections 134 and 135 of title 23, United States Code; and

“(2) developing intermodal transportation plans necessary for the projects in coordination with State and local transportation agencies.

“(d) FUNDING.—Notwithstanding section 5001(a) [112 Stat. 419], from funds made available under such section, the Secretary may provide assistance for the development of an Olympic, a Paralympic, and a Special Olympics transportation management plan in cooperation with an Olympic Organizing Committee responsible for hosting, and State and local communities affected by, an international quadrennial Olympic or Paralympic event or a Special Olympics International event.

“(e) TRANSPORTATION PROJECTS RELATING TO OLYMPIC, PARALYMPIC, AND SPECIAL OLYMPIC EVENTS.—

“(1) IN GENERAL.—The Secretary may provide assistance, including planning, capital, and operating assistance, to States and local governments in carrying out transportation projects relating to an international quadrennial Olympic or Paralympic event or a Special Olympics International event.

“(2) FEDERAL SHARE.—The Federal share of the cost of a project assisted under this subsection shall not exceed 80 percent.

“(f) ELIGIBLE GOVERNMENTS.—A State or local government shall be eligible to receive assistance under this section only if the government is hosting a venue that is part of an international quadrennial Olympics that is officially selected by the International Olympic Committee or Special Olympics International.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section such sums as are necessary for each of fiscal years 1998 through 2003.”

DISCRETIONARY GRANT SELECTION CRITERIA AND  
PROCESS

Pub. L. 105-178, title I, §1311, as added by Pub. L. 105-206, title IX, §9004(a), July 22, 1998, 112 Stat. 842, provided that:

“(a) ESTABLISHMENT OF CRITERIA.—The Secretary shall establish criteria for all discretionary programs funded from the Highway Trust Fund (other than the Mass Transit Account). To the extent practicable, such criteria shall conform to the Executive Order No. 12893 [31 U.S.C. 501 note] (relating to infrastructure investment).

“(b) SELECTION PROCESS.—

“(1) LIMITATION ON ACCEPTANCE OF APPLICATIONS.—Before accepting applications for grants under any discretionary program for which funds are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) by this Act [see Tables for classification] (including the amendments made by this Act), the Secretary shall publish the criteria established under subsection (a). Such publication shall identify all statutory criteria and any criteria established by regulation that will apply to the program.

“(2) EXPLANATION.—Not less often than quarterly, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a list of the projects selected under discretionary programs funded from the Highway Trust Fund (other than the Mass Transit Account) and an explanation of how the projects were selected based on the criteria established under subsection (a).

“(c) MINIMUM COVERED PROGRAMS.—At a minimum, the criteria established under subsection (a) and the selection process established by subsection (b) shall apply to the following programs:

- “(1) The intelligent transportation system deployment program under title V [see Tables for classification].
- “(2) The national corridor planning and development program.
- “(3) The coordinated border infrastructure and safety program.
- “(4) The construction of ferry boats and ferry terminal facilities.
- “(5) The national scenic byways program.
- “(6) The Interstate discretionary program.
- “(7) The discretionary bridge program.”

COMPLIANCE WITH BUY AMERICAN ACT

Section 359(c) of Pub. L. 104-59 directed Secretary of Transportation to conduct a study on compliance with Buy American Act (41 U.S.C. 10a-10c) with respect to contracts entered into using amounts made available from Highway Trust Fund and not later than 1 year after Nov. 28, 1995, transmit to Congress report on results.

DISADVANTAGED BUSINESS ENTERPRISES

Pub. L. 105-178, title I, §1101(b), June 9, 1998, 112 Stat. 113, provided that:

“(1) GENERAL RULE.—Except to the extent that the Secretary determines otherwise, not less than 10 percent of the amounts made available for any program under titles I, III, and V of this Act [see Tables for classification] shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

“(2) DEFINITIONS.—In this subsection, the following definitions apply:

“(A) SMALL BUSINESS CONCERN.—The term ‘small business concern’ has the meaning such term has under section 3 of the Small Business Act (15 U.S.C. 632); except that such term shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has average annual gross receipts

over the preceding 3 fiscal years in excess of \$16,600,000, as adjusted by the Secretary for inflation.

“(B) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term ‘socially and economically disadvantaged individuals’ has the meaning such term has under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged individuals for purposes of this subsection.

“(3) ANNUAL LISTING OF DISADVANTAGED BUSINESS ENTERPRISES.—Each State shall annually survey and compile a list of the small business concerns referred to in paragraph (1) and the location of such concerns in the State and notify the Secretary, in writing, of the percentage of such concerns which are controlled by women, by socially and economically disadvantaged individuals (other than women), and by individuals who are women and are otherwise socially and economically disadvantaged individuals.

“(4) UNIFORM CERTIFICATION.—The Secretary shall establish minimum uniform criteria for State governments to use in certifying whether a concern qualifies for purposes of this subsection. Such minimum uniform criteria shall include, but not be limited to on-site visits, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, résumé of principal owners, financial capacity, and type of work preferred.

“(5) COMPLIANCE WITH COURT ORDERS.—Nothing in this subsection limits the eligibility of an entity or person to receive funds made available under titles I, III, and V of this Act [see Tables for classification], if the entity or person is prevented, in whole or in part, from complying with paragraph (1) because a Federal court issues a final order in which the court finds that the requirement of paragraph (1), or the program established under paragraph (1), is unconstitutional.

“(6) REVIEW BY COMPTROLLER GENERAL.—Not later than 3 years after the date of enactment of this Act [June 9, 1998], the Comptroller General of the United States shall conduct a review of, and publish and report to Congress findings and conclusions on, the impact throughout the United States of administering the requirement of paragraph (1), including an analysis of—

“(A) in the case of small business concerns certified in each State under paragraph (4) as owned and controlled by socially and economically disadvantaged individuals—

“(i) the number of the small business concerns; and

“(ii) the participation rates of the small business concerns in prime contracts and subcontracts funded under titles I, III, and V of this Act [see Tables for classification];

“(B) in the case of small business concerns described in subparagraph (A) that receive prime contracts and subcontracts funded under titles I, III, and V of this Act—

“(i) the number of the small business concerns;

“(ii) the annual gross receipts of the small business concerns; and

“(iii) the net worth of socially and economically disadvantaged individuals that own and control the small business concerns;

“(C) in the case of small business concerns described in subparagraph (A) that do not receive prime contracts and subcontracts funded under titles I, III, and V of this Act—

“(i) the annual gross receipts of the small business concerns; and

“(ii) the net worth of socially and economically disadvantaged individuals that own and control the small business concerns;

“(D) in the case of business concerns that receive prime contracts and subcontracts funded under titles I, III, and V of this Act, other than small business concerns described in subparagraph (B)—

“(i) the annual gross receipts of the business concerns; and

“(ii) the net worth of individuals that own and control the business concerns;

“(E) the rate of graduation from any programs carried out to comply with the requirement of paragraph (1) for small business concerns owned and controlled by socially and economically disadvantaged individuals;

“(F) the overall cost of administering the requirement of paragraph (1), including administrative costs, certification costs, additional construction costs, and litigation costs;

“(G) any discrimination on the basis of race, color, national origin, or sex against small business concerns owned and controlled by socially and economically disadvantaged individuals;

“(H)(i) any other factors limiting the ability of small business concerns owned and controlled by socially and economically disadvantaged individuals to compete for prime contracts and subcontracts funded under titles I, III, and V of this Act; and

“(ii) the extent to which any of those factors are caused, in whole or in part, by discrimination based on race, color, national origin, or sex;

“(I) any discrimination, on the basis of race, color, national origin, or sex, against construction companies owned and controlled by socially and economically disadvantaged individuals in public and private transportation contracting and the financial, credit, insurance, and bond markets;

“(J) the impact on small business concerns owned and controlled by socially and economically disadvantaged individuals of—

“(i) the issuance of a final order described in paragraph (5) by a Federal court that suspends a program established under paragraph (1); or

“(ii) the repeal or suspension of State or local disadvantaged business enterprise programs; and

“(K) the impact of the requirement of paragraph (1), and any program carried out to comply with paragraph (1), on competition and the creation of jobs, including the creation of jobs for socially and economically disadvantaged individuals.”

Similar provisions were contained in the following prior acts:

Pub. L. 102-240, title I, §1003(b), Dec. 18, 1991, 105 Stat. 1919.

Pub. L. 100-17, title I, §106(c), Apr. 2, 1987, 101 Stat. 145.

#### HIGHWAY USE TAX EVASION PROJECTS

Pub. L. 102-240, title I, §1040, Dec. 18, 1991, 105 Stat. 1992, as amended by Pub. L. 104-59, title III, §325(f), Nov. 28, 1995, 109 Stat. 592; Pub. L. 104-66, title I, §1122(b), Dec. 21, 1995, 109 Stat. 725; Pub. L. 105-130, §5(c)(1), Dec. 1, 1997, 111 Stat. 2557, related to highway use tax evasion projects, prior to repeal by Pub. L. 105-178, title I, §1114(b)(2), June 9, 1998, 112 Stat. 154. See section 143 of this title.

#### SCENIC BYWAYS PROGRAM

Section 1047 of Pub. L. 102-240, as amended by Pub. L. 105-130, §5(c)(2), Dec. 1, 1997, 111 Stat. 2557, provided that:

“(a) SCENIC BYWAYS ADVISORY COMMITTEE.—

“(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall establish in the Department of Transportation an advisory committee to assist the Secretary with respect to establishment of a national scenic byways program under title 23, United States Code.

“(2) MEMBERSHIP.—The advisory committee established under this section shall be composed of 17 members as follows:

“(A) The Administrator of the Federal Highway Administration or the designee of the Administrator who shall serve as chairman of the advisory committee.

“(B) The Chief of the Forest Service of the Department of Agriculture or the designee of the Chief.

“(C) The Director of the National Park Service of the Department of the Interior or the designee of the Director.

“(D) The Director of the Bureau of Land Management of the Department of the Interior or the designee of the Director.

“(E) The Under Secretary for Travel and Tourism of the Department of Commerce or the designee of the Under Secretary.

“(F) The Assistant Secretary for Indian Affairs of the Department of the Interior or the designee of the Assistant Secretary.

“(G) 1 individual appointed by the Secretary who is specially qualified to represent the interests of conservationists on the advisory committee.

“(H) 1 individual appointed by the Secretary of Transportation who is specially qualified to represent the interests of recreational users of scenic byways on the advisory committee.

“(I) 1 individual appointed by the Secretary who is specially qualified to represent the interests of the tourism industry on the advisory committee.

“(J) 1 individual appointed by the Secretary who is specially qualified to represent the interests of historic preservationists on the advisory committee.

“(K) 1 individual appointed by the Secretary who is specially qualified to represent the interests of highway users on the advisory committee.

“(L) 1 individual appointed by the Secretary to represent State highway and transportation officials.

“(M) 1 individual appointed by the Secretary to represent local highway and transportation officials.

“(N) 1 individual appointed by the Secretary who is specially qualified to serve on the advisory committee as a planner.

“(O) 1 individual appointed by the Secretary who is specially qualified to represent the motoring public.

“(P) 1 individual appointed by the Secretary who is specially qualified to represent groups interested in scenic preservation.

“(Q) 1 individual appointed by the Secretary who represents the outdoor advertising industry. Individuals appointed as members of the advisory committee under subparagraphs (G) through (P) may be State and local government officials. Members shall serve without compensation other than for reasonable expenses incident to functions of the advisory committee.

“(3) FUNCTIONS.—The advisory committee established under this subsection shall develop and make to the Secretary recommendations regarding minimum criteria for use by State and Federal agencies in designating highways as scenic byways and as all-American roads for purposes of a national scenic byways program to be established under title 23, United States Code. Such recommendations shall include recommendations on the following:

“(A) Consideration of the scenic beauty and historic significance of highways proposed for designation as scenic byways and all-American roads and the areas surrounding such highways.

“(B) Operation and management standards for highways designated as scenic byways and all-American roads, including strategies for maintaining or improving the qualities for which a highway is designated as a scenic byway or all-American road, for protecting and enhancing the landscape and view corridors surrounding such a highway, and for minimizing traffic congestion on such a highway.

“(C)(i) Standards for scenic byway-related signs, including those which identify highways as scenic byways and all-American roads.

“(ii) The advisability of uniform signs identifying highways as components of the scenic byway system.



“(D) Standards for maintaining highway safety on the scenic byway system.

“(E) Design review procedures for location of highway facilities, landscaping, and travelers’ facilities on the scenic byway system.

“(F) Procedures for reviewing and terminating the designation of a highway designated as a scenic byway.

“(G) Such other matters as the advisory committee may deem appropriate.

“(H) Such other matters for which the Secretary may request recommendations.

“(4) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 18, 1991], the advisory committee established under this section shall submit to the Secretary and Congress a report containing the recommendations described in paragraph (3).

“(b) TECHNICAL AND FINANCIAL ASSISTANCE.—The Secretary shall provide technical assistance to the States (as such term is defined under section 101 of title 23, United States Code) and shall make grants to the States for the planning, design, and development of State scenic byway programs.

“(c) FEDERAL SHARE.—The Federal share payable for the costs of planning, design, and development of State scenic byway programs under this section shall be 80 percent.

“(d) FUNDING.—There shall be available to the Secretary for carrying out this section (other than subsection (f)), out of the Highway Trust Fund (other than the Mass Transit Account), \$1,000,000 for fiscal year 1992, \$3,000,000 for fiscal year 1993, \$4,000,000 for fiscal year 1994, \$14,000,000 for each of the fiscal years 1995, 1996, and 1997, and \$7,000,000 for the period of October 1, 1997, through March 31, 1998. Such sums shall remain available until expended.

“(e) CONTRACT AUTHORITY.—Notwithstanding any other provision of law, approval by the Secretary of a grant under this section shall be deemed a contractual obligation of the United States for payment of the Federal share of the cost of activities for which the grant is being made.

“(f) INTERIM SCENIC BYWAYS PROGRAM.—

“(1) GRANT PROGRAM.—During fiscal years 1992, 1993, and 1994, the Secretary may make grants to any State which has a scenic highway program for carrying out eligible projects on highways which the State has designated as scenic byways.

“(2) PRIORITY PROJECTS.—In making grants under paragraph (1), the Secretary shall give priority to—

“(A) those eligible projects which are included in a corridor management plan for maintaining scenic, historic, recreational, cultural, and archeological characteristics of the corridor while providing for accommodation of increased tourism and development of related amenities;

“(B) those eligible projects for which a strong local commitment is demonstrated for implementing the management plans and protecting the characteristics for which the highway is likely to be designated as a scenic byway;

“(C) those eligible projects which are included in programs which can serve as models for other States to follow when establishing and designing scenic byways on an intrastate or interstate basis; and

“(D) those eligible projects in multi-State corridors where the States submit joint applications.

“(3) ELIGIBLE PROJECTS.—The following are projects which are eligible for Federal assistance under this subsection:

“(A) Planning, design, and development of State scenic byway programs.

“(B) Making safety improvements to a highway designated as a scenic byway under this subsection to the extent such improvements are necessary to accommodate increased traffic, and changes in the types of vehicles using the highway, due to such designation.

“(C) Construction along the highway of facilities for the use of pedestrians and bicyclists, rest areas, turnouts, highway shoulder improvements, passing lanes, overlooks, and interpretive facilities.

“(D) Improvements to the highway which will enhance access to an area for the purpose of recreation, including water-related recreation.

“(E) Protecting historical and cultural resources in areas adjacent to the highway.

“(F) Developing and providing tourist information to the public, including interpretive information about the scenic byway.

“(4) FEDERAL SHARE.—The Federal share payable for the costs of carrying out projects and developing programs under this subsection with funds made available pursuant to this subsection shall be 80 percent.

“(5) FUNDING.—There shall be available to the Secretary for carrying out this subsection, out of the Highway Trust Fund (other than the Mass Transit Account), \$10,000,000 for fiscal year 1992, \$10,000,000 for fiscal year 1993, and \$10,000,000 for fiscal year 1994. Such sums shall remain available until expended.

“(g) LIMITATION.—The Secretary shall not make a grant under this section for any project which would not protect the scenic, historic, recreational, cultural, natural, and archeological integrity of the highway and adjacent area. The Secretary may not use more than 10 percent of the funds authorized for each fiscal year under subsection (f)(5) for removal of any outdoor advertising sign, display, or device.

“(h) TREATMENT OF SCENIC HIGHWAYS IN OREGON.—For purposes of this section, a highway designated as a scenic highway in the State of Oregon shall be treated as a scenic byway.”

#### COMMEMORATION OF DWIGHT D. EISENHOWER SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

Section 6012 of Pub. L. 102-240 provided that:

“(a) STUDY.—The Secretary shall conduct a study to determine an appropriate symbol or emblem to be placed on highway signs referring to the Interstate System to commemorate the vision of President Dwight D. Eisenhower in creating the Dwight D. Eisenhower National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways].

“(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall transmit to Congress a report on the results of the study under this section.”

#### DESIGNATION OF NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS AS THE DWIGHT D. EISENHOWER SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

Pub. L. 101-427, Oct. 15, 1990, 104 Stat. 927, provided: “That—

“(a) notwithstanding any other provision of law, The National System of Interstate and Defense Highways shall be redesignated as ‘The Dwight D. Eisenhower System of Interstate and Defense Highways’; and

“(b) any reference before the date of enactment of this Act [Oct. 15, 1990] in any provision of law, regulation, map, sign, or otherwise to The National System of Interstate and Defense Highways shall be deemed to refer, on and after such date, to The Dwight D. Eisenhower System of Interstate and Defense Highways.”

#### SIGNS IDENTIFYING FUNDING SOURCES

Section 154 of Pub. L. 100-17 provided that: “If a State has a practice of erecting on projects under actual construction without Federal-aid highway assistance signs which indicate the source or sources of any funds used to carry out such projects, such State shall erect on all projects under actual construction with any funds made available out of the Highway Trust Fund (other than the Mass Transit Account) signs which are visible

to highway users and which indicate each governmental source of funds being used to carry out such federally assisted projects and the amount of funds being made available by each such source.”

ELIGIBILITY FOR FEDERAL-AID HIGHWAY FUNDS OF PROJECTS INVOLVING IMPROVEMENTS IN VICINITY OF INTERCHANGES NECESSARY TO UPGRADE SAFETY OF PRIMARY ROUTES NOT ON COMMON ALIGNMENT WITH INTERSTATE ROUTE

Section 128 of Pub. L. 97-424 provided that: “In any case where a project involving a Federal-aid primary route not on the Interstate System, and a route on the Interstate System which was originally constructed without the expenditure of any funds authorized under section 108(b) of the Federal-Aid Highway Act of 1956, as amended [set out as a note below], and was subsequently added to the Interstate System, both occupying a common alignment and having elements which have been approved in concept by the Secretary of Transportation as part of a project providing for the upgrading of an interchange on such Interstate route, the cost of improvements in the vicinity of the interchange necessary to upgrade the safety of that part of such Federal-aid primary route not on a common alignment with such Interstate route in an environmentally acceptable manner shall be eligible for the expenditure of funds authorized by such section 108(b).”

STUDY OF FUTURE TRANSPORTATION PROFESSIONAL MANPOWER NEEDS; REPORT

Section 135 of Pub. L. 97-424 provided that: “The Secretary of Transportation shall undertake to enter into appropriate arrangements with the National Academy of Sciences’ Transportation Research Board to conduct a comprehensive study and investigation of future transportation professional manpower needs, including but not limited to prevailing methods of recruitment, training, and financial and other incentives and disincentives which encourage or discourage retention in service of such professional manpower by Federal, State, and local governments. In entering into any arrangement with the National Academy of Sciences for conducting such study and investigation, the Secretary shall request the National Academy of Sciences to report to the Secretary and the Congress not later than two years after the enactment of this Act [Jan. 6, 1983] on the results of such study and investigation, together with its recommendations. The Secretary shall furnish to the Academy at its request any information which the Academy deems necessary for the purpose of conducting the study and investigation authorized by this section.”

CHANGE IN LOCATION OF INTERSTATE SEGMENTS

Section 139 of Pub. L. 97-424, as amended by Pub. L. 100-457, title III, §348, Sept. 30, 1988, 102 Stat. 2156, provided that:

“(a) Notwithstanding the provisions of section 4(b) of the Federal-Aid Highway Act of 1981 [section 4(b) of Pub. L. 97-134, which amended section 108(b) of the Federal-Aid Highway Act of 1956, set out as a note under this section] the Secretary of Transportation may approve a change in location of any Interstate route or segment and approve, in lieu thereof, the construction of such Interstate route or segment on a new location if the original location of such route or segment meets the following criteria: (1) it has been designated under section 103(e) of title 23, United States Code; (2) it is serving Interstate travel as of the date of enactment of this section [Jan. 6, 1983]; (3) it requires improvements which are eligible under the Federal-Aid Highway Act of 1981 [see Short Title of 1981 Amendments note above] and which would either involve major modifications in order to meet acceptable standards or result in severe environmental impacts and such major modifications or mitigation measures relating to the environmental impacts are not cost effective. The cost of the construction of such Interstate route or segment on new loca-

tion with funds available under section 108(b) of the Federal-Aid Highway Act of 1956, as amended [set out as a note below], shall not exceed the estimated cost of the eligible improvements on the original location as eligible under the Federal-Aid Highway Act of 1981 and included in the 1983 interstate cost estimate as approved by the Congress. Such cost shall be increased or decreased, as determined by the Secretary, based on changes in construction costs of the original location of the route or segment as of the date of approval of each project on the new location. Upon approval of a new location, and funds apportioned under section 104(b)(5)(A) of title 23, United States Code, which were expended on the route or segment in the original location shall be refunded to the Highway Trust Fund and credited to the unobligated balance of the State’s apportionment made under section 104(b)(5)(A) of title 23, United States Code, and other eligible Federal-aid highway funds may be substituted in lieu thereof at the appropriate Federal share.

“(b) Where the Secretary of Transportation approves a relocation of an Interstate route or segment under the provisions of subsection (a) of this section, such route or segment shall not be eligible for withdrawal under the provisions of section 103(e)(4) of title 23, United States Code, and shall be subject to the Interstate System completion deadlines provided in subsections (d) and (e) of section 107 of the Surface Transportation Assistance Act of 1978 [section 107(d), (e) of Pub. L. 95-599, set out as a note under section 103 of this title] or subject to Interstate System completion deadlines as may be determined by Congress.

“(c) Notwithstanding any other provision of this section or of any other provision of law, any project involving the relocation of any Interstate route or segment that is approved by the Secretary of Transportation under subsection (a) shall be eligible for discretionary funds made available under section 118(b)(2)(B) of title 23, United States Code.”

BUY AMERICA

Section 165 of Pub. L. 97-424, as amended by Pub. L. 98-229, §10, Mar. 9, 1984, 98 Stat. 57; Pub. L. 100-17, title I, §§133(a)(6), 337(a)(1), (b), (c), Apr. 2, 1987, 101 Stat. 171, 241; Pub. L. 102-240, title I, §1048, title III, §3003(b), Dec. 18, 1991, 105 Stat. 1999, 2088; Pub. L. 103-272, §4(r), July 5, 1994, 108 Stat. 1371; Pub. L. 103-429, §7(a)(3)(E), Oct. 31, 1994, 108 Stat. 4389, provided that:

“(a) Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act or by any Act amended by this Act [see Short Title of 1983 Amendment note above] or, after the date of enactment of this Act [Jan. 6, 1983], any funds authorized to be appropriated to carry out this Act, title 23, United States Code, or the Surface Transportation Assistance Act of 1978 [see Short Title of 1978 Amendment note above] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.

“(b) The provisions of subsection (a) of this section shall not apply where the Secretary finds—

“(1) that their application would be inconsistent with the public interest;

“(2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

“(3) [Repealed. Pub. L. 103-272, §4(r)(2), July 5, 1994, 108 Stat. 1371.]

“(4) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

“(c) For purposes of this section, in calculating components’ costs, labor costs involved in final assembly shall not be included in the calculation.

“(d) The Secretary of Transportation shall not impose any limitation or condition on assistance provided under this Act [see Short Title of 1983 Amendment note above], the Surface Transportation Assistance Act of

1978 [see Short Title of 1978 Amendment note above] or title 23, United States Code, which restricts any State from imposing more stringent requirements than this section on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with such assistance or restricts any recipient of such assistance from complying with such State imposed requirements.

“(e) [Repealed section 401 of Pub. L. 95-599, set out below.]

“(e) REPORT ON WAIVERS.—By January 1, 1995, the Secretary shall submit to Congress a report on the purchases from foreign entities waived under subsection (b) in fiscal years 1992 and 1993, indicating the dollar value of items for which waivers were granted under subsection (b).

“(f) INTENTIONAL VIOLATIONS.—If it has been determined by a court or Federal agency that any person intentionally—

“(1) affixed a label bearing a ‘Made in America’ inscription, or any inscription with the same meaning, to any product used in projects to which this section applies, sold in or shipped to the United States that was not made in the United States; or

“(2) represented that any product used in projects to which this section applies, sold in or shipped to the United States that was not produced in the United States, was produced in the United States; that person shall be ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. 102-240, see Short Title of 1991 Amendment note set out under section 101 of Title 49, Transportation] pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations.

“(g) LIMITATION ON APPLICABILITY OF WAIVERS TO PRODUCTS PRODUCED IN CERTAIN FOREIGN COUNTRIES.—If the Secretary, in consultation with the United States Trade Representative, determines that—

“(1) a foreign country is a party to an agreement with the United States and pursuant to that agreement the head of an agency of the United States has waived the requirements of this section, and

“(2) the foreign country has violated the terms of the agreement by discriminating against products covered by this section that are produced in the United States and are covered by the agreement, the provisions of subsection (b) shall not apply to products produced in that foreign country.”

[Section 337(a) of Pub. L. 100-17 provided that:

“(1)(A) Effective October 1, 1989, section 165(b)(3) of the Surface Transportation Assistance Act of 1982 [section 165(b)(3) of Pub. L. 97-424, set out above] is amended by striking out ‘50’ and inserting in lieu thereof ‘55’.

“(B) Effective October 1, 1991, section 165(b)(3) of the Surface Transportation Assistance Act of 1982 is amended by striking out ‘55’ and inserting in lieu thereof ‘60’.

“(2)(A) Except as provided in subparagraph (B), the amendments made by subparagraphs (A) and (B) of paragraph (1) shall apply only to contracts entered into on or after their respective effective dates.

“(B) The amendments made by paragraph (1) shall not apply with respect to any supplier or contractor or any successor in interest or assignee which qualified under the provisions of section 165(b)(3) of the Surface Transportation Assistance Act of 1982 prior to the date of enactment of this Act [Apr. 2, 1987] under a contract entered into prior to April 1, 1992.”

[Section 337(d) of Pub. L. 100-17 provided that: “The amendments made by subsections (b) and (c) of this section [amending section 165 of Pub. L. 97-424, set out above] shall not apply to any contract awarded pursuant to bids which were outstanding on the date of enactment of this Act [Apr. 2, 1987].”]

#### USE OF ARTICLES MINED OR MANUFACTURED IN UNITED STATES

Pub. L. 95-599, title IV, §401, Nov. 6, 1978, 92 Stat. 2756, as amended by Pub. L. 97-327, §6, Oct. 15, 1982, 96 Stat.

1613, which required that articles, materials, and supplies used in projects administered by Department of Transportation be mined or produced in United States, was repealed by Pub. L. 97-424, title I, §165(e), Jan. 6, 1983, 96 Stat. 2137.

#### INTERCITY PORTIONS OF INTERSTATE SYSTEM; CONSTRUCTION OF PROJECTS; REPORT TO CONGRESS; EXEMPTION

Section 102(b) of Pub. L. 94-280 provided that at least 30 percent of the apportionment made to each State for each of the fiscal years ending Sept. 30, 1978, and Sept. 30, 1979, of the sums authorized in section 102(a) of Pub. L. 94-280 be expended by such State for projects for the construction of intercity portions which would close essential gaps in the Interstate System and provide a continuous System; that the Secretary of Transportation report to Congress before Oct. 1, 1976, on those intercity portions of the Interstate System the construction of which would be needed to close essential gaps in the System; and that a State which did not have sufficient projects to meet the 30 percent requirement would, upon approval of the Secretary of Transportation, be exempt from the requirement to the extent of such inability.

#### INTERSTATE SYSTEM; PROHIBITION OF OBLIGATION OF FUNDS FOR RESURFACING, RESTORATION, OR REHABILITATION PROJECTS

Section 102(c) of Pub. L. 94-280 provided that no part of the funds authorized by section 108(b) of the Federal-Aid Highway Act of 1956, as amended [set out as a note below], for the Interstate System, shall be obligated for any project for resurfacing, restoring, or rehabilitating any portion of the Interstate System.

#### INTERSTATE FUNDING STUDY; REPORT AND RECOMMENDATIONS TO CONGRESS

Section 150 of Pub. L. 94-280 directed Secretary of Transportation to undertake a complete study of the financing of completion of the Interstate Highway System and report to Congress within nine months the results of the study, and to submit to Congress within one year his recommendations regarding the need to provide Federal financial assistance for resurfacing, restoration, and rehabilitation of routes of the System together with results of a study of alternative means of assuring that the high level of transportation service provided by the System is maintained.

#### STUDY OF HIGHWAY NEEDS TO SOLVE ENERGY PROBLEMS; INVESTIGATION AND STUDY; REPORT TO CONGRESS

Section 153 of Pub. L. 94-280 directed Secretary of Transportation to make an investigation and study for the purpose of determining the need for special Federal assistance in the construction or reconstruction of highways on the Federal-aid system necessary for the transportation of coal or other uses in order to promote the solution of the Nation's energy problems; that such study include appropriate consultations with the Secretary of the Interior, the Administrator of the Federal Energy Administration, and other appropriate Federal and State officials; that the Secretary report the results of such investigation and study together with his recommendations, to the Congress not later than one year after May 5, 1976; and that, in order to carry out the study, the Secretary use such funds as were available to him for such purposes under section 104(a) of this title.

#### NATIONAL TRANSPORTATION POLICY STUDY COMMISSION; ESTABLISHMENT; TERMINATION; ETC.

Section 154 of Pub. L. 94-280, as amended by Pub. L. 95-599, title I, §137(a), (b)(1), Nov. 6, 1978, 92 Stat. 2710, established National Transportation Policy Study Commission; directed Commission, not later than July 1, 1979, to make an investigation and study and report to the President and Congress on the transportation

needs and the resources, requirements, and policies of the United States to meet such expected needs; and provided for the Commission to terminate six months after the report.

CONSENT OF GOVERNING BODY FOR EXPENDITURE OF FUNDS

Section 102(d) of Pub. L. 93-643 provided that no funds appropriated under the expanded definition of this section [23 U.S.C. 101(a)] shall be expended without the formal consent of the governing body of the tribe band or group of Indians or Alaskan Natives for whose use the Indian reservation roads and bridges are intended."

CARPOOL DEMONSTRATION PROJECTS IN URBAN AREAS; APPROPRIATIONS AUTHORIZATION

Section 120(b) of Pub. L. 93-643, relating to grants for demonstration projects designed to encourage the use of carpools in urban areas, was repealed by Pub. L. 95-599, title I, §126(b), Nov. 6, 1978, 92 Stat. 2706. See section 146 of this title.

EMERGENCY HIGHWAY ENERGY CONSERVATION

Pub. L. 93-239, §§1-3, Jan. 2, 1974, 87 Stat. 1046, 1047, as amended by Pub. L. 93-643, §§114(c), 120(a), Jan. 4, 1975, 83 Stat. 2286, 2289; Pub. L. 94-280, title I, §143, May 5, 1976, 90 Stat. 445; Pub. L. 95-599, title I, §126(b), Nov. 6, 1978, 92 Stat. 2706, provided:

"[Section 1. Short title]. That this Act be cited as the 'Emergency Highway Energy Conservation Act'.

"SEC. 2. [Repealed. Pub. L. 93-643, §114(c), Jan. 4, 1975, 88 Stat. 2086.]

"SEC. 3. [Repealed. Pub. L. 95-599, title I, §126(b), Nov. 6, 1978, 92 Stat. 2706.]"

Section 4 of Pub. L. 93-239 amended section 601(d) of Federal Aviation Act of 1958, as amended [section 1421(d) of former Title 49, Transportation], relating to emergency locator transmitters.

FUTURE HIGHWAY NEEDS: REPORTS TO CONGRESS

Section 121 of Pub. L. 91-605 provided that:

"(a) The Secretary of Transportation shall develop and include in the report of Congress required to be submitted in January 1972, by section 3 of the Act of August 28, 1965 (79 Stat. 578; Public Law 89-139) [set out below], specific recommendations for the functional realignment of the Federal-aid systems. These recommendations shall be based on the functional classification study made in cooperation with the State highway departments and local governments as required by the Federal-Aid Highway Act of 1968 [see section 17 of Pub. L. 90-495, set out as a note below] and submitted to the Congress in 1970, and the functional classification study now underway of the Federal-aid systems in 1990.

"(b) As a part of the future highway needs report to be submitted to Congress in January 1972, the Secretary shall also make recommendations to the Congress for a continuing Federal-aid highway program for the period 1976 to 1990. The needs estimates to be used in developing such programs shall be in conformance with the functional classification studies referred to in subsection (a) of this section and the recommendations for the functional realignment required by such subsection.

"(c) The recommendations required by subsections (a) and (b) of this section shall be determined on the basis of studies now being conducted by the Secretary in cooperation with the State highway departments and local governments, and, in urban areas of more than fifty thousand population, utilizing the cooperative continuing comprehensive transportation planning process conducted in accordance with section 134 of title 23, United States Code. The highway needs estimates prepared by the States in connection with this report to Congress shall be submitted to Congress by the Secretary, together with his recommendations.

"(d) As a part of the future highway needs report to be submitted to Congress on January 1972, the Secretary shall report to Congress the Federal-aid urban system as designated, and the cost of its construction."

Pub. L. 89-139, §3, Aug. 28, 1965, 79 Stat. 578, which had required the submitting of a report to Congress every second year as to the estimates of the future highway needs of the Nation, and Pub. L. 90-495, §17, Aug. 23, 1968, 82 Stat. 823, which had required that the report include the results of a systematic nationwide functional highway classification study, were repealed by Pub. L. 97-424, title I, §160(b), Jan. 6, 1983, 96 Stat. 2135.

STUDIES OF NEED FOR AND SURVEY OF HIGHWAY CONSTRUCTION PROGRAMS FOR GUAM, AMERICAN SAMOA, AND THE VIRGIN ISLANDS

Pub. L. 90-495, §29, Aug. 23, 1968, 82 Stat. 830, directed the Secretary of Transportation, in cooperation with the government of Guam, the government of American Samoa, and the government of the Virgin Islands, to make studies of the need for, and estimates and planning surveys relative to, highway construction programs for Guam, American Samoa, and the Virgin Islands, and to submit a report to Congress on or before April 1, 1969.

Pub. L. 89-574, §13, Sept. 13, 1966, 80 Stat. 770, as amended by Pub. L. 97-449, §2(a), Jan. 2, 1983, 96 Stat. 2439, directed the Secretary, in cooperation with the government of Guam, the government of American Samoa, and the government of the Virgin Islands to make studies of the need for, and estimates and planning surveys relative to, highway construction programs for Guam, American Samoa, and the Virgin Islands, and to submit a report to Congress on or before July 1, 1967.

REPORT AND RECOMMENDATIONS OF SECRETARY OF COMMERCE

Section 5 of Pub. L. 85-767 directed Secretary of Commerce to submit to Congress not later than Feb. 1, 1959, a report on progress made in attaining objectives set forth in this section, together with recommendations.

SECTION 108(b) OF THE FEDERAL-AID HIGHWAY ACT OF 1956

Section 108(b) of act June 29, 1956, ch. 462, title I, 70 Stat. 378, as amended by Pub. L. 85-381, §7(a), Apr. 16, 1958, 72 Stat. 93; Pub. L. 86-342, title I, §102, Sept. 21, 1959, 73 Stat. 611; Pub. L. 87-61, title I §103, June 29, 1961, 75 Stat. 122; Pub. L. 89-139, §1, Aug. 28, 1965, 79 Stat. 578; Pub. L. 89-574, §2, Sept. 13, 1966, 80 Stat. 766; Pub. L. 90-495, §2, Aug. 23, 1968, 82 Stat. 815; Pub. L. 91-605 title I, §§102, 106(b)(1), Dec. 31, 1970, 84 Stat. 1714, 1716; Pub. L. 93-87, title I, §102, Aug. 13, 1973, 87 Stat. 250; Pub. L. 94-280, title I, §102(a), May 5, 1976, 90 Stat. 425; Pub. L. 95-599, title I, §102, Nov. 6, 1978, 92 Stat. 2689; Pub. L. 97-134, §4(a), (b), Dec. 29, 1981, 95 Stat. 1700; Pub. L. 97-327, §2, Oct. 15, 1982, 96 Stat. 1611; Pub. L. 97-424, title I, §§102, 127(a), Jan. 6, 1983, 96 Stat. 2097, 2117; Pub. L. 100-17, title I, §§104, 138, Apr. 2, 1987, 101 Stat. 142, 175; Pub. L. 102-240, title I, §1001(f), Dec. 18, 1991, 105 Stat. 1916; Pub. L. 103-331, title III, §335(c), Sept. 30, 1994, 108 Stat. 2494, provided that: "For the purpose of expediting the construction, reconstruction, or improvement, inclusive of necessary bridges and tunnels, of the Interstate System, including extensions thereof through urban areas, designated in accordance with the provisions of subsection (e) of section 103 of title 23, United States Code, there is hereby authorized to be appropriated the additional sum of \$1,000,000,000 for the fiscal year ending June 30, 1957, which sum shall be in addition to the authorization heretofore made for that year, the additional sum of \$1,700,000,000 for the fiscal year ending June 30, 1958, the additional sum of \$2,200,000,000 for the fiscal year ending June 30, 1959, the additional sum of \$2,500,000,000 for the fiscal year ending June 30, 1960, the additional sum of \$1,800,000,000 for the fiscal year ending June 30, 1961, the additional sum of \$2,200,000,000 for the fiscal year ending June 30, 1962, the additional sum of \$2,400,000,000 for the fiscal year ending June 30, 1963, the additional sum of \$2,600,000,000 for the fiscal year ending June 30, 1964, the additional sum of \$2,700,000,000 for the fiscal year ending June 30,

1965, the additional sum of \$2,800,000,000 for the fiscal year ending June 30, 1966, the additional sum of \$3,000,000,000 for the fiscal year ending June 30, 1967, the additional sum of \$3,400,000,000 for the fiscal year ending June 30, 1968, the additional sum of \$3,800,000,000 for the fiscal year ending June 30, 1969, the additional sum of \$4,000,000,000 for the fiscal year ending June 30, 1970, the additional sum of \$4,000,000,000 for the fiscal year ending June 30, 1971, the additional sum of \$4,000,000,000 for the fiscal year ending June 30, 1972, the additional sum of \$4,000,000,000 for the fiscal year ending June 30, 1973, the additional sum of \$2,600,000,000 for the fiscal year ending June 30, 1974, the additional sum of \$3,000,000,000 for the fiscal year ending June 30, 1975, the additional sum of \$3,000,000,000 for the fiscal year ending June 30, 1976, the additional sum of \$3,250,000,000 for the fiscal year ending June 30, 1977, the additional sum of \$3,250,000,000 for the fiscal year ending September 30, 1978, the additional sum of \$3,250,000,000 for the fiscal year ending September 30, 1979, the additional sum of \$3,250,000,000 for the fiscal year ending September 30, 1980, the additional sum of \$3,500,000,000 for the fiscal year ending September 30, 1981, the additional sum of \$3,500,000,000 for the fiscal year ending September 30, 1982, the additional sum of \$3,100,000,000 for the fiscal year ending September 30, 1983, the additional sum of \$4,000,000,000 for the fiscal year ending September 30, 1984, the additional sum of \$4,000,000,000 for the fiscal year ending September 30, 1985, the additional sum of \$4,000,000,000 for the fiscal year ending September 30, 1986, the additional sum of \$4,000,000,000 for the fiscal year ending September 30, 1987, the additional sum of \$3,000,000,000 for the fiscal year ending September 30, 1988, the additional sum of \$3,150,000,000 for the fiscal year ending September 30, 1989, the additional sum of \$3,150,000,000 for the fiscal year ending September 30, 1990, the additional sum of \$3,150,000,000 for the fiscal year ending September 30, 1991, the additional sum of \$3,150,000,000 for the fiscal year ending September 30, 1992, the additional sum of \$1,800,000,000 for the fiscal year ending September 30, 1993, the additional sum of \$1,800,000,000 for the fiscal year ending September 30, 1994, the additional sum of \$1,800,000,000 for the fiscal year ending September 30, 1995, and the additional sum of \$1,800,000,000, reduced by the amount made available under section 1045(b)(1)(B) of the Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. 102-240, as amended by Pub. L. 103-331, title III, §335(a), Sept. 30, 1994, 108 Stat. 2494, which is not classified to the Code], for the fiscal year ending September 30, 1996. Nothing in this subsection shall be construed to authorize the appropriation of any sums to carry out sections 131, 136, or 319(b) of title 23, United States Code, or any provision of law relating to highway safety enacted after May 1, 1966. Beginning with funds authorized to be appropriated for fiscal year 1980, no such funds shall be available for projects to expand or clear zones immediately adjacent to the paved roadway of routes designed prior to February, 1967. Effective on and after the date of enactment of this sentence [Dec. 29, 1981], the obligation of funds authorized by this subsection, except for advance construction interstate projects approved before the date of enactment of this sentence, shall be limited to the construction necessary to provide a minimum level of acceptable service on the Interstate System which shall consist of (1) full access control; (2) a pavement design to accommodate the types and volumes of traffic anticipated for the twenty-year period from date of authorization of the initial basic construction contract; (3) essential environmental requirements; (4) a design of not more than six lanes (exclusive of high occupancy vehicle lanes) in rural areas and all urbanized areas under four hundred thousand population, and up to eight lanes (exclusive of high occupancy vehicle lanes) in urbanized areas of four hundred thousand population or more as shown in the 1980 Federal census; and (5) those high occupancy vehicle lanes (including approaches and all directly related facilities) included in the interstate cost estimate for fiscal year 1981. The obligation of funds authorized

by this subsection shall be further limited to the actual costs of only those design concepts, locations, geometrics, and other construction features included in the 1981 interstate cost estimate, except in any case where the Secretary of Transportation determines that a provision of Federal law requires a different design, location, geometric, or other construction feature of a type authorized by this subsection. Notwithstanding any other provision of law, including any other provision of this subsection, where a project is to be constructed (1) to provide parking garage ramps in conjunction with high occupancy vehicle lanes which flow into a distributor system emptying directly into ramps for off-street parking with preferential parking for carpools, vanpools, and buses and the ramps are part of an environmental mitigation effort and are designed to feed into an aerial walkway system, or (2) to provide a parking lot near the terminus of an Interstate System spur route which radiates from an Interstate System beltway which will be used as an intermodal transfer facility for a light rail transit project to be constructed in the median of the spur route and the parking lot is part of an environmental mitigation effort, or (3) to provide a parking garage and associated facilities as part of an intermodal transfer facility with a transit system near or within an Interstate System route right-of-way which will have direct and indirect access to the facility by way of local streets and the parking garage and associated facilities are part of an environmental mitigation effort, or (4) to provide for the comprehensive upgrading of existing high occupancy vehicle lanes, new ramps and parking facilities at mass transit intermodal transfer points on an existing Interstate System route which has temporary high occupancy vehicle lanes in the median and the parking facilities and ramps are part of an environmental mitigation effort, the costs of such parking garage ramps, parking lots, parking garages, associated interchange ramps, high occupancy vehicle lanes, and other associated work eligible under title 23, United States Code, shall be eligible for funds authorized by this subsection as if the costs for these projects were included in the 1981 interstate cost estimate and shall be included as eligible projects in any future interstate cost estimate. For purposes of this subsection, construction necessary to provide a minimum level of acceptable service on the Interstate System shall include, but not be limited to, any construction on the Interstate System which is required under a court order issued before the date of enactment of this sentence. Notwithstanding the fifth sentence of this subsection, the costs of a project which will upgrade an interstate route and will complete a gap on the Interstate System providing access to an international airport and which was described as the preferred alternative in a final environmental impact statement submitted to the Secretary of Transportation on September 30, 1983, shall be eligible for funds authorized by this subsection as if such costs were included in the 1981 interstate cost estimate and shall be included as eligible costs in any future interstate cost estimate, except that (1) such costs may be further developed in the design and environmental process under normal Federal-aid interstate procedures, and (2) the amount of such costs shall not include the portion of the project between High Street and Causeway Street."

Section 127(b) of Pub. L. 97-424 provided that: "Notwithstanding the provisions of section 108(b) of the Federal-Aid Highway Act of 1956, as amended [set out above], the Secretary of Transportation may approve the expenditure of funds authorized under such section for the construction of a previously approved project which provides for improvements to and reconstruction of ramps and service roads which are being developed as part of a roadway system to relieve a severely congested segment on an Interstate route. Such expenditures shall be limited (1) to work necessary to provide more effective and safe operation of such Interstate route, and (2) to a section of an Interstate route which proceeded to construction contract prior to the date of enactment of such Act and which Interstate route, to-

gether with service roads, was constructed without the expenditure of any funds authorized by such section.”

DEFINITIONS OF “INTERSTATE SYSTEM” AND  
“SECRETARY”

Pub. L. 105-178, § 2, June 9, 1998, 112 Stat. 111, provided that: “In this Act [see Tables for classification], the following definitions apply:

“(1) INTERSTATE SYSTEM.—The term ‘Interstate System’ has the meaning such term has under section 101 of title 23, United States Code.

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of Transportation.”

DEFINITION OF “STATE”

Pub. L. 105-178, title I, § 1103(n), June 9, 1998, 112 Stat. 127, as amended by Pub. L. 105-206, title IX, § 9002(c)(2), July 22, 1998, 112 Stat. 835, provided that: “For the purposes of apportioning funds under sections 104, 105, 144, and 206 of title 23, United States Code, the term ‘State’ means any of the 50 States and the District of Columbia.”

DEFINITION OF “SECRETARY”

Section 2 of Pub. L. 104-59 provided that: “In this Act [See Short Title of 1995 Amendment note above], the term ‘Secretary’ means the Secretary of Transportation.”

Section 2 of Pub. L. 100-17 provided that: “As used in this Act [see Short Title of 1987 Amendment note above], the term ‘Secretary’ means the Secretary of Transportation.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 181 of this title; title 16 sections 4601-6a, 460111, 3911; title 49 sections 104, 5308, 47107.

**§ 102. Program efficiencies**

(a) HOV PASSENGER REQUIREMENTS.—

(1) IN GENERAL.—A State transportation department shall establish the occupancy requirements of vehicles operating in high occupancy vehicle lanes; except that no fewer than 2 occupants per vehicle may be required and, subject to section 163 of the Surface Transportation Assistance Act of 1982, motorcycles and bicycles shall not be considered single occupant vehicles.

(2) EXCEPTION FOR INHERENTLY LOW-EMISSION VEHICLES.—Notwithstanding paragraph (1), before September 30, 2003, a State may permit a vehicle with fewer than 2 occupants to operate in high occupancy vehicle lanes if the vehicle is certified as an Inherently Low-Emission Vehicle pursuant to title 40, Code of Federal Regulations, and is labeled in accordance with, section 88.312-93(c) of such title. Such permission may be revoked by the State should the State determine it necessary.

(b) ACCESS OF MOTORCYCLES.—No State or political subdivision of a State may enact or enforce a law that applies only to motorcycles and the principal purpose of which is to restrict the access of motorcycles to any highway or portion of a highway for which Federal-aid highway funds have been utilized for planning, design, construction, or maintenance. Nothing in this subsection shall affect the authority of a State or political subdivision of a State to regulate motorcycles for safety.

(c) ENGINEERING COST REIMBURSEMENT.—If on-site construction of, or acquisition of right-of-

way for, a highway project is not commenced within 10 years (or such longer period as the State requests and the Secretary determines to be reasonable) after the date on which Federal funds are first made available, out of the Highway Trust Fund (other than Mass Transit Account), for preliminary engineering of such project, the State shall pay an amount equal to the amount of Federal funds made available for such engineering. The Secretary shall deposit in such Fund all amounts paid to the Secretary under this section.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 887; Pub. L. 102-240, title I, § 1016(a), Dec. 18, 1991, 105 Stat. 1945; Pub. L. 105-178, title I, §§ 1206, 1209, 1212(a)(2)(A)(i), 1304, June 9, 1998, 112 Stat. 185, 186, 193, 227.)

REFERENCES IN TEXT

Section 163 of the Surface Transportation Assistance Act of 1982, referred to in subsec. (a)(1), is section 163 of Pub. L. 97-424, which is set out as a note under section 146 of this title.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178, § 1209, designated existing provisions as par. (1), inserted heading, realigned margins, and added par. (2).

Subsec. (a)(1). Pub. L. 105-178, § 1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department”.

Subsec. (b). Pub. L. 105-178, § 1206, added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 105-178, § 1304, which directed insertion of “(or such longer period as the State requests and the Secretary determines to be reasonable)” after “10 years” in first sentence of subsec. (b), was executed by making the insertion in first sentence of subsec. (c) to reflect the probable intent of Congress and the amendment by Pub. L. 105-178, § 1206. See below.

Pub. L. 105-178, § 1206, redesignated subsec. (b) as (c).

1991—Pub. L. 102-240 substituted section catchline for one which read: “Authorizations” and amended text generally. Prior to amendment, text read as follows: “The provisions of this title apply to all unappropriated authorizations contained in prior Acts, and also to all unexpended appropriations, heretofore made, providing for the expenditure of Federal funds upon the Federal-aid systems. All such authorizations and appropriations shall continue in full force and effect, but hereafter obligations entered into and expenditures made pursuant thereto shall be subject to the provisions of this title.”

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

**§ 103. Federal-aid systems**

(a) IN GENERAL.—For the purposes of this title, the Federal-aid systems are the Interstate System and the National Highway System.

(b) NATIONAL HIGHWAY SYSTEM.—

(1) DESCRIPTION.—The National Highway System consists of the highway routes and connections to transportation facilities depicted on the map submitted by the Secretary to Congress with the report entitled “Pulling Together: The National Highway System and its Connections to Major Intermodal Termi-

nals” and dated May 24, 1996. The system shall—

(A) serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and other major travel destinations;

(B) meet national defense requirements; and

(C) serve interstate and interregional travel.

(2) COMPONENTS.—The National Highway System described in paragraph (1) consists of the following:

(A) The Interstate System described in subsection (c).

(B) Other urban and rural principal arterial routes.

(C) Other connector highways (including toll facilities) that provide motor vehicle access between arterial routes on the National Highway System and a major intermodal transportation facility.

(D) A strategic highway network consisting of a network of highways that are important to the United States strategic defense policy and that provide defense access, continuity, and emergency capabilities for the movement of personnel, materials, and equipment in both peacetime and wartime. The highways may be highways on or off the Interstate System and shall be designated by the Secretary in consultation with appropriate Federal agencies and the States.

(E) Major strategic highway network connectors consisting of highways that provide motor vehicle access between major military installations and highways that are part of the strategic highway network. The highways shall be designated by the Secretary in consultation with appropriate Federal agencies and the States.

(3) MAXIMUM MILEAGE.—The mileage of highways on the National Highway System shall not exceed 178,250 miles.

(4) MODIFICATIONS TO NHS.—

(A) IN GENERAL.—The Secretary may make any modification, including any modification consisting of a connector to a major intermodal terminal, to the National Highway System that is proposed by a State or that is proposed by a State and revised by the Secretary if the Secretary determines that the modification—

(i) meets the criteria established for the National Highway System under this title; and

(ii) enhances the national transportation characteristics of the National Highway System.

(B) COOPERATION.—

(i) IN GENERAL.—In proposing a modification under this paragraph, a State shall cooperate with local and regional officials.

(ii) URBANIZED AREAS.—In an urbanized area, the local officials shall act through the metropolitan planning organization designated for the area under section 134.

(5) CONGRESSIONAL HIGH PRIORITY CORRIDORS.—Upon the completion of feasibility

studies, the Secretary shall add to the National Highway System any congressional high priority corridor or any segment of such a corridor established by section 1105 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2031 et seq.) that was not identified on the National Highway System described in paragraph (1).

(6) ELIGIBLE PROJECTS FOR NHS.—Subject to approval by the Secretary, funds apportioned to a State under section 104(b)(1) for the National Highway System may be obligated for any of the following:

(A) Construction, reconstruction, resurfacing, restoration, and rehabilitation of segments of the National Highway System.

(B) Operational improvements for segments of the National Highway System.

(C) Construction of, and operational improvements for, a Federal-aid highway not on the National Highway System, and construction of a transit project eligible for assistance under chapter 53 of title 49, if—

(i) the highway or transit project is in the same corridor as, and in proximity to, a fully access-controlled highway designated as a part of the National Highway System;

(ii) the construction or improvements will improve the level of service on the fully access-controlled highway described in clause (i) and improve regional traffic flow; and

(iii) the construction or improvements are more cost-effective than an improvement to the fully access-controlled highway described in clause (i).

(D) Highway safety improvements for segments of the National Highway System.

(E) Transportation planning in accordance with sections 134 and 135.

(F) Highway research and planning in accordance with chapter 5.

(G) Highway-related technology transfer activities.

(H) Capital and operating costs for traffic monitoring, management, and control facilities and programs.

(I) Fringe and corridor parking facilities.

(J) Carpool and vanpool projects.

(K) Bicycle transportation and pedestrian walkways in accordance with section 217.

(L) Development, establishment, and implementation of management systems under section 303.

(M) In accordance with all applicable Federal law (including regulations), participation in natural habitat and wetland mitigation efforts related to projects funded under this title, which may include participation in natural habitat and wetland mitigation banks, contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetland, and development of statewide and regional natural habitat and wetland conservation and mitigation plans, including any such banks, efforts, and plans authorized under the Water Resources Development Act of 1990 (Public Law 101-640) (including crediting provisions). Contributions to the mitigation

efforts described in the preceding sentence may take place concurrent with or in advance of project construction; except that contributions in advance of project construction may occur only if the efforts are consistent with all applicable requirements of Federal law (including regulations) and State transportation planning processes. With respect to participation in a natural habitat or wetland mitigation effort related to a project funded under this title that has an impact that occurs within the service area of a mitigation bank, preference shall be given, to the maximum extent practicable, to the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605 (November 28, 1995)) or other applicable Federal law (including regulations).

(N) Publicly-owned intracity or intercity bus terminals.

(O) Infrastructure-based intelligent transportation systems capital improvements.

(P) In the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, any project eligible for assistance under section 133, any airport, and any seaport.

(c) INTERSTATE SYSTEM.—

(1) DESCRIPTION.—

(A) IN GENERAL.—The Dwight D. Eisenhower National System of Interstate and Defense Highways within the United States (including the District of Columbia and Puerto Rico) consists of highways designed, located, and selected in accordance with this paragraph.

(B) DESIGN.—

(i) IN GENERAL.—Except as provided in clause (ii), highways on the Interstate System shall be designed in accordance with the standards of section 109(b).

(ii) EXCEPTION.—Highways on the Interstate System in Alaska and Puerto Rico shall be designed in accordance with such geometric and construction standards as are adequate for current and probable future traffic demands and the needs of the locality of the highway.

(C) LOCATION.—Highways on the Interstate System shall be located so as—

(i) to connect by routes, as direct as practicable, the principal metropolitan areas, cities, and industrial centers;

(ii) to serve the national defense; and

(iii) to the maximum extent practicable, to connect at suitable border points with routes of continental importance in Canada and Mexico.

(D) SELECTION OF ROUTES.—To the maximum extent practicable, each route of the Interstate System shall be selected by joint action of the State transportation departments of the State in which the route is located and the adjoining States, in cooperation with local and regional officials, and subject to the approval of the Secretary.

(2) MAXIMUM MILEAGE.—The mileage of highways on the Interstate System shall not exceed 43,000 miles, exclusive of designations under paragraph (4).

(3) MODIFICATIONS.—The Secretary may approve or require modifications to the Interstate System in a manner consistent with the policies and procedures established under this subsection.

(4) INTERSTATE SYSTEM DESIGNATIONS.—

(A) ADDITIONS.—If the Secretary determines that a highway on the National Highway System meets all standards of a highway on the Interstate System and that the highway is a logical addition or connection to the Interstate System, the Secretary may, upon the affirmative recommendation of the State or States in which the highway is located, designate the highway as a route on the Interstate System.

(B) DESIGNATIONS AS FUTURE INTERSTATE SYSTEM ROUTES.—

(i) IN GENERAL.—If the Secretary determines that a highway on the National Highway System would be a logical addition or connection to the Interstate System and would qualify for designation as a route on the Interstate System under subparagraph (A) if the highway met all standards of a highway on the Interstate System, the Secretary may, upon the affirmative recommendation of the State or States in which the highway is located, designate the highway as a future Interstate System route.

(ii) WRITTEN AGREEMENT OF STATES.—A designation under clause (i) shall be made only upon the written agreement of the State or States described in such clause that the highway will be constructed to meet all standards of a highway on the Interstate System by the date that is 12 years after the date of the agreement.

(iii) REMOVAL OF DESIGNATION.—

(I) IN GENERAL.—If the State or States described in clause (i) have not substantially completed the construction of a highway designated under this subparagraph within the time provided for in the agreement between the Secretary and the State or States under clause (ii), the Secretary shall remove the designation of the highway as a future Interstate System route.

(II) EFFECT OF REMOVAL.—Removal of the designation of a highway under subclause (I) shall not preclude the Secretary from designating the highway as a route on the Interstate System under subparagraph (A) or under any other provision of law providing for addition to the Interstate System.

(iv) PROHIBITION ON REFERRAL AS INTERSTATE SYSTEM ROUTE.—No law, rule, regulation, map, document, or other record of the United States, or of any State or political subdivision of a State, shall refer to any highway designated as a future Interstate System route under this subparagraph, nor shall any such highway be signed or marked, as a highway on the



Interstate System until such time as the highway is constructed to the geometric and construction standards for the Interstate System and has been designated as a route on the Interstate System.

(C) FINANCIAL RESPONSIBILITY.—Except as provided in this title, the designation of a highway under this paragraph shall create no additional Federal financial responsibility with respect to the highway.

(d) TRANSFER OF INTERSTATE CONSTRUCTION FUNDS.—

(1) INTERSTATE CONSTRUCTION FUNDS NOT IN SURPLUS.—

(A) IN GENERAL.—Upon application by a State and approval by the Secretary, the Secretary may transfer to the apportionment of the State under section 104(b)(1) any amount of funds apportioned to the State under section 104(b)(5)(A) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century), if the amount does not exceed the Federal share of the costs of construction of segments of the Interstate System in the State included in the most recent Interstate System cost estimate.

(B) EFFECT OF TRANSFER.—Upon transfer of an amount under subparagraph (A), the construction on which the amount is based, as included in the most recent Interstate System cost estimate, shall not be eligible for funding under section 104(b)(5)(A) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) or 118(c).

(2) SURPLUS INTERSTATE CONSTRUCTION FUNDS.—Upon application by a State and approval by the Secretary, the Secretary may transfer to the apportionment of the State under section 104(b)(1) any amount of surplus funds apportioned to the State under section 104(b)(5)(A) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century), if the State has fully financed all work eligible under the most recent Interstate System cost estimate.

(3) APPLICABILITY OF CERTAIN LAWS.—Funds transferred under this subsection shall be subject to the laws (including regulations, policies, and procedures) relating to the apportionment to which the funds are transferred.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 887; Pub. L. 86-70, §21(d)(1), June 25, 1959, 73 Stat. 145; Pub. L. 86-624, §17(b), (c), July 12, 1960, 74 Stat. 415; Pub. L. 87-866, §8(a), Oct. 23, 1962, 76 Stat. 1147; Pub. L. 90-238, Jan. 2, 1968, 81 Stat. 772; Pub. L. 90-495, §§14, 21, Aug. 23, 1968, 82 Stat. 822, 826; Pub. L. 91-605, title I, §§106(b), 124, Dec. 31, 1970, 84 Stat. 1716, 1729; Pub. L. 93-87, title I, §§109(a), 110(a), (b), 137, 148(a)–(c), (e), Aug. 13, 1973, 87 Stat. 255, 256, 268, 274; Pub. L. 93-643, §125, Jan. 4, 1975, 88 Stat. 2290; Pub. L. 94-280, title I, §§109, 110, 111(a), May 5, 1976, 90 Stat. 431, 433; Pub. L. 95-599, title I, §107(a), (b), (f)(1), Nov. 6, 1978, 92 Stat. 2694, 2695; Pub. L. 96-106, §§1, 2(a), (c), Nov. 9, 1979, 93 Stat. 796; Pub. L. 96-144, §2, Dec. 13, 1979, 93 Stat. 1084; Pub. L. 97-424, title I, §§107(a)–(c)(1), (d), (e), 108(f), Jan. 6, 1983, 96 Stat.

2101-2104; Pub. L. 100-17, title I, §103(b), (f)(1), Apr. 2, 1987, 101 Stat. 136, 141; Pub. L. 102-240, title I, §§1006(a), (b), (d), 1011, title III, §3003(b), Dec. 18, 1991, 105 Stat. 1923, 1925, 1935, 2088; Pub. L. 103-272, §5(f)(1), July 5, 1994, 108 Stat. 1374; Pub. L. 103-429, §§3(1), 7(a)(4)(B), Oct. 31, 1994, 108 Stat. 4377, 4389; Pub. L. 104-59, title I, §101, title III, §301(a), Nov. 28, 1995, 109 Stat. 569, 578; Pub. L. 104-287, §2, Oct. 11, 1996, 110 Stat. 3388; Pub. L. 105-178, title I, §1106(b), June 9, 1998, 112 Stat. 131.)

REFERENCES IN TEXT

Section 1105 of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (b)(5), is section 1105 of Pub. L. 102-240, which amended section 105 of this title and enacted provisions establishing high priority corridors and segments, which are not classified to the Code.

The Water Resources Development Act of 1990, referred to in subsec. (b)(6)(M), is Pub. L. 101-640, Nov. 28, 1990, 104 Stat. 4604. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 2201 of Title 33, Navigation and Navigable Waters, and Tables.

The date of enactment of the Transportation Equity Act for the 21st Century, referred to in subsec. (d)(1), (2), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

CODIFICATION

Another section 1106(b) of Pub. L. 105-178 is set out as a note below.

AMENDMENTS

1998—Pub. L. 105-178 reenacted section catchline without change and amended text generally. Prior to amendment, section related to Federal-aid systems and, in subsec. (a), identified such systems, in subsec. (b), described National Highway System, in subsec. (e), described Interstate Highway System, in subsec. (f), specified authority of Secretary with respect to system, in subsec. (g), provided for removal of certain parts from system, in subsec. (h), authorized Secretary to pay all non-Federal costs of certain parts of system, and in subsec. (i), described eligible projects for National Highway System.

1996—Subsec. (e)(4)(L). Pub. L. 104-287 substituted “CHAPTER 53 OF TITLE 49” for “FTA” in heading.

1995—Subsec. (b)(3)(C). Pub. L. 104-59, §101(b)(1), substituted “The” for “For purposes of proposing highways for designation to the National Highway System, the”.

Subsec. (b)(3)(D). Pub. L. 104-59, §101(b)(2), substituted “The” for “In proposing highways for designation to the National Highway System, the” and inserted “on the National Highway System” after “highway mileage”.

Subsec. (b)(5) to (8). Pub. L. 104-59, §101(a), added pars. (5) to (8).

Subsec. (i)(8). Pub. L. 104-59, §301(a), added par. (8) and struck out former par. (8) which read as follows: “Startup costs for traffic management and control if such costs are limited to the time period necessary to achieve operable status but not to exceed 2 years following the date of project approval, if such funds are not used to replace existing funds.”

1994—Subsec. (e)(4)(L)(i). Pub. L. 103-272, §5(f)(1)(A), as amended by Pub. L. 103-429, §7(a)(4)(B), substituted “chapter 53 of title 49” for “the Federal Transit Act”.

Subsec. (e)(4)(L)(ii). Pub. L. 103-272, §5(f)(1)(B), as amended by Pub. L. 103-429, §7(a)(4)(B), substituted “section 5323(a)(1)(D) of title 49” for “section 3(e)(4) of the Federal Transit Act”.

Subsec. (i)(3). Pub. L. 103-429, §3(1), substituted “chapter 53 of title 49” for “the Federal Transit Act”.

1991—Subsec. (a). Pub. L. 102-240, §1006(a), added subsec. (a) and struck out former subsec. (a) which estab-

lished and continued four Federal-aid systems: primary, urban, secondary and Interstate.

Subsec. (b). Pub. L. 102-240, §1006(a), added subsec. (b) and struck out former subsec. (b) which related to Federal-aid primary system.

Subsecs. (c), (d). Pub. L. 102-240, §1006(b)(1), struck out subsecs. (c) and (d) which related to Federal-aid secondary system and Federal-aid urban system, respectively.

Subsec. (e)(4)(E)(i). Pub. L. 102-240, §1011(c), inserted provisions at end specifying that funds authorized to be appropriated for substitute transit projects for fiscal year 1993 and for substitute highway projects for fiscal year 1995 are to remain available until expended.

Subsec. (e)(4)(G). Pub. L. 102-240, §1011(a)(1), struck out "and" before "\$740,000,000", inserted provisions relating to fiscal years 1992 through 1995 and inserted provisions authorizing obligation of sums for transit substitute projects.

Subsec. (e)(4)(H)(i). Pub. L. 102-240, §1011(a)(2)(A), inserted provisions at end relating to apportionment of funds for fiscal years 1992 through 1995.

Subsec. (e)(4)(H)(iii). Pub. L. 102-240, §1011(a)(2)(B), (C), substituted "1988-1995" for "1988, 1989, 1990, and 1991" in heading and "1991, 1992, 1993, 1994, and 1995" for "and 1991" in text.

Subsec. (e)(4)(I). Pub. L. 102-240, §3003(b), substituted "Federal Transit Act" for "Urban Mass Transportation Act of 1964".

Subsec. (e)(4)(J)(i). Pub. L. 102-240, §1011(b)(1), (2), inserted "and ending before October 1, 1991" after "1983," and provisions at end relating to apportionment of 100 percent of funds appropriated for fiscal years 1992 and 1993.

Subsec. (e)(4)(J)(iii). Pub. L. 102-240, §1011(b)(3), (4), substituted "1988-1993" for "1988, 1989, 1990, and 1991" in heading and substituted "1991, 1992, and 1993" for "and 1991" in text.

Subsec. (e)(4)(L). Pub. L. 102-240, §3003(b), substituted "FTA" for "UMTA" in heading and "Federal Transit Act" for "Urban Mass Transportation Act of 1964" in cls. (i) and (ii).

Subsec. (f). Pub. L. 102-240, §1006(b)(2), struck out "the Federal-aid primary system, the Federal-aid secondary system, the Federal-aid urban system, and" before "the Interstate System" and struck out at end "No Federal-aid system or portion thereof shall be eligible for projects in which Federal funds participate until approved by the Secretary."

Subsec. (i). Pub. L. 102-240, §1006(d), added subsec. (i). 1987—Subsec. (e). Pub. L. 100-17, §103(f)(1)(A)-(D), (H)-(J), inserted heading, indented par. (1) and aligned such par. and pars. (2), (3), and (5) to (9) with par. (4), as amended, and inserted headings for pars. (1) to (3), (8), and (9).

Subsec. (e)(4). Pub. L. 100-17, §103(b), amended par. (4) generally, revising and restating as subpars. (A) to (P) provisions formerly contained in a single paragraph.

Subsec. (e)(5). Pub. L. 100-17, §103(f)(1)(E), (K), inserted heading, aligned subpars. (A) and (B) with subpar. (A) of par. (4), and substituted "withdrawal of approval." for "withdrawal of approval; and" in subpar. (B).

Subsec. (e)(6). Pub. L. 100-17, §103(f)(1)(F), (K), inserted heading, aligned subpars. (A) and (B) with subpar. (A) of par. (4), and substituted "withdrawal of approval." for "withdrawal of approval;" in subpar. (B).

Subsec. (e)(7). Pub. L. 100-17, §103(f)(1)(G), inserted heading and substituted "are to be applied." for "are to be applied; and".

1983—Subsec. (b)(1). Pub. L. 97-424, §108(f), substituted "Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands" for "or Puerto Rico" after "Hawaii, Alaska,".

Subsec. (e)(4). Pub. L. 97-424, §107(a)(1), struck out eighth sentence and substituted provision relating to authorizations and apportionment of funds for fiscal years ending Sept. 30, 1983, through Sept. 30, 1986, and relating to substitute highway projects and substitute

transit projects for provision that there were authorized to be appropriated for liquidation of the obligations incurred under this paragraph such sums as might be necessary out of the general fund of the Treasury.

Pub. L. 97-424, §107(a)(2), struck out sixth sentence and substituted provisions relating to the period of availability of sums apportioned under this paragraph and of sums available for obligation and the disposition of funds apportioned to a State and unobligated for provision that the sums available for obligation would remain available until obligated.

Pub. L. 97-424, §107(b), inserted at end provision that any route or segment thereof which was statutorily designed after March 7, 1978, to be on the Interstate System shall not be eligible for withdrawal or substitution under this subsection.

Pub. L. 97-424, §107(c)(1)(A), inserted "or up to and including the 1983 interstate cost estimate, whichever is earlier," after "approved by Congress," and before "subject to increase or decrease" in provision in second sentence relating to the action of the Secretary in withdrawing his approval under this paragraph.

Pub. L. 97-424, §107(c)(1)(B), struck out "the date of enactment of the Federal-Aid Highway Act of 1976 or" after "portion thereof as of", and "whichever is later, and in accordance with the design of the route or portion thereof that is the basis of the latest cost estimate" after "substitute project under this paragraph," in provision in second sentence relating to the action of the Secretary in withdrawing his approval under this paragraph.

Pub. L. 97-424, §107(c)(1)(C), inserted "or the date of approval of the 1983 interstate cost estimate, whichever is earlier," after "approval of each substitute project under this paragraph" in provision in second sentence relating to the action of the Secretary in withdrawing his approval under this paragraph.

Pub. L. 97-424, §107(d), inserted provision in third sentence that except with respect to any route which on May 12, 1982, is under judicial injunction prohibiting its construction the Secretary may approve substitute projects and withdrawals on such route until Sept. 30, 1985.

Pub. L. 97-424, §107(e)(1), struck out "which is within an urbanized area or which passes through and connects urbanized areas within a State and" after "portion thereof on the Interstate System" in first sentence.

Pub. L. 97-424, §107(e)(2), substituted "which will serve the area or areas from which the interstate route or portion thereof was withdrawn, which are selected by the responsible local officials of the area or areas to be served, and which are selected by the Governor or the Governors of the State or the States in which the withdrawn route was located if the withdrawn route was not within an urbanized area or did not pass through and connect urbanized areas, and which are submitted by the Governors of the States in which the withdrawn route was located", for "which will serve the urbanized area and the connecting nonurbanized area corridor from which the interstate route or portion thereof was withdrawn, which are selected by the responsible local officials of the urbanized area or area to be served, and which are submitted by the Governor of the State in which the withdrawn route was located", after "section 103 of this title; or both," in second sentence.

1979—Subsec. (e)(4). Pub. L. 96-144 provided that after Sept. 30, 1979, the Secretary shall not withdraw his approval under par. (4) of any route or portion thereof on the Interstate System open to traffic before the date of the proposed withdrawal, and that any withdrawal of approval of any such route or portion thereof before Sept. 30, 1979, is determined to be authorized by par. (4).

Pub. L. 96-106, §1, inserted provision that the preceding sentence not apply to a designation made under section 139 of this title.

Subsec. (e)(5). Pub. L. 96-106, §2(a), inserted " , in the case of any withdrawal of approval before November 6, 1978" after "any other provision of law".

Subsec. (e)(6) to (9). Pub. L. 96-106, §2(c), added pars. (6) and (7) and redesignated former pars. (6) and (7) as (8) and (9), respectively.

1978—Subsec. (e)(2). Pub. L. 95-599, §107(a)(1), substituted provisions relating to the deadline for designation of Interstate routes for provisions relating to maximum costs of all mileage and granting of preferences.

Subsec. (e)(4). Pub. L. 95-599, §107(a)(2), (b), (f)(1)(A), substituted provision setting the maximum Federal share at 85 per cent of the cost of the substitute project for provision stating that the share would be determined in accordance with section 120 of this title, inserted provisions relating to deadline for approval by Secretary and designation of mileage, and struck out provision relating to withdrawal of approval.

Subsec. (e)(5) to (7). Pub. L. 95-599, §107(f)(1)(B), (C), redesignated par. (5) as (7) and added pars. (5) and (6).

1976—Subsec. (e)(2). Pub. L. 94-280, §§109(a), 111(a), struck out from second sentence "prior to the enactment of this paragraph" after "with this title," and in fourth sentence, substituted provision respecting limitation of cost to United States for aggregate of mileage for route withdrawals which read as follows: "or if the cost of any such withdrawn route was not included in such 1972 Interstate System cost estimate, the cost of such withdrawn route as set forth in the last Interstate System cost estimate before such 1972 cost estimate which was approved by Congress and which included the cost of such withdrawn route, increased or decreased, as the case may be, as determined by the Secretary, based on changes in construction costs of such route or portion thereof, which, (i) in the case of a withdrawn route the cost of which was not included in the 1972 cost estimate but in an earlier cost estimate, have occurred between such earlier cost estimate and the date of enactment of the Federal-Aid Highway Act of 1976, and (ii) in the case of a withdrawn route the cost of which was included in the 1972 cost estimate, have occurred between the 1972 cost estimate and the date of enactment of the Federal-Aid Highway Act of 1976, or the date of withdrawal of approval, whichever date is later, and in each case costs shall be based on that design of such route or portion thereof which is the basis of the applicable cost estimate" for "increased or decreased, as the case may be, as determined by the Secretary, based on changes in construction costs of such route or portion thereof as of the date of withdrawal of approval under this paragraph and in accordance with that design of such route or portion thereof which is the basis of such 1972 cost estimate."

Subsec. (e)(4). Pub. L. 94-280, §110(a), in revising par. (4), substituting provisions set out in text for prior provisions set out in note hereunder, among other changes: authorized the Secretary to withdraw approval of route or portion thereof on Interstate System which passes through and connects urbanized areas within a State and to incur obligations for Federal share of projects authorized under any highway assistance program under section 103 of this title; provided for determination of Federal share of substitute projects as provided in section 120 of this title applicable to the highway program of which the substitute project is a part; made specific reference to section 4 of, for prior general reference to, Urban Mass Transportation Act of 1964, as source of Federal share for mass transit projects; authorized sums available for obligation to remain available until obligated; made sums obligated for mass transit projects part of, to be administered through, Urban Mass Transportation Fund; authorized appropriations out of general fund of the Treasury for liquidation of obligations incurred under this paragraph; made amended par. (4) effective Aug. 13, 1973; and deleted provisions making route withdrawn mileage available for designation on Interstate System in any other State, prohibition against obligation under this paragraph of general funds after June 30, 1981, and requirement that for nonhighway public mass transit project, the Secretary receive State assurance that public mass transportation system will fully utilize the proposed project.

Pub. L. 94-280, §110(b), inserted provision for application of sums to a permissible transportation project when paid to a State for a route or portion of the Interstate System in event of withdrawal of approval for the route or portion instead of making of refund to Highway Trust Fund.

Subsec. (e)(5). Pub. L. 94-280, §109(b), added par. (5).

1975—Subsec. (e)(2), (4). Pub. L. 93-643 inserted "increased or decreased, as the case may be, as determined by the Secretary, based on changes in construction costs of such route or portion thereof as of the date of withdrawal of approval under this paragraph and in accordance with that design of such route or portion thereof which is the basis of such 1972 cost estimate" after "House Report Numbered 92-1443".

1973—Subsec. (b). Pub. L. 93-87, §148(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 93-87, §148(b), (e), designated existing provisions as par. (1), inserted "access roads to airports," after "local rural roads", and added par. (2).

Subsec. (d)(1). Pub. L. 93-87, §§109(a), 148(c), authorized establishment of Federal-aid urban system in such other urban areas as the State highway department may designate, substituted "shall include high traffic volume arterial and collector routes, including access roads to airports and other transportation terminals" for "designed taking into consideration the highest traffic volume corridors, and the longest trips within such area and shall be selected so as to best serve the goals and objectives of the community as determined by the responsible local officials of such urbanized area based upon the planning process required pursuant to the provisions of section 134 of this title", reenacted third sentence without change, inserted "to the extent feasible" in the text reading "Each route of the system to the extent feasible shall connect with another route", substituted "Routes . . . shall be selected by the appropriate local officials so as to serve the goals and objectives of the community, with the concurrence of the State highway departments, and, in urbanized areas, also in accordance with the planning process under section 134 of this title" for "Routes . . . shall be selected by the appropriate local officials and the State highway departments in cooperation with each other subject to the approval of the Secretary as provided in subsection (f) of this section", and inserted preceding last sentence "Designation of the Federal-aid urban system shall be subject to the approval of the Secretary as provided in subsection (f) of this section", and designated provisions, as amended, as par. (1), respectively.

Subsec. (d)(2). Pub. L. 93-87, §148(c), added par. (2).

Subsec. (e)(2). Pub. L. 93-87, §137(a), substituted in first sentence "additional mileage for the Interstate System of five hundred miles" for "additional mileage for the Interstate System of two hundred miles"; in fourth sentence "1972 Interstate System cost estimate set forth in House Public Works Committee Print Numbered 92-29, as revised in House Report Numbered 92-1443" for "1968 Interstate System cost estimate set forth in House Document Numbered 199, Ninetieth Congress, as revised"; and in fifth sentence "preference, along with due regard for interstate highway type needs on a nationwide basis," for "due regard", respectively.

Subsec. (e)(4). Pub. L. 93-87, §137(b), added par. (4).

Subsec. (g). Pub. L. 93-87, §110(a), substituted first sentence reading "the Secretary, on July 1, 1974, shall remove from designation as a part of the Interstate System each segment of such system for which a State has not notified the Secretary that such State intends to construct such segment, and which the Secretary finds is not essential to completion of a unified and connected Interstate System." for "The Secretary, on July 1, 1973, shall remove from designation as a part of the Interstate System every segment of such System for which a State has not established a schedule for the expenditure of funds for completion of construction of such segment within the period of availability of funds authorized to be appropriated for completion of the

Interstate System, and with respect to which the State has not provided the Secretary with assurances satisfactory to him that such schedule will be met.”; deleted former second sentence reading “Nothing in the preceding sentence shall be construed to prohibit the substitution prior to July 1, 1973, of alternative segments of the Interstate System which will meet the requirements of this title.”; substituted “Any segment of the Interstate System, with respect to which a State has not submitted by July 1, 1975, a schedule for the expenditure of funds for completion of construction of such segment or alternative segment within the period of availability of funds authorized to be appropriated for completion of the Interstate System, and with respect to which the State has not provided the Secretary with assurances satisfactory to him such schedule will be met,” for “Any segment of the Interstate System with respect to which a State has not submitted plans, specifications, and estimates for approval by the Secretary by July 1, 1975,” before “shall be removed from designation as a part of the Interstate System”; authorized the Secretary to designate as a part of the Interstate System any segment previously removed from the System when necessary in the interest of national defense or for other reasons of national interest; and made subsec. (g) inapplicable to any segment of the Interstate System referred to in section 23(a) of the Federal-Aid Highway Act of 1968.

Subsec. (h). Pub. L. 93-87, §110(b), added subsec. (h). 1970—Subsec. (a). Pub. L. 91-605, §106(b)(3), substituted “four” for “three” and added the urban system to the list of Federal-aid systems.

Subsecs. (b), (c). Pub. L. 91-605, §106(b)(1), substituted “subsection (f)” for “subsection (e)”.

Subsecs. (d), (e). Pub. L. 91-605, §106(b)(1), added subsec. (d), redesignated former subsec. (d) as (e) and substituted “subsection (f)” for “subsection (e)”. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 91-605, §106(b)(1), (2), redesignated former subsec. (e) as (f) and inserted reference to Federal-aid urban system.

Subsec. (g). Pub. L. 91-605, §124, added subsec. (g). 1968—Subsec. (d)(1). Pub. L. 90-495, §14(a), inserted provision making allowance for an exception in pars. (2) and (3) to the forty-one thousand mile total extent of the Interstate system.

Subsec. (d)(2). Pub. L. 90-495, §21, substituted “1968 Interstate System cost estimate set forth in House Document Numbered 199, Ninetieth Congress, as revised” for “1965 Interstate System cost estimate set forth in House Document Numbered 42, Eighty-ninth Congress”.

Subsec. (d)(3). Pub. L. 90-495, §14(b), added par. (3). Subsec. (d). Pub. L. 90-238 redesignated existing provision as par. (1) and added par. (2).

1962—Subsec. (c). Pub. L. 87-866 substituted “This system may be located both in rural and urban areas, but any extension of the system into urban areas shall be subject to the condition that such extension pass through the urban area or connect with another Federal-aid system within the urban area” for “This system shall be confined to rural areas, except (1) that in any State having a population density of more than two hundred per square mile as shown by the latest available Federal census, the system may include mileage in urban areas as well as rural, and (2) that the system may be extended into urban areas subject to the conditions that any such extension passes through the urban area or connects with another Federal-aid system within the urban area, and that Federal participation in projects on such extensions is limited to urban funds”.

1960—Subsec. (d). Pub. L. 86-624, §17(c), substituted “within the United States, including the District of Columbia, and” for “within the continental United States and”, and inserted “to the greatest extent possible” in two places.

1959—Subsec. (f). Pub. L. 86-70 repealed subsec. (f) which related to determination of roads in the Territory of Alaska on which Federal-aid funds could be expended.

Subsec. (g). Pub. L. 86-624, §17(b), repealed subsec. (g) which provided that the systems of highways on which funds apportioned to the Territory of Hawaii under this chapter shall be expended may be determined and agreed upon by the Governor of said Territory and the Secretary.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Section 7(a) of Pub. L. 103-429 provided in part that the amendment made by that section is effective July 5, 1994.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by sections 1006 and 1011 of Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 107(c) of Pub. L. 95-599 provided that: “The amendment made by subsection (a) of this section [amending this section] shall apply to each route or portion thereof designated under section 103(e)(2) of title 23, United States Code, before January 1, 1978, the construction of which was not complete on such date, and the Secretary of Transportation shall make such revisions in existing contracts and agreements as may be necessary to carry out this section and the amendment made by subsection (a) of this section.”

Section 107(f)(2) of Pub. L. 95-599, which provided that the amendments made by section 107(f)(1) of Pub. L. 95-599 to this section apply to any withdrawal of approval before Nov. 6, 1978, was repealed by Pub. L. 96-106, §2(b), Nov. 9, 1979, 93 Stat. 796.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Section 110(c) of Pub. L. 93-87 provided that: “The amendments made by subsections (a) and (b) of this section [amending this section] shall take effect June 30, 1973.”

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Section 8(b) of Pub. L. 87-866 provided that: “The amendment made by subsection (a) of this section [amending this section] shall apply to apportionments made before as well as after the date of enactment of this Act [Oct. 23, 1962].”

#### EFFECTIVE DATE OF 1959 AMENDMENT

Section 21(d) of Pub. L. 86-70 provided that the repeal of subsec. (f) of this section, sections 116(d), 119, and 120(h) of this title, and sections 321a to 321d and 322 to 325 of Title 48, Territories and Insular Possessions, is effective July 1, 1959.

#### ADMINISTRATION OF NATIONAL HIGHWAY SYSTEM AND INTERSTATE MAINTENANCE PROGRAM

Pub. L. 105-178, title I, §1106(a), June 9, 1998, 112 Stat. 131, provided that: “The Secretary shall administer the National Highway System program and the Interstate Maintenance program as a combined program for purposes of allowing States maximum flexibility. References in this Act [see Tables for classification] and title 23, United States Code, shall not be affected by such consolidation.”

#### UNOBLIGATED BALANCES OF INTERSTATE SUBSTITUTE FUNDS

Pub. L. 105-178, title I, §1106(b), June 9, 1998, 112 Stat. 136, provided that: “Unobligated balances of funds ap-

portioned to a State under section 103(e)(4)(H) of title 23, United States Code (as in effect on the day before the date of enactment of this Act [June 9, 1998]), shall be available for obligation by the State under the law (including regulations, policies, and procedures) relating to the obligation and expenditure of the funds in effect on that date."

#### INTERMODAL FREIGHT CONNECTORS STUDY

Pub. L. 105-178, title I, §1106(d), June 9, 1998, 112 Stat. 136, provided that:

"(1) REPORT.—Not later than 2 years after the date of enactment of this Act [June 9, 1998], the Secretary shall—

"(A) review the condition of and improvements made, since the designation of the National Highway System, to connectors on the National Highway System that serve seaports, airports, and other intermodal freight transportation facilities; and

"(B) report to Congress on the results of such review.

"(2) REVIEW.—In preparing the report, the Secretary shall review the connectors and identify projects carried out on those connectors that were intended to provide and improve service to an intermodal facility referred to in paragraph (1) and to facilitate the efficient movement of freight, including movements of freight between modes.

"(3) IDENTIFICATION OF IMPEDIMENTS.—If the Secretary determines on the basis of the review that there are impediments to improving the connectors serving intermodal facilities referred to in paragraph (1), the Secretary shall identify such impediments and make any appropriate recommendations as part of the Secretary's report to Congress under this subsection."

#### FUNCTIONAL RECLASSIFICATION OF HIGHWAYS

Section 1006(c) of Pub. L. 102-240 provided that:

"(1) STATE ACTION.—Each State shall functionally reclassify the roads and streets in such State in accordance with such guidelines and time schedule as the Secretary may establish in order to carry out the objectives of this section [amending this section and sections 101, 104 and 113 of this title and enacting provisions set out as a note under section 311 of this title], including the amendments made by this section.

"(2) APPROVAL AND SUBMISSION TO CONGRESS.—Not later than September 30, 1993, the Secretary shall approve the functional reclassification of roads and streets made by the States pursuant to this subsection and shall submit a report to Congress containing such reclassification.

"(3) STATE DEFINED.—In this subsection, the term 'State' has the meaning such term has under section 101 of title 23, United States Code, and shall include the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Marianas."

#### APPORTIONMENT FACTORS FOR EXPENDITURES ON SUBSTITUTE HIGHWAY AND TRANSIT PROJECTS

Section 103(a) of Pub. L. 100-17 directed Secretary to apportion for fiscal year 1987 the sums to be apportioned for such year under 22 U.S.C. 103(e)(4) for expenditure on substitute highway and transit projects, using the apportionment factors contained in the Committee Print Numbered 100-6 of the Committee on Public Works and Transportation of the House of Representatives.

#### SUBSTITUTE TRANSIT PROJECTS; INCREASE IN COST TO COMPLETE; APPORTIONMENT FACTORS

Section 103(c) of Pub. L. 100-17 provided that:

"(1) INCREASE IN COST TO COMPLETE.—The cost of completing substitute transit projects under section 103(e)(4)(B) of title 23, United States Code, is increased by \$100,000,000.

"(2) APPORTIONMENT FACTORS.—Notwithstanding section 103(e)(4) of such title, funds appropriated to carry out projects as a result of enactment of paragraph (1)

shall be made available in accordance with the apportionment factors contained in the Committee Print Numbered 100-2 of the Committee on Public Works and Transportation of the House of Representatives."

#### COMBINED ROAD PLAN DEMONSTRATION PROGRAM; REPORT TO CONGRESSIONAL COMMITTEES

Section 137 of Pub. L. 100-17 directed Secretary, in cooperation with up to 5 States, to conduct a combined road plan demonstration to test feasibility of approaches for combining, streamlining, and increasing flexibility in administration of Federal-aid secondary program, Federal-aid urban program, and the off-system bridge, urban bridge, and secondary bridge programs and to submit to Congress an interim report on the program being carried out within 3 years after Apr. 2, 1987, and a final report evaluating the effectiveness of the demonstration program and making needed recommendations as soon as practicable after completion of the demonstration.

#### ROUTES WITHDRAWN; AVAILABILITY TO SECRETARY OF SUMS WHERE SUMS DETERMINED ARE LESS THAN COST OF COMPLETING WITHDRAWN ROUTES

Section 107(c)(2) of Pub. L. 97-424, as amended by Pub. L. 100-17, title I, §103(f)(2), Apr. 2, 1987, 101 Stat. 142, provided that: "Notwithstanding any other provision of law, with respect to any route or portion thereof on the Interstate System approval of which is or has been withdrawn under section 103(e)(4) of title 23, United States Code, in any case where the sum determined under subparagraph (B) of such section is less than the cost to complete the withdrawn route or portion (in accordance with the design of such route or portion on the date of such withdrawal) as of June 30, 1980, as a result of decreases in construction costs, the sum which shall be available to the Secretary under such subparagraph shall be an amount equal to such cost of completion as of June 30, 1980."

#### WITHDRAWAL OF SECRETARY'S APPROVAL OF ROUTE OR PORTION OF ROUTE ON INTERSTATE SYSTEM BETWEEN JUNE 20, 1979, AND JUNE 30, 1979, INCLUSIVE; SUBSTITUTION OF PROJECTS

Section 3 of Pub. L. 96-144 provided that: "Notwithstanding the amendment made to section 103(e)(4) of title 23, United States Code, by the preceding section, in the case where the Secretary has withdrawn his approval of a route or portion thereof on the Interstate System under such section between June 20, 1979, and June 30, 1979, both dates inclusive, the sum available to the Secretary of Transportation to incur obligations for projects substituted for such withdrawn route or portion thereof shall be a sum equal to the Federal share of the cost to complete the withdrawn route or portion thereof, as that cost is included in the 1975 Interstate System cost estimate, as approved by Congress, subject to increase or decrease as determined by the Secretary based on changes in the construction costs of the withdrawn route or portion thereof as of the date of approval of each substitute project under section 103(e)(4) of title 23, United States Code."

#### NECESSITY OF ENVIRONMENTAL IMPACT STATEMENT PRIOR TO ROUTE CONSTRUCTION ON THE DWIGHT D. EISENHOWER SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

Section 107(d) of Pub. L. 95-599, as amended by Pub. L. 101-427, Oct. 15, 1990, 104 Stat. 927, provided that: "Notwithstanding any other provision of law, including but not limited to section 103 of title 23, United States Code and this section, no route or portion thereof shall be constructed on The Dwight D. Eisenhower System of Interstate and Defense Highways with respect to which an environmental impact statement has not been submitted to the Secretary of Transportation in accordance with the National Environmental Policy Act of 1969 [section 4321 et seq. of Title 42, The Public Health and Welfare] by September 30, 1983. Any such route or

portion thereof shall thereupon be removed from designation as part of such Interstate System.”

**TIME LIMIT FOR COMMENCEMENT OF, OR CONTRACT FOR, CONSTRUCTION; REMOVAL FROM DESIGNATION AS PART OF INTERSTATE SYSTEM**

Section 107(e) of Pub. L. 95-599, as amended by Pub. L. 97-424, title I, §107(g), Jan. 6, 1983, 96 Stat. 2103; Pub. L. 100-17, title I, §103(d)(1), Apr. 2, 1987, 101 Stat. 141, provided that: “By September 30, 1986, all routes or portions thereof on the Interstate System (for which the Secretary of Transportation finds that sufficient Interstate authorizations are available) must be under contract for construction or construction must have commenced. Immediately after such date, the Secretary shall remove from designation as part of the Interstate System each route or portion thereof not complying with this subsection.”

[Section 103(d)(2) of Pub. L. 100-17 provided that: “The amendments made by paragraph (1) [amending section 107(e) of Pub. L. 95-599 set out above] shall take effect September 29, 1986.”]

**INTERSTATE SYSTEM ROUTES WITHDRAWN FOR PURPOSE OF DESIGNATING ALTERNATIVE ROUTES AS SUBJECT TO ROUTE WITHDRAWAL PROVISIONS**

Section 111(b) of Pub. L. 94-280 provided that: “The amendment made by subsection (a) of this section [to fourth sentence of subsec. (e)(2) of this section] shall be applicable to each route on the Interstate System approval of which was withdrawn or is hereafter withdrawn by the Secretary of Transportation in accordance with the provisions of section 103(e)(2) of title 23, United States Code, including any route on the Interstate System approval of which was withdrawn by the Secretary of Transportation in accordance with the provisions of title 23, United States Code, on August 30, 1965, for the purpose of designating an alternative route.”

**INTERSTATE SYSTEM SUBSECTION (e)(4) PROVISIONS IN EFFECT PRIOR TO AMENDMENT BY PUB. L. 94-280, §110; ROUTE WITHDRAWALS WITHIN URBANIZED AREAS; AVAILABILITY OF MILEAGE IN OTHER STATES; PUBLIC MASS TRANSIT NONHIGHWAY PROJECTS; GENERAL FUNDS UNAVAILABLE FOR OBLIGATION AFTER JUNE 30, 1981; SUPPLEMENTARY FUNDS; URBAN MASS TRANSPORTATION PROVISIONS APPLICABLE**

Section 103(e)(4) of this title, as added Pub. L. 93-87, title I, §137(b), Aug. 13, 1973, 87 Stat. 269, and amended Pub. L. 93-643, §125(b), Jan. 4, 1975, 88 Stat. 2290, read prior to amendment by section 110 of Pub. L. 94-280 [set out in the text] as follows: “Upon the joint request of a State Governor and the local governments concerned, the Secretary may withdraw his approval of any route or portion thereof on the Interstate System within any urbanized area in that State selected and approved in accordance with this title prior to the enactment of this paragraph, if he determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System or will no longer be essential by reason of the application of this paragraph and will not be constructed as a part of the Interstate System, and if he receives assurances that the State does not intend to construct a toll road in the traffic corridor which would be served by such route or portion thereof. The mileage of the route or portion thereof of approval of which is withdrawn under this paragraph shall be available for designation on the Interstate System in any other State in accordance with paragraph (1) of this subsection. After the Secretary has withdrawn his approval of any such route or portion thereof, whenever responsible local officials of such urbanized area notify the State highway department that, in lieu of a route or portion thereof approval for which is withdrawn under this paragraph, their needs require a nonhighway public mass transit project involving the construction of fixed rail facilities, or the purchase of passenger equipment, including rolling stock for any

mode of mass transit, or both, and the State highway department determines that such public mass transit project is in accordance with the planning process under section 134 of this title and is entitled to priority under such planning process, such public mass transit project shall be submitted for approval to the Secretary. Approval of the plans, specifications, and estimates for such project by the Secretary shall be deemed a contractual obligation of the United States for payment out of the general funds in the Treasury of its proportional share of the cost of such project in an amount equal to the Federal share which would be paid for such a project under the Urban Mass Transportation Act of 1964 [section 1601 et seq. of Title 49, Transportation], except that the total Federal cost of all such projects under this paragraph with respect to such route or portion thereof approval of which is withdrawn under this paragraph, shall not exceed the Federal share of the cost which would have been paid for such route or portion thereof, as such cost is included in the 1972 Interstate System cost estimate set forth in table 5 of House Public Works Committee Print Numbered 92-29, as revised in House Report Numbered 92-1443, increased or decreased, as the case may be, as determined by the Secretary, based on changes in construction costs of such route or portion thereof as of the date of withdrawal of approval under this paragraph and in accordance with that design of such route or portion thereof which is the basis of such 1972 cost estimate. Funds apportioned to such State for the Interstate System, which apportionment is based upon an Interstate System cost estimate that includes a route or portion thereof approval of which is withdrawn under this paragraph, shall be reduced by an amount equal to the Federal share of such project as such share becomes a contractual obligation of the United States. No general funds shall be obligated under authority of this paragraph after June 30, 1981. No nonhighway public mass transit project shall be approved under this paragraph unless the Secretary has received assurances satisfactory to him from the State that public mass transportation systems will fully utilize the proposed project. The provision of assistance under this paragraph shall not be construed as bringing within the application of chapter 15 of title 5, United States Code [section 1501 et seq. of Title 5, Government Organization and Employees], any nonsupervisory employee of an urban mass transportation system (or of any other agency or entity performing related functions) to whom such chapter is otherwise inapplicable. Funds available for expenditure to carry out the purposes of this paragraph shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to the Urban Mass Transportation Act of 1964, as amended [section 1601 et seq. of Title 49, Transportation]. The provisions of section 3(e)(4) of the Urban Mass Transportation Act of 1964, as amended, [section 1602 (e)(4) of Title 49], shall apply in carrying out this paragraph.”

**BASIS OF FEDERAL-AID SYSTEMS REALIGNMENT**

Section 148(d) of Pub. L. 93-87 provided that: “Federal-aid systems realignment shall be based upon anticipated functional usage in the year 1980 or a planned connected system.”

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 101, 104, 115, 119, 127 of this title; title 49 sections 5309, 5323, 5327, 5331.

**§ 104. Apportionment**

**(a) ADMINISTRATIVE EXPENSES.—**

(1) **IN GENERAL.**—Whenever an apportionment is made of the sums made available for expenditure on each of the surface transportation program under section 133, the bridge program under section 144, the congestion mitigation and air quality improvement pro-

gram under section 149, the Interstate and National Highway System program, the minimum guarantee program under section 105, the Federal lands highway program under section 204, or the Appalachian development highway system program under section 201 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.), the Secretary shall deduct a sum, in an amount not to exceed—

(A) 1½ percent of all sums so made available, as the Secretary determines necessary—

(i) to administer the provisions of law to be financed from appropriations for the Federal-aid highway program and programs authorized under chapter 2; and

(ii) to make transfers of such sums as the Secretary determines to be appropriate to the Appalachian Regional Commission for administrative activities associated with the Appalachian development highway system; and

(B) one-third of 1 percent of all sums so made available, as the Secretary determines necessary, to administer the provisions of law to be financed from appropriations for motor carrier safety programs and motor carrier safety research.

(2) CONSIDERATION OF UNOBLIGATED BALANCES.—In making the determination described in paragraph (1), the Secretary shall take into account the unobligated balance of any sums deducted under this subsection in prior fiscal years.

(3) AVAILABILITY.—The sum deducted under paragraph (1) shall remain available until expended.

(4) LIMITATION ON TRANSFERABILITY.—Unless expressly authorized by law, the Secretary may not transfer any sums deducted under paragraph (1) to a Federal agency or entity other than the Federal Highway Administration and the Federal Motor Carrier Safety Administration.

(b) APPORTIONMENTS.—On October 1 of each fiscal year, the Secretary, after making the deduction authorized by subsection (a) and the set-aside authorized by subsection (f), shall apportion the remainder of the sums authorized to be appropriated for expenditure on the Interstate and National Highway System program, the Congestion Mitigation and Air Quality Improvement program, and the Surface Transportation program for that fiscal year, among the several States in the following manner:

(1) NATIONAL HIGHWAY SYSTEM COMPONENT.—

(A) IN GENERAL.—For the National Highway System (excluding funds apportioned under paragraph (4)), \$36,400,000 for each fiscal year to the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands, \$18,800,000 for each of fiscal years 1998 through 2002 for the Alaska Highway, and the remainder apportioned as follows:

(i) 25 percent in the ratio that—

(I) the total lane miles of principal arterial routes (excluding Interstate System routes) in each State; bears to

(II) the total lane miles of principal arterial routes (excluding Interstate System routes) in all States.

(ii) 35 percent in the ratio that—

(I) the total vehicle miles traveled on lanes on principal arterial routes (excluding Interstate System routes) in each State; bears to

(II) the total vehicle miles traveled on lanes on principal arterial routes (excluding Interstate System routes) in all States.

(iii) 30 percent in the ratio that—

(I) the total diesel fuel used on highways in each State; bears to

(II) the total diesel fuel used on highways in all States.

(iv) 10 percent in the ratio that—

(I) the quotient obtained by dividing the total lane miles on principal arterial highways in each State by the total population of the State; bears to

(II) the quotient obtained by dividing the total lane miles on principal arterial highways in all States by the total population of all States.

(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A) and paragraph (4), each State shall receive a minimum of ½ of 1 percent of the funds apportioned under subparagraph (A) and paragraph (4).

(2) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—

(A) IN GENERAL.—For the congestion mitigation and air quality improvement program, in the ratio that—

(i) the total of all weighted nonattainment and maintenance area populations in each State; bears to

(ii) the total of all weighted nonattainment and maintenance area populations in all States.

(B) CALCULATION OF WEIGHTED NONATTAINMENT AND MAINTENANCE AREA POPULATION.—Subject to subparagraph (C), for the purpose of subparagraph (A), the weighted nonattainment and maintenance area population shall be calculated by multiplying the population of each area in a State that was a nonattainment area or maintenance area as described in section 149(b) for ozone or carbon monoxide by a factor of—

(i) 0.8 if—

(I) at the time of the apportionment, the area is a maintenance area; or

(II) at the time of the apportionment, the area is classified as a submarginal ozone nonattainment area under the Clean Air Act (42 U.S.C. 7401 et seq.);

(ii) 1.0 if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.);

(iii) 1.1 if, at the time of the apportionment, the area is classified as a moderate ozone nonattainment area under such subpart;

(iv) 1.2 if, at the time of the apportionment, the area is classified as a serious ozone nonattainment area under such subpart;

(v) 1.3 if, at the time of the apportionment, the area is classified as a severe ozone nonattainment area under such subpart;

(vi) 1.4 if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area under such subpart; or

(vii) 1.0 if, at the time of the apportionment, the area is not a nonattainment or maintenance area as described in section 149(b) for ozone, but is classified under subpart 3 of part D of title I of such Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide.

(C) ADDITIONAL ADJUSTMENT FOR CARBON MONOXIDE AREAS.—

(i) CARBON MONOXIDE NONATTAINMENT AREAS.—If, in addition to being classified as a nonattainment or maintenance area for ozone, the area was also classified under subpart 3 of part D of title I of such Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide, the weighted nonattainment or maintenance area population of the area, as determined under clauses (i) through (vi) of subparagraph (B), shall be further multiplied by a factor of 1.2.

(ii) CARBON MONOXIDE MAINTENANCE AREAS.—If, in addition to being classified as a nonattainment or maintenance area for ozone, the area was at one time also classified under subpart 3 of part D of title I of such Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide but has been redesignated as a maintenance area, the weighted nonattainment or maintenance area population of the area, as determined under clauses (i) through (vi) of subparagraph (B), shall be further multiplied by a factor of 1.1.

(D) MINIMUM APPORTIONMENT.—Notwithstanding any other provision of this paragraph, each State shall receive a minimum of  $\frac{1}{2}$  of 1 percent of the funds apportioned under this paragraph.

(E) DETERMINATIONS OF POPULATION.—In determining population figures for the purposes of this paragraph, the Secretary shall use the latest available annual estimates prepared by the Secretary of Commerce.

(3) SURFACE TRANSPORTATION PROGRAM.—

(A) IN GENERAL.—For the surface transportation program, in accordance with the following formula:

(i) 25 percent of the apportionments in the ratio that—

(I) the total lane miles of Federal-aid highways in each State; bears to

(II) the total lane miles of Federal-aid highways in all States.

(ii) 40 percent of the apportionments in the ratio that—

(I) the total vehicle miles traveled on lanes on Federal-aid highways in each State; bears to

(II) the total vehicle miles traveled on lanes on Federal-aid highways in all States.

(iii) 35 percent of the apportionments in the ratio that—

(I) the estimated tax payments attributable to highway users in each State paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available; bears to

(II) the estimated tax payments attributable to highway users in all States paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available.

(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), each State shall receive a minimum of  $\frac{1}{2}$  of 1 percent of the funds apportioned under this paragraph.

(4) INTERSTATE MAINTENANCE COMPONENT.—For resurfacing, restoring, rehabilitating, and reconstructing the Interstate System—

(A)  $33\frac{1}{3}$  percent in the ratio that—

(i) the total lane miles on Interstate System routes open to traffic in each State; bears to

(ii) the total of all such lane miles in all States;

(B)  $33\frac{1}{3}$  percent in the ratio that—

(i) the total vehicle miles traveled on Interstate System routes open to traffic in each State; bears to

(ii) the total of all such vehicle miles traveled in all States; and

(C)  $33\frac{1}{3}$  percent in the ratio that—

(i) the total of each State's annual contributions to the Highway Trust Fund (other than the Mass Transit Account) attributable to commercial vehicles; bears to

(ii) the total of such annual contributions by all States.

(c) TRANSFERABILITY OF NHS APPORTIONMENTS.—A State may transfer not to exceed 50 percent of the State's apportionment under subsection (b)(1) to the apportionment of the State under subsection (b)(3). A State may transfer not to exceed 100 percent of the State's apportionment under subsection (b)(1) to the apportionment of the State under subsection (b)(3) if the State requests to make such transfer and the Secretary approves such transfer as being in the public interest, after providing notice and sufficient opportunity for public comment. Section 133(d) shall not apply to funds transferred under this subsection.

(d) OPERATION LIFESAVER AND HIGH SPEED RAIL CORRIDORS.—

(1) OPERATION LIFESAVER.—Before making an apportionment under subsection (b)(3) of this section for a fiscal year, the Secretary shall set aside \$500,000 for such fiscal year for carrying out a public information and education program to help prevent and reduce motor ve-



hicle accidents, injuries, and fatalities and to improve driver performance at railway-highway crossings.

(2) RAILWAY-HIGHWAY CROSSING HAZARD ELIMINATION IN HIGH SPEED RAIL CORRIDORS.—

(A) IN GENERAL.—Before making an apportionment of funds under subsection (b)(3) for a fiscal year, the Secretary shall set aside \$5,250,000 of the funds made available for the surface transportation program for the fiscal year for elimination of hazards of railway-highway crossings.

(B) ELIGIBLE CORRIDORS.—Subject to subparagraph (E), funds made available under subparagraph (A) shall be expended for projects in—

(i) 5 railway corridors selected by the Secretary in accordance with this subsection (as in effect on the day before the date of enactment of this clause);

(ii) 3 railway corridors selected by the Secretary in accordance with subparagraphs (C) and (D);

(iii) a Gulf Coast high speed railway corridor (as designated by the Secretary);

(iv) a Keystone high speed railway corridor from Philadelphia to Harrisburg, Pennsylvania; and

(v) an Empire State railway corridor from New York City to Albany to Buffalo, New York.

(C) REQUIRED INCLUSION OF HIGH SPEED RAIL LINES.—A corridor selected by the Secretary under subparagraph (B) shall include rail lines where railroad speeds of 90 miles or more per hour are occurring or can reasonably be expected to occur in the future.

(D) CONSIDERATIONS IN CORRIDOR SELECTION.—In selecting corridors under subparagraph (B), the Secretary shall consider—

(i) projected rail ridership volume in each corridor;

(ii) the percentage of each corridor over which a train will be capable of operating at its maximum cruise speed taking into account such factors as topography and other traffic on the line;

(iii) projected benefits to nonriders such as congestion relief on other modes of transportation serving each corridor (including congestion in heavily traveled air passenger corridors);

(iv) the amount of State and local financial support that can reasonably be anticipated for the improvement of the line and related facilities; and

(v) the cooperation of the owner of the right-of-way that can reasonably be expected in the operation of high speed rail passenger service in each corridor.

(E) CERTAIN IMPROVEMENTS.—Not less than \$250,000 of such set-aside shall be available per fiscal year for eligible improvements to the Minneapolis/St. Paul-Chicago segment of the Midwest High Speed Rail Corridor.

(F) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$15,000,000 for each of fiscal years 1999 through 2003 to carry out this subsection.

(e) CERTIFICATION OF APPORTIONMENTS.—

(1) IN GENERAL.—On October 1, of each fiscal year the Secretary shall certify to each of the State transportation departments the sums which he has apportioned hereunder to each State for such fiscal year, and also the sums which he has deducted for administration pursuant to subsection (a) of this section. To permit the States to develop adequate plans for the utilization of apportioned sums, the Secretary shall advise each State of the amount that will be apportioned each year under this section not later than ninety days before the beginning of the fiscal year for which the sums to be apportioned are authorized, except that in the case of the Interstate System the Secretary shall advise each State ninety days prior to the apportionment of such funds.

(2) NOTICE TO STATES.—If the Secretary has not made an apportionment under section 104, 105, or 144 by the 21st day of a fiscal year beginning after September 30, 1998, the Secretary shall transmit, by such 21st day, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a written statement of the reason for not making such apportionment in a timely manner.

(f) METROPOLITAN PLANNING.—

(1) SET-ASIDE.—On October 1 of each fiscal year, the Secretary, after making the deduction authorized by subsection (a) of this section, shall set aside not to exceed 1 percent of the remaining funds authorized to be appropriated for expenditure upon programs authorized under this title, for the purpose of carrying out the requirements of section 134 of this title.

(2) APPORTIONMENT TO STATES OF SET-ASIDE FUNDS.—These funds shall be apportioned to the States in the ratio which the population in urbanized areas or parts thereof, in each State bears to the total population in such urbanized areas in all the States as shown by the latest available census, except that no State shall receive less than one-half per centum of the amount apportioned.

(3) USE OF FUNDS.—The funds apportioned to any State under paragraph (2) of this subsection shall be made available by the State to the metropolitan planning organizations responsible for carrying out the provisions of section 134 of this title, except that States receiving the minimum apportionment under paragraph (2) may, in addition, subject to the approval of the Secretary, use the funds apportioned to finance transportation planning outside of urbanized areas. These funds shall be matched in accordance with section 120(b) unless the Secretary determines that the interests of the Federal-aid highway program would be best served without such matching.

(4) DISTRIBUTION OF FUNDS WITHIN STATES.—The distribution within any State of the planning funds made available to agencies under paragraph (3) of this subsection shall be in accordance with a formula developed by each State and approved by the Secretary which shall consider but not necessarily be limited to, population, status of planning, attainment of air quality standards, metropolitan area

transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of section 134 and other applicable requirements of Federal law.

(5) DETERMINATION OF POPULATION FIGURES.—For the purposes of determining population figures under this subsection, the Secretary shall use the most recent estimate published by the Secretary of Commerce.

(g) Not more than 40 per centum of the amount apportioned in any fiscal year to each State in accordance with sections 130, 144, and 152 of this title may be transferred from the apportionment under one section to the apportionment under any other of such sections if such a transfer is requested by the State transportation department and is approved by the Secretary as being in the public interest. The Secretary may approve the transfer of 100 per centum of the apportionment under one such section to the apportionment under any other of such sections if such transfer is requested by the State transportation department, and is approved by the Secretary as being in the public interest, if he has received satisfactory assurances from such State transportation department that the purposes of the program from which such funds are to be transferred have been met. A State may transfer not to exceed 50 per cent of the State's apportionment under section 144 in any fiscal year to the apportionment of such State under subsection (b)(1) or subsection (b)(3) of this section. Any transfer to subsection (b)(3) shall not be subject to section 133(d). Nothing in this subsection authorizes the transfer of any amount apportioned from the Highway Trust Fund to any apportionment the funds for which were not from the Highway Trust Fund, and nothing in this subsection authorizes the transfer of any amount apportioned from funds not from the Highway Trust Fund to any apportionment the funds for which were from the Highway Trust Fund.

(h) RECREATIONAL TRAILS PROGRAM.—

(1) ADMINISTRATIVE COSTS.—Whenever an apportionment is made of the sums authorized to be appropriated to carry out the recreational trails program under section 206, the Secretary shall deduct an amount, not to exceed 1½ per cent of the sums authorized, to cover the cost to the Secretary for administration of and research and technical assistance under the recreational trails program and for administration of the National Recreational Trails Advisory Committee. The Secretary may enter into contracts with for-profit organizations or contracts, partnerships, or cooperative agreements with other government agencies, institutions of higher learning, or non-profit organizations to perform these tasks.

(2) APPORTIONMENT TO THE STATES.—After making the deduction authorized by paragraph (1) of this subsection, the Secretary shall apportion the remainder of the sums authorized to be appropriated for expenditure on the recreational trails program for each fiscal year, among the States in the following manner:

(A) 50 percent of that amount shall be apportioned equally among eligible States.

(B) 50 percent of that amount shall be apportioned among eligible States in amounts proportionate to the degree of non-highway recreational fuel use in each of those States during the preceding year.

(3) ELIGIBLE STATE DEFINED.—In this section, the term "eligible State" means a State that meets the requirements of section 206(c).

(i) AUDITS OF HIGHWAY TRUST FUND.—From administrative funds deducted under subsection (a), the Secretary may reimburse the Office of Inspector General of the Department of Transportation for the conduct of annual audits of financial statements in accordance with section 3521 of title 31.

(j) REPORT TO CONGRESS.—The Secretary shall submit to Congress a report for each fiscal year on—

(1) the amount obligated, by each State, for Federal-aid highways and highway safety construction programs during the preceding fiscal year;

(2) the balance, as of the last day of the preceding fiscal year, of the unobligated apportionment of each State by fiscal year under this section and sections 105 and 144;

(3) the balance of unobligated sums available for expenditure at the discretion of the Secretary for such highways and programs for the fiscal year; and

(4) the rates of obligation of funds apportioned or set aside under this section and sections 105, 133, and 144, according to—

(A) program;

(B) funding category or subcategory;

(C) type of improvement;

(D) State; and

(E) sub-State geographic area, including urbanized and rural areas, on the basis of the population of each such area.

(k) TRANSFER OF HIGHWAY AND TRANSIT FUNDS.—

(1) TRANSFER OF HIGHWAY FUNDS.—Funds made available under this title and transferred for transit projects of a type described in section 133(b)(2) shall be administered by the Secretary in accordance with chapter 53 of title 49, except that the provisions of this title relating to the non-Federal share shall apply to the transferred funds.

(2) TRANSFER OF TRANSIT FUNDS.—Funds made available under chapter 53 of title 49 and transferred for highway projects shall be administered by the Secretary in accordance with this title, except that the provisions of such chapter relating to the non-Federal share shall apply to the transferred funds.

(3) TRANSFER OF OBLIGATION AUTHORITY.—Obligation authority provided for projects described in paragraphs (1) and (2) shall be transferred in the same manner and amount as the funds for the projects are transferred.

(l) EFFECT OF CERTAIN DELAY IN DEPOSITS INTO HIGHWAY TRUST FUND.—Notwithstanding any other provision of law, deposits into the Highway Trust Fund resulting from the application of section 901(e) of the Taxpayer Relief Act of 1997 (111 Stat. 872) shall not be taken into account in determining the apportionments and

allocations that any State shall be entitled to receive under the Transportation Equity Act for the 21st Century and this title.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 889; Pub. L. 86-70, § 21(e)(2), June 25, 1959, 73 Stat. 146; Pub. L. 86-657, § 8(g), July 14, 1960, 74 Stat. 525; Pub. L. 87-866, § 10(a), Oct. 23, 1962, 76 Stat. 1148; Pub. L. 88-157, §§ 2, 3, Oct. 24, 1963, 77 Stat. 276; Pub. L. 88-423, § 4(a), Aug. 13, 1964, 78 Stat. 397; Pub. L. 89-574, § 4(b), Sept. 13, 1966, 80 Stat. 767; Pub. L. 90-495, § 4(b), Aug. 23, 1968, 82 Stat. 816; Pub. L. 91-605, title I, §§ 104(b), 106(c), Dec. 31, 1970, 84 Stat. 1714, 1717; Pub. L. 93-87, title I, §§ 106(b), 111(a), 112, title II, § 227, Aug. 13, 1973, 87 Stat. 254, 256, 257, 292; Pub. L. 94-280, title I, §§ 106(b), 107(b), 112(a)-(g), 113(a), title II, § 206, May 5, 1976, 90 Stat. 429, 430, 433-435, 453; Pub. L. 95-599, title I, §§ 108-110, 116(b), Nov. 6, 1978, 92 Stat. 2695, 2696, 2699; Pub. L. 97-134, §§ 4(c), 5, Dec. 29, 1981, 95 Stat. 1700; Pub. L. 100-17, title I, §§ 102(b)(1), (2), 114(e)(1), Apr. 2, 1987, 101 Stat. 135, 153; Pub. L. 100-202, § 101(l) [title III, § 347(a)], Dec. 22, 1987, 101 Stat. 1329-358, 1329-388; Pub. L. 101-516, title III, § 333 [part], Nov. 5, 1990, 104 Stat. 2184; Pub. L. 102-143, title III, § 333(c), Oct. 28, 1991, 105 Stat. 947; Pub. L. 102-240, title I, §§ 1001(c)-(e), 1003(e), 1006(e), (f), 1007(b), 1008(b), 1009(d), 1010, 1024(b), (c)(2), 1028(g), Dec. 18, 1991, 105 Stat. 1915, 1916, 1926, 1930, 1932, 1934, 1962, 1968; Pub. L. 104-59, title III, §§ 302, 319(a)(2), 337(f), title IV, § 410, Nov. 28, 1995, 109 Stat. 578, 589, 603, 633; Pub. L. 105-130, §§ 4(a)(3), 5(b), Dec. 1, 1997, 111 Stat. 2556; Pub. L. 105-178, title I, §§ 1103(a)-(k), (o), 1212(a)(2)(A), June 9, 1998, 112 Stat. 118-125, 193; Pub. L. 105-206, title IX, § 9002(c)(3), July 22, 1998, 112 Stat. 835; Pub. L. 106-159, title I, § 101(b), Dec. 9, 1999, 113 Stat. 1751.)

#### REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b)(2)(B), (C), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended. Subpart 2 of part D of title I of the Act is classified to subpart 2 (§ 7511 et seq.) of part D of subchapter I of chapter 85 of Title 42, The Public Health and Welfare. Subpart 3 of part D of title I of the Act is classified to subpart 3 (§ 7512 et seq.) of part D of subchapter I of chapter 85 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The date of enactment of this clause, referred to in subsec. (d)(2)(B)(i), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

Section 901(e) of the Taxpayer Relief Act of 1997, referred to in subsec. (l), is section 901(e) of Pub. L. 105-34, title IX, Aug. 5, 1997, 111 Stat. 872, which is set out as a note under section 6302 of Title 26, Internal Revenue Code.

The Transportation Equity Act for the 21st Century, referred to in subsec. (l), is Pub. L. 105-178, June 9, 1998, 112 Stat. 107, as amended. For complete classification of this Act to the Code, see section 1(a) of Pub. L. 105-178, set out as a Short Title of 1998 Amendment note under section 101 of this title and Tables.

#### CODIFICATION

Another section 1003(e) of Pub. L. 102-240, as added by Pub. L. 105-130, § 2(d), is not classified to the Code.

#### AMENDMENTS

1999—Subsec. (a)(1). Pub. L. 106-159, § 101(b)(1)-(3), substituted “exceed—” for “exceed 1½ percent of all sums so made available, as the Secretary determines necessary—” in introductory provisions, added introductory provisions of subpar. (A), redesignated former sub-

pars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), substituted “; and” for the period at end of cl. (ii), and added subpar. (B).

Subsec. (a)(4). Pub. L. 106-159, § 101(b)(4), which directed amendment of subsec. (a)(1) by adding par. (4) at the end, was executed by adding par. (4) at the end of subsec. (a), to reflect the probable intent of Congress.

1998—Subsec. (a). Pub. L. 105-178, § 1103(a), added subsec. (a) and struck out former subsec. (a) which read as follows: “Whenever an apportionment is made of the sums authorized to be appropriated for expenditure on the surface transportation program, the congestion mitigation and air quality improvement program, the National Highway System, and the Interstate System, the Secretary shall deduct a sum, in such amount not to exceed 3¾ per centum of all sums so authorized as the Secretary may deem necessary for administering the provisions of law to be financed from appropriations for the Federal-aid systems and for carrying on the research authorized by subsections (a) and (b) of section 307 of this title. In making such determination, the Secretary shall take into account the unexpended balance of any sums deducted for such purposes in prior years. The sum so deducted shall be available for expenditure from the unexpended balance of any appropriation made at any time for expenditure upon the Federal-aid systems, until such sum has been expended.”

Subsec. (a)(1). Pub. L. 105-178, § 1103(o)(1), as added by Pub. L. 105-206, § 9002(c)(3), struck out “under section 103” after “National Highway System program” in introductory provisions.

Subsec. (b). Pub. L. 105-178, § 1103(b), inserted heading and amended text of subsec. (b) generally. Prior to amendment, text related to Secretary’s apportionment among various States of sums authorized to be appropriated for surface transportation program, congestion mitigation and air quality improvement program, National Highway System, and Interstate System each fiscal year.

Subsec. (b)(1)(A). Pub. L. 105-178, § 1103(o)(2)(A), as added by Pub. L. 105-206, § 9002(c)(3), substituted “1998 through 2002” for “1999 through 2003”.

Subsec. (b)(4)(B)(i). Pub. L. 105-178, § 1103(o)(2)(B), as added by Pub. L. 105-206, § 9002(c)(3), substituted “on Interstate System routes open to traffic in each State” for “on lanes on Interstate System routes designated under—

“(I) section 103;

“(II) section 139(a) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) before March 9, 1984 (other than routes on toll roads not subject to a Secretarial agreement under section 105 of the Federal-Aid Highway Act of 1978 (92 Stat. 2692)); and

“(III) section 139(c) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century);

in each State”.

Subsec. (d)(1). Pub. L. 105-178, § 1103(c)(1), substituted “Before making an apportionment under subsection (b)(3) of this section for a fiscal year, the Secretary shall set aside \$500,000 for such” for “The Secretary shall expend, from administrative funds deducted under subsection (a), \$300,000 for each”.

Subsec. (d)(2). Pub. L. 105-178, § 1103(c)(2), added par. (2) and struck out former par. (2) which read as follows:

“(2) RAILWAY-HIGHWAY CROSSING HAZARD ELIMINATION IN HIGH SPEED RAIL CORRIDORS.—(A) Before making an apportionment of funds under subsection (b)(3) for a fiscal year, the Secretary shall set aside \$5,000,000 of the funds authorized to be appropriated for the surface transportation program for such fiscal year for elimination of hazards of railway-highway crossings in not to exceed 5 railway corridors selected by the Secretary in accordance with the criteria set forth in this paragraph.

“(B) A corridor selected by the Secretary under subparagraph (A) must include rail lines where railroad speeds of 90 miles per hour are occurring or can reasonably be expected to occur in the future.”

Subsec. (d)(3). Pub. L. 105-178, §1103(c)(2), struck out par. (3) which read as follows: "In making the determination required by paragraph (2)(A), the Secretary shall consider projected rail ridership volumes in such corridors, the percentage of the corridor over which a train will be capable of operating at its maximum cruise speed taking into account such factors as topography and other traffic on the line, projected benefits to nonriders such as congestion relief on other modes of transportation serving the corridors (including congestion in heavily traveled air passenger corridors), the amount of State and local financial support that can reasonably be anticipated for the improvement of the line and related facilities, and the cooperation of the owner of the right-of-way that can reasonably be expected in the operation of high speed rail passenger service in such corridors."

Subsec. (e). Pub. L. 105-178, §1103(d), inserted heading, designated existing provisions as par. (1), inserted heading, struck out "(other than under subsection (b)(5) of this section)" after "apportioned hereunder" and "and research" before "pursuant to subsection (a) of this section" in first sentence, struck out second sentence which read "On October 1 of the year preceding the fiscal year for which authorized, the Secretary shall certify to each of the State highway departments the sums which he has apportioned under subsection (b)(5) of this section to each State for such fiscal year, and also the sums which he has deducted for administration and research pursuant to subsection (a) of this section.", realigned margins, and added par. (2).

Subsec. (e)(1). Pub. L. 105-178, §1212(a)(2)(A)(ii), substituted "State transportation departments" for "State highway departments".

Subsec. (e)(2). Pub. L. 105-178, §1103(o)(3), as added by Pub. L. 105-206, §9002(c)(3), substituted "104, 105, or 144" for "104, 144, or 157".

Subsec. (f). Pub. L. 105-178, §1103(k)(1), inserted heading.

Subsec. (f)(1). Pub. L. 105-178, §1103(k)(2), which directed the amendment of par. (1) by striking out "except that" and all that follows through "programs", was executed by striking out "except that the amount from which such set aside is made shall not include funds authorized to be appropriated for the recreational trails program" after "section 134 of this title" to reflect the probable intent of Congress and the amendment by Pub. L. 105-178, §1103(e)(1). See below.

Pub. L. 105-178, §1103(k)(1), (6), inserted heading and realigned margins.

Pub. L. 105-178, §1103(e)(1), substituted "recreational trails program" for "Interstate construction and Interstate substitute programs".

Subsec. (f)(2). Pub. L. 105-178, §1103(k)(3), (6), inserted heading and realigned margins.

Subsec. (f)(3). Pub. L. 105-178, §1103(e)(2), (k)(4), (6), inserted heading, substituted "section 120(b)" for "section 120(j) of this title", and realigned margins.

Subsec. (f)(4). Pub. L. 105-178, §1103(k)(5), (6), inserted heading and realigned margins.

Subsec. (f)(5). Pub. L. 105-178, §1103(k)(6), realigned margins.

Subsec. (g). Pub. L. 105-178, §1212(a)(2)(A)(i), substituted "State transportation department" for "State highway department" wherever appearing.

Subsec. (h). Pub. L. 105-178, §1103(f), amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: "In addition to funds made available from the National Recreational Trails Trust Fund, the Secretary shall obligate, from administrative funds (contract authority) deducted under subsection (a), to carry out section 1302 of the Intermodal Surface Transportation Efficiency Act of 1991 (16 U.S.C. 1261) \$15,000,000 for each of fiscal years 1996 and 1997 and \$7,500,000 for the period of October 1, 1997, through March 31, 1998."

Subsec. (i). Pub. L. 105-178, §1103(g), added subsec. (i) and struck out former subsec. (i) which read as follows: "(i) WOODROW WILSON MEMORIAL BRIDGE.—

"(1) EXPENDITURE.—From any available administrative funds deducted under subsection (a), the Sec-

retary shall obligate such sums as are necessary for each of fiscal years 1996 and 1997, and for the period of October 1, 1997, through March 31, 1998, for the rehabilitation of the Woodrow Wilson Memorial Bridge and for environmental studies and documentation, planning, preliminary engineering and design, and final engineering for a new crossing of the Potomac River as part of the Project, as defined by section 404 of the Woodrow Wilson Memorial Bridge Authority Act of 1995.

"(2) FEDERAL SHARE.—The Federal share of the cost of any project funded with amounts expended under paragraph (1) shall be 100 percent."

Subsec. (j). Pub. L. 105-178, §1103(h), added subsec. (j) and struck out former subsec. (j) which read as follows: "The Secretary shall submit to Congress not later than the 20th day of each calendar month which begins after the date of enactment of this subsection a report on (1) the amount of obligation, by State, for Federal-aid highways and the highway safety construction programs during the preceding calendar month, (2) the cumulative amount of obligation, by State, for that fiscal year, (3) the balance as of the last day of such preceding month of the unobligated apportionment of each State by fiscal year, and (4) the balance of unobligated sums available for expenditure at the discretion of the Secretary for such highways and programs for that fiscal year."

Subsec. (k). Pub. L. 105-178, §1103(i), added subsec. (k).

Subsec. (l). Pub. L. 105-178, §1103(j), added subsec. (l). 1997—Subsec. (h). Pub. L. 105-130, §5(b), added Pub. L. 102-240, §1003(e). See 1991 Amendment note below.

Subsec. (i)(1). Pub. L. 105-130, §4(a)(3), inserted ", and for the period of October 1, 1997, through March 31, 1998," after "fiscal years 1996 and 1997".

1995—Subsec. (b)(2). Pub. L. 104-59, §319(a)(2), in second sentence of introductory provisions substituted "was a nonattainment area (as defined in section 171(2) of the Clean Air Act (42 U.S.C. 7501(2))) for ozone during any part of fiscal year 1994" for "is a nonattainment area (as defined in the Clean Air Act) for ozone" and in first sentence of closing provisions substituted "If the area was also" for "If the area is also", and inserted "during any part of fiscal year 1994" after "area for carbon monoxide".

Subsec. (g). Pub. L. 104-59, §302, substituted "exceed 50 percent" for "exceed 40 percent" in third sentence.

Subsecs. (h) to (j). Pub. L. 104-59, §§337(f), 410, added subsecs. (h) and (i) and redesignated former subsec. (h) as (j).

1991—Subsec. (a). Pub. L. 102-240, §1007(b)(2)(A), substituted "on the surface transportation program, the congestion mitigation and air quality improvement program, the National Highway System, and the Interstate System" for "upon the Federal-aid systems" and was executed by making the substitution for the first reference to "upon the Federal-aid systems".

Subsec. (a)(2), (3). Pub. L. 102-143, §333(c), repealed Pub. L. 101-516, §333. See 1990 Amendment note below.

Subsec. (b). Pub. L. 102-240, §1007(b)(2), in introductory provisions, substituted "paragraph (5)(A)" for "paragraphs (4) and (5)", "and section 307" for "and sections 118(c) and 307(d)", and "on the surface transportation program, the congestion mitigation and air quality improvement program, the National Highway System, and the Interstate System" for "upon the Federal-aid systems".

Pub. L. 102-143, §333(c), repealed Pub. L. 101-516, §333. See 1990 Amendment note below.

Subsec. (b)(1). Pub. L. 102-240, §1006(e), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "For the Federal-aid primary system (including extensions in urban areas and priority primary routes)—

"Two-thirds according to the following formula: one-third in the ratio which the area of each State bears to the total area of all the States, one-third in the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States as shown by the latest available Fed-

eral census, and one-third in the ratio which the mileage of rural delivery routes and intercity mail routes where service is performed by motor vehicles in each State bear to the total mileage of rural delivery and intercity mail routes where service is performed by motor vehicles, as shown by a certificate of the Postmaster General, which he is directed to make and furnish annually to the Secretary; and one-third as follows: in the ratio which the population in urban areas in each State bears to the total population in urban areas in all the States as shown by the latest Federal census. No State (other than the District of Columbia) shall receive less than one-half of 1 per centum of each year's apportionment."

Subsec. (b)(2). Pub. L. 102-240, §1008(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "For the Federal-aid secondary system:

"One-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States as shown by the latest available Federal census; and one-third in the ratio which the mileage of rural delivery and intercity mail routes where service is performed by motor vehicles, certified as above provided, in each State bears to the total mileage of rural delivery and intercity mail routes where service is performed by motor vehicles in all the States. No State (other than the District of Columbia) shall receive less than one-half of 1 per centum of each year's apportionment."

Subsec. (b)(3). Pub. L. 102-240, §1007(b)(1), which directed that par. (3) "is amended to read as follows", was executed by adding par. (3) to reflect the probable intent of Congress, because prior par. (3) had been repealed. See 1976 Amendment note below.

Subsec. (b)(5)(A). Pub. L. 102-240, §1001(c)-(e), substituted "1960 through 1996" for "1960 through 1990" wherever appearing, and "As soon as practicable after the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991 for fiscal year 1992, and on October 1 of each of fiscal years 1993, 1994, and 1995, the Secretary shall make the apportionment required by this subparagraph for all States (other than Massachusetts) using the Federal share of the last estimate submitted to Congress, adjusted to reflect (i) all previous credits, apportionments of interstate construction funds, and lapses of previous apportionments of interstate construction funds, (ii) previous withdrawals of interstate segments, (iii) previous allocations of interstate discretionary funds, and (iv) transfers of interstate construction funds" for "On October 1 of each of fiscal years 1988, 1989, 1990, and 1991, whenever Congress has not approved a cost estimate under this subparagraph, the Secretary shall make the apportionment required by this subparagraph using the Federal share of the last estimate submitted to Congress, adjusted to reflect (i) all previous credits, apportionments of interstate construction funds and lapses of previous apportionments of interstate construction funds, (ii) previous withdrawals of interstate segments, (iii) previous allocations of interstate discretionary funds, and (iv) transfers of interstate construction funds", and inserted before last sentence: "Notwithstanding any other provision of this subparagraph or any cost estimate approved or adjusted pursuant to this subparagraph, subject to the deductions under this section, the amounts to be apportioned to the State of Massachusetts pursuant to this subparagraph for fiscal years 1993, 1994, 1995, and 1996 shall be as follows: \$450,000,000 for fiscal year 1993, \$800,000,000 for fiscal year 1994, \$800,000,000 for fiscal year 1995, and \$500,000,000 for fiscal year 1996."

Subsec. (b)(5)(B). Pub. L. 102-240, §1009(d), inserted "and routes on the Interstate System designated under section 139(a) of this title before March 9, 1984," in two places.

Subsec. (c). Pub. L. 102-240, §1006(f), added subsec. (c) and struck out former subsec. (c) which read as follows:

"(1) Subject to subsection (d), the amount apportioned in any fiscal year, commencing with the appor-

tionment of funds authorized to be appropriated under subsection (a) of section 102 of the Federal-Aid Highway Act of 1956 (70 Stat. 374), to each State in accordance with paragraph (1) or (2) of subsection (b) of this section may be transferred from the apportionment under one paragraph to the apportionment under the other paragraph if such a transfer is requested by the State highway department and is approved by the Governor of such State and the Secretary as being in the public interest.

"(2) Subject to subsection (d), the amount apportioned in any fiscal year to each State in accordance with paragraph (1) or (6) of subsection (b) of this section may be transferred from the apportionment under one paragraph to the apportionment under the other paragraph if such transfer is requested by the State highway department and is approved by the Governor of such State and the Secretary as being in the public interest. Funds apportioned in accordance with paragraph (6) of subsection (b) of this section shall not be transferred from their allocation to any urbanized area of two hundred thousand population or more under section 150 of this title, without the approval of the local officials of such urbanized area."

Pub. L. 102-143, §333(c), repealed Pub. L. 101-516, §333. See 1990 Amendment note below.

Subsec. (d). Pub. L. 102-240, §1010, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Each transfer of apportionments under subsection (c) of this section shall be subject to the following conditions:

"(1) In the case of transfers under paragraph (1), the total of all transfers during any fiscal year to any apportionment shall not increase the original amount of such apportionment for such fiscal year by more than 50 per centum. Not more than 50 per centum of the original amount of an apportionment for any fiscal year shall be transferred to other apportionments.

"(2) In the case of transfers under paragraph (2), the total of all transfers during any fiscal year to any apportionment shall not increase the original amount of such apportionment for such fiscal year by more than 50 per centum. Not more than 50 per centum of the original amount of an apportionment for any fiscal year shall be transferred to other apportionments.

"(3) No transfer shall be made from an apportionment during any fiscal year if during such fiscal year a transfer has been made to such apportionment.

"(4) No transfer shall be made to an apportionment during any fiscal year if during such fiscal year a transfer has been made from such apportionment."

Subsec. (f)(1). Pub. L. 102-240, §1024(b)(1)-(3), substituted "1 percent" for "one-half per centum", "programs authorized under this title" for "the Federal-aid systems", and "except that the amount from which such set aside is made shall not include funds authorized to be appropriated for the Interstate construction and Interstate substitute programs" for "except that in the case of funds authorized for apportionment on the Interstate System, the Secretary shall set aside that portion of such funds (subject to the overall limitation of one-half of 1 per centum) on October 1 of the year next preceding the fiscal year for which such funds are authorized for such System".

Subsec. (f)(3). Pub. L. 102-240, §1024(b)(4), (c)(2), substituted "120(j)" for "120" and struck out "designated by the State as being" after "organizations".

Subsec. (f)(4). Pub. L. 102-240, §1024(b)(5), inserted provisions relating to attainment of air quality standards and provisions relating to other factors necessary to provide appropriate distribution of funds to carry out section 134 and other requirements of Federal law.

Subsec. (f)(5). Pub. L. 102-240, §1024(b)(6), added par. (5).

Subsec. (g). Pub. L. 102-240, §1028(g), inserted before last sentence "A State may transfer not to exceed 40 percent of the State's apportionment under section 144 in any fiscal year to the apportionment of such State under subsection (b)(1) or subsection (b)(3) of this section. Any transfer to subsection (b)(3) shall not be subject to section 133(d)."

Subsec. (h). Pub. L. 102-240, §1003(e), as added by Pub. L. 105-130, §5(b), inserted before period at end "and \$7,500,000 for the period of October 1, 1997, through March 31, 1998".

1990—Subsec. (a)(2), (3). Pub. L. 101-516, §333 [part], which added pars. (2) and (3) to read as follows:

"(2) The Secretary shall withhold 10 per centum (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1), (2), (5), and (6) of section 104(b) on the first day of each fiscal year which begins after the fourth full calendar year following the date of enactment of this section if the State does not meet the requirements of paragraph (3) on the first day of such fiscal year.

"(3) A State meets the requirements of this paragraph if—

"(A) the State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception—

"(i) the revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of—

"(I) any violation of the Controlled Substances Act, or

"(II) any drug offense, and

"(ii) a delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted, or

"(B) The Governor of the State—

"(i) submits to the Secretary no earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after the date of enactment of this section a written certification stating that he is opposed to the enactment or enforcement in his State of a law described in subparagraph (A) relating to the revocation, suspension, issuance, or reinstatement of driver's licenses to convicted drug offenders; and

"(ii) submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law described in clause (i)."

was repealed by Pub. L. 102-143, §333(c). See Construction of 1990 Amendment note below and section 159(a)(2), (3) of this title.

Subsec. (b). Pub. L. 101-516, §333 [part], which amended subsec. (b) generally to read as follows:

"(1)(A) Any funds withheld under subsection (a) from apportionment to any State on or before September 30, 1995, shall remain available for apportionment to such State as follows:

"(i) If such funds would have been apportioned under section 104(b)(5)(A) but for this section, such funds shall remain available until the end of the fiscal year for which such funds are authorized to be appropriated.

"(ii) If such funds would have been apportioned under section 104(b)(5)(B) but for this section, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

"(iii) If such funds would have been apportioned under paragraph (1), (2), or (6) of section 104(b) but for this section, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

"(B) No funds withheld under this section from apportionment to any State after September 30, 1995, shall be available for apportionment to such State.

"(2) If, before the last day of the period for which funds withheld under subsection (a) from apportionment are to remain available for apportionment to a

State under paragraph (1), the State meets the requirements of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirements of subsection (a)(3), apportion to the State the funds withheld under subsection (a) that remain available for apportionment to the State.

"(3) Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure as follows:

"(A) Funds originally apportioned under section 104(b)(5)(A) shall remain available until the end of the fiscal year succeeding the fiscal year in which such funds are apportioned under paragraph (2).

"(B) Funds originally apportioned under paragraph (1), (2), (5)(B), or (6) of section 104(b) shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with section 118(b).

"(4) If, at the end of the period for which funds withheld under subsection (a) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5), such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b)."

was repealed by Pub. L. 102-143, §333(c). See Construction of 1990 Amendment note below and section 159(b) of this title.

Subsec. (c). Pub. L. 101-516, §333 [part], which amended subsec. (c) generally to read as follows: "For purposes of this section—

"(1) The term 'driver's license' means a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.

"(2) The term 'drug offense' means any criminal offense which proscribes—

"(A) the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or

"(B) the operation of a motor vehicle under the influence of such a substance.

"(3) The term 'convicted' includes adjudicated under juvenile proceedings."

was repealed by Pub. L. 102-143, §333(c). See Construction of 1990 Amendment note below and section 159(c) of this title.

1987—Subsec. (b). Pub. L. 100-17, §114(e)(1), inserted "and the set asides authorized by subsection (f) of this section and sections 118(c) and 307(d) of this title" after "subsection (a) of this section" in introductory provisions.

Subsec. (b)(5)(A). Pub. L. 100-17, §102(b)(1), inserted after "September 30, 1990." the following: "The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System after taking into account all previous apportionments made under this section in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within 10 days subsequent to January 2, 1989. Upon the approval by Congress, the Secretary shall use the Federal share of such approved estimates in making apportionments for the fiscal years 1991 and 1992. The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System after taking into account all previous apportionments made under this section in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within 10 days subsequent to January 2, 1991. Upon the approval by Congress, the Secretary shall use the Federal share of such approved estimates in making apportionments for the fiscal year 1993."

Pub. L. 100-17, §102(b)(2), inserted at end "On October 1 of each of fiscal years 1988, 1989, 1990, and 1991, whenever Congress has not approved a cost estimate under this subparagraph, the Secretary shall make the apportionment required by this subparagraph using the Federal share of the last estimate submitted to Congress, adjusted to reflect (i) all previous credits, apportionments of interstate construction funds and lapses of previous apportionments of interstate construction funds, (ii) previous withdrawals of interstate segments, (iii) previous allocations of interstate discretionary funds, and (iv) transfers of interstate construction funds. If, before apportionment of funds under this subparagraph for any fiscal year, the Secretary and a State highway department agree that a portion of the apportionment to such State is not needed for such fiscal year, the amount of such portion shall be made available under section 118(b)(2) of this title."

Subsec. (g). Pub. L. 100-202 substituted "sections 130, 144, and 152 of this title" for "sections 144, 152, and 153 of this title, or section 203(d) of the Highway Safety Act of 1973," and struck out "All or any part of the funds apportioned in any fiscal year to a State in accordance with section 203(d) of the Highway Safety Act of 1973 from funds authorized in section 203(c) of such Act, may be transferred from that apportionment to the apportionment made under section 219 of this title if such transfer is requested by the State highway department and is approved by the Secretary after he has received satisfactory assurances from such department that the purposes of such section 203 have been met."

1981—Subsec. (b)(5)(A). Pub. L. 97-134, §4(c), inserted provision that the Secretary shall include only those costs eligible for funds authorized by section 108(b) of the Federal Highway Act of 1956 in making the revised estimate of completing Interstate System for the purpose of transmitting it to the Congress within ten days subsequent to Jan. 2, 1983 or thereafter.

Subsec. (b)(5)(B). Pub. L. 97-134, §5, inserted reference to reconstruction in opening par., substituted "55 per centum in the ratio that lane miles on the Interstate routes designated under sections 103 and 139(c) of this title (other than those on toll roads not subject to a Secretarial agreement provided for in section 105 of the Federal-Aid Highway Act of 1978) in each State bears to the total of all such lane miles in all States; and 45 per centum in the ratio that vehicle miles traveled on lanes on the Interstate routes designated under sections 103 and 139(c) of this title" for "Seventy-five per centum in the ratio that lane miles in use for more than five years on the Interstate System (other than those on toll roads not subject to a Secretarial agreement provided for in section 105 of the Federal-Aid Highway Act of 1978) in each State bears to the total of all such lane miles in all States; and 25 per centum in the ratio that vehicle miles traveled on lanes in use for more than five years on the Interstate System" and inserted provision that no State excluding any State that has no interstate lane miles shall receive less than one-half of 1 per centum of the total apportionment made by this subparagraph for any fiscal year.

1978—Subsec. (b)(5)(A). Pub. L. 95-599, §108, inserted provision relating to deadline for inclusion of estimate.

Subsec. (b)(5)(B). Pub. L. 95-599, §116(b), substituted provisions limiting apportionment of funds ratio to seventy-five percent of lane miles ratio and twenty-five of miles traveled ratio for provision establishing a straight ratio for such apportionment.

Subsec. (d). Pub. L. 95-599, §109, substituted "50" for "40" and "20" wherever appearing.

Subsec. (h). Pub. L. 95-599, §110, added subsec. (h).

1976—Subsec. (b). Pub. L. 94-280, §112(a), substituted "On October 1 of each fiscal year" for "On or before January 1 next preceding the commencement of each fiscal year,".

Subsec. (b)(1). Pub. L. 94-280, §112(b), inserted in introductory text "(including extensions in urban areas and priority primary routes)", made existing provisions applicable for a two-third apportionment of monies, striking out "in all the States at the close of the next

preceding calendar year" before "as shown by a certificate of the Postmaster General" and inserted provision for a one-third apportionment in the ratio which the population in urban areas in each State bears to the total population in urban areas in all the States as shown by the latest Federal census.

Subsec. (b)(3). Pub. L. 94-280, §112(c), repealed provisions respecting apportionment of monies for extensions of the Federal-aid primary and Federal-aid secondary systems within urban areas in the ratio which the population in municipalities and other urban places of five thousand or more in each State bears to the total population in municipalities and other urban places of five thousand or more in all of the States as shown by the latest available Federal census.

Subsec. (b)(5)(A). Pub. L. 94-280, §§106(b), 107(b), 112(g), designated existing provisions as subpar. (A) and inserted introductory phrase "Except as provided in subparagraph B—"; substituted wherever appearing in introductory phrase and second and third sentences "1990" for "1979"; substituted provision for apportionment for fiscal year ending September 30, 1977, for prior provision for fiscal year ending June 30, 1977, substituted provision for apportionment for fiscal year ending September 30, 1978, in accordance with section 103 of Federal-Aid Highway Act of 1976, for prior provision for apportionment for fiscal year ending June 30, 1978, substituted provision for apportionment for fiscal year ending September 30, 1979, for prior provision for fiscal year ending June 30, 1979, provided for apportionment for fiscal year ending September 30, 1980, and inserted provisions for revised estimates of completion costs and transmittal thereof to Congress within ten days subsequent to January 2, 1979, 1981, 1983, 1985, and 1987 for apportionments for fiscal years ending September 30, 1981 and 1982, 1983 and 1984, 1985 and 1986, 1987 and 1988, and 1989 and 1990; and substituted in third sentence "October 1 of the year preceding the fiscal year for which authorized" for "a date as far in advance of the beginning of the fiscal year for which authorized as practicable but in no case more than eighteen months prior to the beginning of the fiscal year for which authorized".

Subsec. (b)(5)(B). Pub. L. 94-280, §106(b), added subpar. (B).

Subsec. (c). Pub. L. 94-280, §113(a), designated existing provisions as par. (1), substituted "Subject to subsection (d), the amount" for "Not more than 40 per centum of the amount" and "transferred from the apportionment under one paragraph to the apportionment under the other paragraph" for "transferred from the apportionment under one paragraph to the apportionment under any other of such paragraphs" and struck out former last sentence reading "The total of such transfers shall not increase the original apportionment under any of such paragraphs by more than 40 per centum.", and incorporated former subsec. (d) provisions in a new par. (2), substituting "Subject to subsection (d), the amount" for "Not more than 40 per centum of the amount" and paragraph "(1)" for "(3)" and striking out former last sentence reading "The total of such transfers shall not increase the original apportionment under either of such paragraphs by more than 40 per centum."

Subsec. (d). Pub. L. 94-280, §113(a), inserted provisions respecting conditions for transfer of apportionments under subsec. (c) of this section and struck out prior subsec. (d) provisions respecting transfer of certain apportionments, now incorporated in subsec. (c)(2) of this section.

Subsec. (e). Pub. L. 94-280, §112(d), in first sentence, substituted "On October 1" for "On or before January 1 preceding the commencement" and inserted "(other than under subsection (b)(5) of this section)" after "hereunder" and inserted certification provision respecting sums apportioned under subsec. (b)(5) of this section to each State highway department and amount of deductions for administration and research; and inserted provisions advising the States not less than ninety days before the beginning of the fiscal year of

amounts to be apportioned to the States and in the case of the Interstate System ninety days prior to the apportionment of funds.

Subsec. (f)(1). Pub. L. 94-280, § 112(e), substituted "On October 1" for "On or before January 1 next preceding the commencement" and inserted exception provision.

Subsec. (f)(3). Pub. L. 94-280, § 112(f), authorized State use of apportioned funds to finance transportation planning outside of urbanized areas.

Subsec. (g). Pub. L. 94-280, § 206, increased percentage limitation to "40 per centum" from "30 per centum"; authorized approval by Secretary of transfer of apportionments when requested by the State highway department and approved by the Secretary as being in the public interest; and provided for transfer of apportionments under section 203(c) and (d) of the Highway Safety Act of 1973, to apportionments under section 219 of this title, and clarified the authority for apportionment of Highway Trust Fund funds.

1973—Subsec. (b)(1). Pub. L. 93-87, § 111(a)(1), (2), substituted "intercity mail routes where service is performed by motor vehicles" for "star routes" in two places, "one-third in the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States" for "one-third in the ratio which the population of each State bears to the total population of all the States", and "No State (other than the District of Columbia) shall receive" for "No State shall receive".

Subsec. (b)(2). Pub. L. 93-87, § 111(a)(1), (3), substituted "intercity mail routes where service is performed by motor vehicles" for "star routes" in two places, "one-third in the ratio which the population of rural areas of each State bears to the total population of rural areas of all of the States" for "one-third in the ratio which the rural population of each State bears to the total rural population of all the States", and "No State (other than the District of Columbia) shall receive" for "No State shall receive".

Subsec. (b)(5). Pub. L. 93-87, § 106(b), extended from 1976 to 1979, the date for completion of the Interstate System; and authorized the Secretary to use the Federal share of the approved estimate in making apportionments for fiscal years ending June 30, 1976, 1977, 1978, and 1979, reenacted requirement that Secretary make a revised estimate of cost of completing the then designated Interstate System, substituting Jan. 2, 1975, for Jan. 2, 1974, as the commencing date for the ten day period for transmittal of the revised cost estimate, and reenacted provisions of last sentence without change, respectively.

Subsec. (b)(6). Pub. L. 93-87, § 111(a)(4), substituted "urban areas" for "urbanized areas" in two places and mandated that no State shall receive less than one-half of 1 per centum of each year's apportionment.

Subsec. (c). Pub. L. 93-87, § 111(a)(5), (7), substituted "40" for "20" per centum in two places and struck out reference to par. (3) of subsec. (b) of this section and provision of last sentence that nothing contained in subsec. (c) shall alter or impair the authority contained in subsec. (d) of this section.

Subsec. (d). Pub. L. 93-87, § 111(a)(6), substituted provisions respecting transfer of apportionment of funds under pars. (3) and (6) of subsec. (b) of this section from one paragraph to the other when requested by the State highway department and approved as in the public interest by the Governor of the State and the Secretary for former provisions which authorized expenditure of subsec. (b)(2) funds apportioned for Federal-aid secondary system to a State for projects on another Federal-aid system when the State highway department and the Secretary were in joint agreement as to such other expenditure.

Subsec. (f). Pub. L. 93-87, § 112, incorporated provisions of former subsec. (f) that "Not to exceed 50 per centum of the amounts apportioned in accordance with paragraph (3) of subsection (b) of this section may be expended for projects on the Federal-aid urban system" in provisions designated as par. (1) and stating that "On or before January 1 next preceding the commence-

ment of each fiscal year, the Secretary, after making the deduction authorized by subsection (a) of this section, shall set aside not to exceed one-half per centum of the remaining funds authorized to be appropriated for expenditure upon the Federal-aid systems, for the purpose of carrying out the requirements of section 134 of this title." and added pars. (2)-(4).

Subsec. (g). Pub. L. 93-87, § 227, added subsec. (g).

1970—Subsec. (b)(5). Pub. L. 91-605, § 104(b), extended from 1974 to 1976 the date for completion of the Interstate System, substituted "on April 20, 1970" for "within ten days subsequent to January 2, 1970" as the date for submission by the Secretary to Congress of a revised completion cost estimate of the Interstate System, struck out reference of finality as applied to this estimate, deleted June 30, 1974 from the enumerated list of fiscal years for which the Secretary shall use the Federal share of the approved 1970 estimate in making apportionments, inserted provision directing the Secretary to submit to Congress a revised Interstate System completion cost estimate within 10 days from Jan. 2, 1972 with apportionments to be made by the Secretary for use in the fiscal years 1974 and 1975 from the Federal share of the approved estimate, and inserted provision directing the Secretary to submit to Congress another cost estimate within 10 days from Jan. 2, 1974 to be used for making apportionments for the fiscal year 1976.

Subsec. (b)(6). Pub. L. 91-605, § 106(c)(2), added par. (6).

Subsec. (f). Pub. L. 91-605, § 106(c)(1), added subsec. (f).

1968—Subsec. (b)(5). Pub. L. 90-495 extended from 1972 to 1974 the date for completion of the Interstate System, added the fiscal year ending June 30, 1971, to the enumeration of fiscal years for which the Secretary may use the Federal share of approval estimates in making apportionments, substituted January 2, 1970, for January 2, 1969, as the date for commencement of the 10-day period during which the Secretary shall transmit to Congress his final revised estimate of the cost of completing the Interstate system, and added the fiscal years ending June 30, 1973, and June 30, 1974, to the enumerated list of fiscal years for which the Secretary shall use the Federal share of the approved estimate in making apportionments.

1966—Subsec. (b)(5). Pub. L. 89-574 substituted "1972" for "1971" wherever appearing except in provision requiring the Secretary, with the approval of Congress, to use the Federal share of the approved estimates in making apportionments for the fiscal year ending June 30, 1971, and, in such provision, retained the authority of the Secretary to use the Federal share of the approved estimates in making apportionments for the fiscal year ending June 30, 1971, but extended the authority of the Secretary to use the Federal share of the approved estimates in making apportionments for the fiscal year ending June 30, 1972, as well.

1964—Subsec. (b)(5). Pub. L. 88-423 substituted "January 2, 1961" for "January 2, 1962".

1963—Subsec. (b)(3). Pub. L. 88-157, § 2, struck out provision which considered Connecticut and Vermont towns as municipalities for the purposes of par. (3) regardless of their incorporated status.

Subsec. (b)(5). Pub. L. 88-157, § 3, substituted "1971" for "1969" in introductory text and 3d sentence; inserted "For the fiscal years 1960 through 1966," and substituted "such State" for "each State" in 1st sentence; inserted 2d sentence respecting apportionment for fiscal years 1967 through 1971; substituted in 9th sentence "January 2, 1965" for "January 2, 1966, and annually thereafter through and including January 2, 1968"; substituted in 10th sentence "Upon the approval of such estimate by the Congress" for "Upon approval of any such estimate by the Congress by concurrent resolution" and "fiscal years ending June 30, 1967; June 30, 1968; and June 30, 1969" for "fiscal year which begins next following the fiscal year in which such report is transmitted to the Senate and the House of Representatives" and inserted "the Federal share of" before "such approved estimate"; and inserted 11th through 14th sentences, respecting revised cost estimate for



completion of the Interstate System and its submission to Congress within 10 days after Jan. 2, 1968, apportionment for fiscal year ending June 30, 1970, final revised cost estimate for completion of the Interstate System and its submission to Congress within 10 days after Jan. 2, 1969, and apportionment for fiscal year ending June 30, 1971, respectively.

1962—Subsec. (b)(1). Pub. L. 87-866 substituted “preceding calendar year” for “preceding fiscal year”.

1960—Subsec. (b)(5). Pub. L. 86-657 struck out provisions which required, in making the estimates of cost for completing the Interstate System, exclusion of the cost of completing any mileage designated from the one thousand additional miles authorized by section 108(1) of the Federal-Aid Highway Act of 1956.

1959—Subsec. (b). Pub. L. 86-70 struck out “, except that only one-third of the area of Alaska shall be included” after “total area of all States” in pars. (1) and (2).

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-159 effective Jan. 1, 2000, see section 107(a) of Pub. L. 106-159, set out as a note under section 104 of Title 49, 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 this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Section 1100 of title I of Pub. L. 102-240 provided that: “(a) GENERAL RULE.—This title [see Tables for classification], including the amendments made by this title, shall take effect on the date of the enactment of this Act [Dec. 18, 1991].

“(b) APPLICABILITY.—The amendments made by this title shall apply to funds authorized to be appropriated or made available after September 30, 1991, and, except as otherwise provided in subsection (c), shall not apply to funds appropriated or made available on or before September 30, 1991.

“(c) UNOBLIGATED BALANCES.—

“(1) IN GENERAL.—Unobligated balances of funds apportioned to a State under sections 104(b)(1), 104(b)(2), 104(b)(5)(B), and 104(b)(6) of title 23, United States Code, before October 1, 1991, shall be available for obligation in that State under the law, regulations, policies and procedures relating to the obligation and expenditure of those funds in effect on September 30, 1991.

“(2) TRANSFERABILITY.—

“(A) PRIMARY SYSTEM.—A State may transfer unobligated balances of funds apportioned to the State for the Federal-aid primary system before October 1, 1991, to the apportionment to such State under section 104(b)(1) or 104(b)(3) of title 23, United States Code, or both.

“(B) SECONDARY AND URBAN SYSTEM.—A State may transfer unobligated balances of funds apportioned to the State for the Federal-aid secondary system or the Federal-aid urban system before October 1, 1991, to the apportionment to such State under section 104(b)(3) of such title.

“(C) APPLICABILITY OF CERTAIN LAWS, REGULATIONS, POLICIES, AND PROCEDURES.—Funds transferred under this paragraph shall be subject to the laws, regulations, policies, and procedures relating to the apportionment to which they are transferred.”

#### EFFECTIVE DATE OF 1976 AMENDMENT; APPLICABLE PROVISIONS DEPENDENT ON FISCAL FUND AUTHORIZATIONS

Section 113(b) of Pub. L. 94-280 provided that: “The amendment made by subsection (a) of this section

[amending this section] shall take effect on July 1, 1976, and shall be applicable with respect to funds authorized for the fiscal year ending September 30, 1977, and for subsequent fiscal years. With respect to the fiscal year 1976 and earlier fiscal years, the provisions of subsections (c) and (d) of section 104 of title 23, United States Code, as in effect on June 30, 1976, shall remain applicable to funds authorized for such years.”

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Section 10(b) of Pub. L. 87-866 provided that: “The amendment made by subsection (a) of this section [amending this section] shall be applicable only with respect to apportionments made after the date of enactment of this Act [Oct. 23, 1962].”

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-70 effective July 1, 1959, see section 21(e) of Pub. L. 86-70, set out as a note under section 101 of this title.

#### CONSTRUCTION OF 1990 AMENDMENT

Section 333(d) of Pub. L. 102-143 provided that: “The amendments made by section 333 of the Department of Transportation and Related Agencies Appropriations Act, 1991 (104 Stat. 2184-2186) [Pub. L. 101-516, amending this section and enacting provisions formerly set out as a note below] shall be treated as having not been enacted into law.”

#### ADJUSTMENTS FOR SURFACE TRANSPORTATION EXTENSION ACT OF 1997

Pub. L. 105-178, title I, §1103(m), June 9, 1998, 112 Stat. 126, provided that:

“(1) IN GENERAL.—Notwithstanding any other provision of law and subject to section 2(c) of the Surface Transportation Extension Act of 1997 [Pub. L. 105-130, set out below], the Secretary shall ensure that the total apportionments for a State (other than Massachusetts) for fiscal year 1998 made under the Transportation Equity Act for the 21st Century [Pub. L. 105-178, see Tables for classification] (including amendments made by such Act) shall be reduced by the amount apportioned to such State (other than Massachusetts) under section 1003(d)(1) of the Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. 102-240, 111 Stat. 2553].

“(2) REPAYMENT OF TRANSFERRED FUNDS.—The Secretary shall ensure that any apportionments made to a State for fiscal year 1998 and adjusted under paragraph (1) shall first be used to restore in accordance with section 3(c) of the Surface Transportation Extension Act of 1997 [Pub. L. 105-130, 111 Stat. 2555] any funds that a State transferred under section 3 of such Act.

“(3) INSUFFICIENT FUNDS FOR REPAYMENT.—If a State has insufficient funds apportioned in fiscal year 1998 under the Transportation Equity Act for the 21st Century (including amendments made by such Act) to make the adjustment required by paragraph (1), then the Secretary shall make an adjustment to any funds apportioned to such State in fiscal year 1999.

“(4) ALLOCATED PROGRAMS.—Notwithstanding any other provision of law, amounts made available for fiscal year 1998 by the Transportation Equity Act for the 21st Century (including amendments made by such Act) for a program that is continued by both of sections 4, 5, 6, and 7 of the Surface Transportation Extension Act of 1997 (including amendments made by such sections) [Pub. L. 105-130, see Tables for classification] and the Transportation Equity Act for the 21st Century (including amendments made by such Act) shall be reduced by the amount made available by such sections 4, 5, 6, and 7 for such programs.

“(5) TREATMENT OF STEA OBLIGATION AUTHORITY.—The amount of obligation authority made available

under section 2(e) of the Surface Transportation Extension Act of 1997 [Pub. L. 105-130, set out below] shall be considered to be an amount of obligation authority made available for fiscal year 1998 under section 1102(a) of this Act [set out above].”

#### ADVANCES

Section 2 of Pub. L. 105-130 provided that:

“(a) IN GENERAL.—The Secretary of Transportation (referred to in this Act as the ‘Secretary’) shall apportion funds made available under section 1003(d) of the Intermodal Surface Transportation Efficiency Act of 1991 [see 111 Stat. 2553] to each State in the ratio that—

“(1) the State’s total fiscal year 1997 obligation authority for funds apportioned for the Federal-aid highway program; bears to

“(2) all States’ total fiscal year 1997 obligation authority for funds apportioned for the Federal-aid highway program.

“(b) PROGRAMMATIC DISTRIBUTIONS.—

“(1) PROGRAMS.—Of the funds to be apportioned to each State under subsection (a), the Secretary shall ensure that the State is apportioned an amount of the funds, determined under paragraph (2), for the Interstate maintenance program, the National Highway System, the bridge program, the surface transportation program, the congestion mitigation and air quality improvement program, minimum allocation under section 157 of title 23, United States Code, Interstate reimbursement under section 160 of that title, the donor State bonus under section 1013(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1940) [Pub. L. 102-240, set out as a note under section 157 of this title], hold harmless under section 1015(a) of that Act (105 Stat. 1943) [set out below], 90 percent of payments adjustments under section 1015(b) of that Act (105 Stat. 1944) [set out below], section 1015(c) of that Act (105 Stat. 1944) [set out below], an amount equal to the funds provided under sections 1103 through 1108 of that Act (105 Stat. 2027) [see Tables for classification], and funding restoration under section 202 of the National Highway System Designation Act of 1995 (109 Stat. 571).

“(2) IN GENERAL.—The amount that each State shall be apportioned under this subsection for each item referred to in paragraph (1) shall be determined by multiplying—

“(A) the amount apportioned to the State under subsection (a); by

“(B) the ratio that—

“(i) the amount of funds apportioned for the item, or allocated under sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2027), to the State for fiscal year 1997; bears to

“(ii) the total of the amount of funds apportioned for the items, and allocated under those sections, to the State for fiscal year 1997.

“(3) USE OF FUNDS.—Amounts apportioned to a State under subsection (a) attributable to sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 shall be available to the State for projects eligible for assistance under chapter 1 of title 23, United States Code.

“(4) ADMINISTRATION.—Funds authorized by the amendment made by subsection (d) shall be administered as if they had been apportioned, allocated, deducted, or set aside, as the case may be, under title 23, United States Code; except that the deduction under section 104(a) of title 23, United States Code, the set-asides under section 104(b)(1) of that title for the territories and under section 104(f)(1) of that title for metropolitan planning, and the expenditure required under section 104(d)(1) of that title shall not apply to those funds.

“(c) REPAYMENT FROM FUTURE APPORTIONMENTS.—

“(1) IN GENERAL.—The Secretary shall reduce the amount that would, but for this section, be apportioned to a State for programs under chapter 1 of title 23, United States Code, for fiscal year 1998 under

a law reauthorizing the Federal-aid highway program enacted after the date of enactment of this Act [Dec. 1, 1997] by the amount that is apportioned to each State under subsection (a) and section 5(f) [Pub. L. 105-130, 111 Stat. 2558] for each such program.

“(2) PROGRAM CATEGORY RECONCILIATION.—The Secretary may establish procedures under which funds apportioned under subsection (a) for a program category for which funds are not authorized under a law described in paragraph (1) may be restored to the Federal-aid highway program.

“(d) AUTHORIZATION OF CONTRACT AUTHORITY.—[Amended section 1003 of Pub. L. 102-240.]

“(e) LIMITATION ON OBLIGATIONS.—

“(1) IN GENERAL.—Subject to paragraph (2), after the date of enactment of this Act [Dec. 1, 1997], the Secretary shall allocate to each State an amount of obligation authority made available under the Department of Transportation and Related Agencies Appropriations Act, 1998 (Public Law 105-66 [see Tables for classification]) that is—

“(A) equal to the greater of—

“(i) the State’s unobligated balance, as of October 1, 1997, of Federal-aid highway apportionments subject to any limitation on obligations; or

“(ii) 50 percent of the State’s total fiscal year 1997 obligation authority for funds apportioned for the Federal-aid highway program; but

“(B) not greater than 75 percent of the State’s total fiscal year 1997 obligation authority for funds apportioned for the Federal-aid highway program.

“(2) LIMITATION ON AMOUNT.—The total of all allocations under paragraph (1) shall not exceed \$9,786,275,000.

“(3) TIME PERIOD FOR OBLIGATIONS OF FUNDS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a State shall not obligate any funds for any Federal-aid highway program project after May 1, 1998, until the earlier of the date of enactment of a multiyear law reauthorizing the Federal-aid highway program or July 1, 1998.

“(B) REOBLIGATION.—Subparagraph (A) shall not preclude the reobligation of previously obligated funds.

“(C) DISTRIBUTION OF REMAINING OBLIGATION AUTHORITY.—On the earlier of the date of enactment of a law described in subparagraph (A) or July 1, 1998, the Secretary shall distribute to each State any remaining amounts of obligation authority for Federal-aid highways and highway safety construction programs by allocation in accordance with section 310(a) of the Department of Transportation and Related Agencies Appropriations Act, 1998 (Public Law 105-66) [set out below].

“(D) CONTRACT AUTHORITY.—No contract authority made available to the States prior to July 1, 1998, shall be obligated after that date until such time as a multiyear law reauthorizing the Federal-aid highway program has been enacted.

“(4) TREATMENT OF OBLIGATIONS.—Any obligation of an allocation of obligation authority made under this subsection shall be considered to be an obligation for Federal-aid highways and highway safety construction programs for fiscal year 1998 for the purposes of the matter under the heading ‘LIMITATION ON OBLIGATIONS’ under the heading ‘FEDERAL-AID HIGHWAYS’ in title I of the Department of Transportation and Related Agencies Appropriations Act, 1998 (Public Law 105-66 [111 Stat. 1431]).”

#### EFFECT OF LIMITATION ON APPORTIONMENT

Section 319(c) of Pub. L. 104-59 provided that: “Notwithstanding any other provision of law, for each of fiscal years 1996 and 1997, the amendments made by subsection (a) [amending this section and section 149 of this title] shall not affect any apportionment adjustments under section 1015 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1943) [Pub. L. 102-240, set out below].”

COMPLETION OF INTERSTATE SYSTEM

Section 1001(a) of Pub. L. 102-240 provided that: "Congress declares that the authorizations of appropriations and apportionments for construction of the Dwight D. Eisenhower National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways] made by this section (including the amendments made by this section [amending this section and section 101 of this title]) are the final authorizations of appropriations and apportionments for completion of construction of such System."

APPORTIONMENT ADJUSTMENTS

Section 1015 of Pub. L. 102-240 provided that:

"(a) HOLD HARMLESS.—

"(1) GENERAL RULE.—The amount of funds which, but for this subsection, would be apportioned to a State for each of the fiscal years 1992 through 1997 under section 104(b)(3) of title 23, United States Code, for the surface transportation program shall be increased or decreased by an amount which, when added to or subtracted from the aggregate amount of funds apportioned to the State for such fiscal year and funds allocated to the State for the prior fiscal year under section 104(b) of such title, section 103(e)(4) for Interstate highway substitute, section 144 of such title, section 157 of such title, under section 202 of such title for the Federal lands highways program, section 160 of such title for the reimbursement program, and section 1013(c) of this Act [23 U.S.C. 157 note] for the donor State bonus program, will result in the percentage of amounts so apportioned and allocated to all States being equal to the percentage listed for such State in paragraph (2).

"(2) STATE PERCENTAGES.—For purposes of paragraph (1) the percentage of amounts apportioned and allocated which are referred to in paragraph (1) for each State, and the District of Columbia shall be determined in accordance with the following table:

States	Adjustment Percentage
Alabama .....	1.74
Alaska .....	1.28
Arizona .....	1.49
Arkansas .....	1.20
California .....	9.45
Colorado .....	1.35
Connecticut .....	1.78
Delaware .....	0.41
District of Columbia .....	0.53
Florida .....	4.14
Georgia .....	2.97
Hawaii .....	0.57
Idaho .....	0.69
Illinois .....	3.72
Indiana .....	2.20
Iowa .....	1.25
Kansas .....	1.14
Kentucky .....	1.52
Louisiana .....	1.55
Maine .....	0.50
Maryland .....	1.69
Massachusetts .....	4.36
Michigan .....	2.81
Minnesota .....	1.58
Mississippi .....	1.15
Missouri .....	2.23
Montana .....	0.97
Nebraska .....	0.83
Nevada .....	0.64
New Hampshire .....	0.48
New Jersey .....	2.87
New Mexico .....	1.08
New York .....	5.37

North Carolina .....	2.65
North Dakota .....	0.62
Ohio .....	3.73
Oklahoma .....	1.42
Oregon .....	1.26
Pennsylvania .....	4.38
Rhode Island .....	0.54
South Carolina .....	1.41
South Dakota .....	0.71
Tennessee .....	2.08
Texas .....	6.36
Utah .....	0.77
Vermont .....	0.44
Virginia .....	2.27
Washington .....	2.06
West Virginia .....	0.94
Wisconsin .....	1.70
Wyoming .....	0.67

"(b) 90 PERCENT OF PAYMENT ADJUSTMENTS.—

"(1) GENERAL RULE.—For each of fiscal years 1992 through 1997, the Secretary shall allocate among the States amounts sufficient to ensure that a State's total apportionments for such fiscal year and allocations for the prior fiscal year under section 104(b) of such title, section 103(e)(4) for Interstate highway substitute, section 144 of such title, section 157 of such title, section 202 of such title for the Federal lands highways program, section 1013(c) of this Act [23 U.S.C. 157 note] for the donor State bonus program, section 160 of such title for the reimbursement program, and subsection (a) of this section for hold harmless is not less than 90 percent of the estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund (other than Mass Transit Account) in the latest fiscal year in which data is available.

"(2) TRANSFER OF ALLOCATED AMOUNTS TO STP AP-  
PORTIONMENT.—Subject to subsection (d) of this sec-  
tion, the Secretary shall transfer amounts allocated  
to a State pursuant to paragraph (1) to the apportion-  
ment of such State under section 104(b)(3) for the sur-  
face transportation program.

"(c) ADDITIONAL ALLOCATION.—Subject to subsection  
(d) of this section, the Secretary shall allocate to the  
State of Wisconsin \$40,000,000 for fiscal year 1992 and  
\$47,800,000 for each of fiscal years 1993 through 1997 and  
transfer such amounts to the apportionment of such  
State under section 104(b)(3) of title 23, United States  
Code, for the surface transportation program.

"(d) LIMITATION ON APPLICABILITY OF CERTAIN RE-  
QUIREMENTS OF STP PROGRAM.—The following provi-  
sions of section 133 of title 23, United States Code, shall  
not apply to ½ of the amounts added under subsection  
(a) to the apportionment of the State for the surface  
transportation program and of amounts transferred  
under subsections (b) and (c) to such apportionment:

"(1) Subsection (d)(1).

"(2) Subsection (d)(2).

"(3) Subsection (d)(3).

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are  
authorized to be appropriated, out of the Highway  
Trust Fund (other than the Mass Transit Account), to  
carry out this section such sums as may be necessary  
for each of fiscal years 1992 through 1997."

ALLOCATION FORMULA STUDY

Section 1098 of Pub. L. 102-240, as amended by Pub. L.  
104-59, title III, §325(g), Nov. 28, 1995, 109 Stat. 592, di-  
rected General Accounting Office in conjunction with  
Bureau of Transportation Statistics to conduct thor-  
ough study and recommend to Congress within 2 years  
after Dec. 18, 1991, a fair and equitable apportionment  
formula for allocation of Federal-aid highway funds  
that best directs highway funds to places of greatest  
need for highway maintenance and enhancement based  
on extent of these highway systems, their present use,  
and increases in their use, with results of study to be

presented to Congress on or before Jan. 1, 1994, and to be considered by Congress in the 1996 reauthorization of surface transportation program.

#### STUDY ON IMPACT OF CLIMATIC CONDITIONS

Pub. L. 102-240, title I, §§1101-1102, Dec. 18, 1991, 105 Stat. 2027, directed Secretary of Transportation to conduct a study of effects of climatic conditions on costs of highway construction and maintenance and to transmit to Congress, not later than Sept. 30, 1993, a report on the results of the study, prior to repeal by Pub. L. 105-362, title XV, §1501(d), Nov. 10, 1998, 112 Stat. 3294.

#### WITHHOLDING OF FIVE PER CENTUM OF FUNDS FOR STATES FAILING TO MEET REQUIREMENTS

Section 333 [part] of Pub. L. 101-516, which for each fiscal year directed Secretary of Transportation to withhold five per centum of the amount required to be apportioned to any State under each of paragraphs (1), (2), (5), and (6) of section 104(b) of this title on the first day of each fiscal year which begins after the second full calendar year following Nov. 5, 1990, if State does not meet the requirements of paragraph (3) on such date, was repealed by Pub. L. 102-143, title III, §333(c), Oct. 28, 1991, 105 Stat. 947.

#### REDUCTION IN AMOUNT STATES FAILING TO AUTHORIZE TAX-BASED SOURCES OF REVENUE MAY OBLIGATE

Section 341 of Pub. L. 101-516, as amended by Pub. L. 102-240, title III, §3003(b), Dec. 18, 1991, 105 Stat. 2088, provided that:

“(a) Notwithstanding any other provision of law, for the period January 1, 1992, through December 31, 1992, the Secretary of Transportation shall reduce the aggregate amount which a State may obligate for Federal-aid highways and highway safety construction programs by 25 percent if such State has a public authority which provides mass transportation for an urbanized area of such State with a population of 3,000,000 or more as determined under the 1980 decennial census of the United States, and if by October 1, 1991—

“(1) laws of such State do not authorize a general tax-based source of revenues to take effect on or before January 1, 1992, dedicated to paying the non-Federal share of projects for mass transportation eligible for assistance under the Federal Transit Act [now 49 U.S.C. 5301 et seq.]; or

“(2) the laws of such State do not authorize the establishment of regional or local tax-based sources of revenues dedicated to pay such non-Federal share or for paying operating expenses of mass transit service so as to satisfy financial capacity standards as may be required by the Secretary of Transportation.

“(b) For purposes of this section, the terms ‘mass transportation’, ‘State’, and ‘urbanized areas’ have the meaning such terms have under section 12 of the Federal Transit Act [now 49 U.S.C. 5302].

“(c) Any withholding defined under this section shall be waived if the Governor of the State—

“(1) submits to the Secretary by October 1, 1991, a written certification stating that he is opposed to the enactment in his State of a law described in subsections (a)(1) and (2) and that funding as described in subsections (a)(1) and (2) would not improve public transportation safety; and

“(2) submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution by a simple majority expressing its opposition to a law described in subsections (a)(1) and (2).

“(d) This section shall remain in effect until December 31, 1992.”

Pub. L. 102-27, title IV, §404(b), Apr. 10, 1991, 105 Stat. 155, provided that: “The Secretary of Transportation shall restore any reductions in obligation authority made under section 329 [of Pub. L. 101-516, formerly set out below] prior to its repeal.”

Similar provisions were contained in Pub. L. 101-516, title III, §329, Nov. 5, 1990, 104 Stat. 2183, which was re-

pealed by Pub. L. 102-27, title IV, §404(a), Apr. 10, 1991, 105 Stat. 155.

#### IMPLEMENTATION OF CERTAIN PRESIDENTIAL ORDERS REQUIRING PERCENTAGE REDUCTION FOR FEDERAL-AID HIGHWAY, MASS TRANSIT, AND HIGHWAY SAFETY PROGRAMS

Section 136 of Pub. L. 100-17 provided that: “In implementing any order issued by the President which provides for or requires a percentage reduction in new budget authority, unobligated balances, obligated balances, new loan guarantee commitments, new direct loan obligations, spending authority, or obligation limitations for the Federal-aid highway, mass transit and highway safety programs and with respect to which the budget account activity as identified in the program and financing schedule contained in the Appendix to the Budget of the United States Government for such programs includes more than one specific highway, mass transit, or highway safety program or project for which budget authority is provided by this Act or an amendment made by this Act [see Short Title of 1987 Amendment note set out under section 101 of this title], the Secretary shall apply the percentage reduction equally to each such specific program or project.”

#### FEDERAL-AID PRIMARY FORMULA FOR AMOUNTS AUTHORIZED FOR FISCAL YEARS 1983 THROUGH 1991

Pub. L. 97-424, title I, §108(a)-(e), Jan. 6, 1983, 96 Stat. 2103, as amended by Pub. L. 100-17, title I, §§107, 133(a)(1), Apr. 2, 1987, 101 Stat. 146, 170, provided that:

“(a) Notwithstanding section 104(b)(1) of title 23, United States Code, and any other provision of law, amounts authorized for fiscal years 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991 for the Federal-aid primary system (including extensions in urban areas and priority primary routes) shall be apportioned in accordance with this section. The Secretary of Transportation shall determine for each State the higher of (1) the amount which would be apportioned to such State under section 104(b)(1) of title 23, United States Code, and (2) the amount which would be apportioned to such State under the following formula:

“One-half in the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States as shown by the latest available Federal census and one-half in the ratio which the population in urban areas in each State bears to the total population in urban areas in all the States as shown by the latest Federal census.

“(b) The Secretary of Transportation shall, for each of the fiscal years 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991, determine the total of the amounts determined for each State under subsection (a) and shall determine the ratio which the total amount authorized for such fiscal year for the Federal-aid primary system bears to the total of such amounts determined under subsection (a) for such fiscal year.

“(c) The amount which shall be apportioned to each State for the Federal-aid primary system (including extensions in urban areas and priority primary routes) for each of the fiscal years 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991 shall be the amount determined for such State under subsection (a), multiplied by the ratio determined under subsection (b).

“(d) Notwithstanding any other provision of law, no State shall receive an apportionment under this section for any fiscal year which is less than the lower of (1) the amount which the State would be apportioned for such fiscal year under section 104(b)(1) of title 23, United States Code, and (2) the amount which would be determined under the formula set forth in subsection (a). Notwithstanding any other provision of law, no State shall receive for any such fiscal year less than one-half of 1 per centum of the total apportionment under this section for such fiscal year. For purposes of this paragraph and subsection (b) of section 103 of title 23, United States Code, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the North-

ern Mariana Islands shall be considered together as one State. The State consisting of the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Mariana Islands shall not receive less than one-half of 1 per centum of each year's apportionment. There are authorized to be appropriated such sums as may be necessary out of the Highway Trust Fund to carry out this subsection. Funds authorized by this subsection shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under chapter 1 of title 23, United States Code.

“(e) Amounts apportioned under this section shall be deemed to be amounts apportioned under section 104(b)(1) of title 23, United States Code, for purposes of such title and all other provisions of law. Terms used in this section shall have the same meaning such terms have in chapter 1 of title 23, United States Code.”

MATCHING FUND WAIVER FOR PERIOD JANUARY 6, 1983,  
THROUGH SEPTEMBER 30, 1984

Pub. L. 97-424, title I, §145, Jan. 6, 1983, 96 Stat. 2130, provided that:

“(a) Notwithstanding any other provision of law, the Federal share of any qualifying project approved by the Secretary of Transportation under section 106(a) [section 106(a) of this title], and of any qualifying project for which the United States becomes obligated to pay under section 117, of title 23, United States Code, during the period beginning on the date of enactment of this Act [Jan. 6, 1983] and ending September 30, 1984, shall be such percentage of the construction cost as the State highway department requests, up to and including 100 per centum.

“(b) For purposes of this section, the term ‘qualifying project’ means a project approved by the Secretary of Transportation under section 106(a) of title 23, United States Code, or a project for which the United States becomes obligated to pay under section 117 of title 23, United States Code, for which the Governor of the State submitting the project has certified, in accordance with regulations established by the Secretary of Transportation, that sufficient funds are not available to pay the cost of the non-Federal share of the project.

“(c) The total amount which may be obligated for qualifying projects in any State under subsection (a) shall not be greater than the excess of—

“(1) the sum of the amount of obligation authority distributed to such State for fiscal year 1983 under section 104(b) of this Act [set out above], plus the amount, if any, available to such State under section 150 of this Act [enacting section 157 of this title], pertaining to minimum allocation, over

“(2) the amount of obligation authority distributed to such State for fiscal year 1982 under section 3(b) of the Federal-Aid Highway Act of 1981 [set out below].

“(d) The total amount of such increases in the Federal share as are made pursuant to subsection (a) for any State shall be repaid to the United States by such State on or before September 30, 1984. Such payments shall be deposited in the Highway Trust Fund and such repaid amounts shall be credited to the appropriate apportionment accounts of such State.

“(e) If a State has not made the repayment as required by subsection (d) of this section, the Secretary shall deduct from funds apportioned to such State under section 104(b) of title 23, United States Code, except for paragraph (5)(A), in each of the fiscal years ending September 30, 1985, and September 30, 1986, a pro rata share of each category of such apportioned funds, the total amount of which shall be equal to 50 per centum of the amount needed for repayment. Any amount deducted under this subsection shall be reapportioned for the fiscal years 1985 and 1986 in accordance with section 104(b)(1) of title 23, United States Code, to those States which have not received a higher Federal share

under this section and to those States which have made the repayment required by subsection (d).”

FEDERAL-AID HIGHWAYS AND HIGHWAY SAFETY CONSTRUCTION PROGRAMS; MAXIMUM LIMITS ON TOTAL OBLIGATIONS; EXCEPTIONS; STATE ALLOCATIONS

Pub. L. 105-178, title I, §1102, June 9, 1998, 112 Stat. 115, as amended by Pub. L. 105-206, title IX, §9002(b), July 22, 1998, 112 Stat. 834; Pub. L. 106-159, title I, §103(b)(2), Dec. 9, 1999, 113 Stat. 1753, provided that:

“(a) GENERAL LIMITATION.—Notwithstanding any other provision of law but subject to subsections (g) and (h), the obligations for Federal-aid highway and highway safety construction programs shall not exceed—

“(1) \$21,500,000,000 for fiscal year 1998;

“(2) \$25,511,000,000 for fiscal year 1999;

“(3) \$26,245,000,000 for fiscal year 2000;

“(4) \$26,761,000,000 for fiscal year 2001;

“(5) \$27,355,000,000 for fiscal year 2002; and

“(6) \$27,811,000,000 for fiscal year 2003.

“(b) EXCEPTIONS.—The limitations under subsection (a) shall not apply to obligations—

“(1) under section 125 of title 23, United States Code;

“(2) under section 147 of the Surface Transportation Assistance Act of 1978 [Pub. L. 95-599, set out as a note under section 144 of this title];

“(3) under section 9 of the Federal-Aid Highway Act of 1981 [Pub. L. 97-134, 95 Stat. 1701];

“(4) under sections 131(b) and 131(j) of the Surface Transportation Assistance Act of 1982 [Pub. L. 97-424, 96 Stat. 2119, 2123];

“(5) under sections 149(b) and 149(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 [Pub. L. 100-17, 101 Stat. 198, 200];

“(6) under sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. 102-240, see Tables for classification];

“(7) under section 157 of title 23, United States Code, as in effect on the day before the date of enactment of this Act [June 9, 1998]; and

“(8) under section 105 of title 23, United States Code (but, for each of fiscal years 1998 through 2007), only in an amount equal to \$639,000,000 per fiscal year.

“(c) DISTRIBUTION OF OBLIGATION AUTHORITY.—For each of fiscal years 1998 through 2003, the Secretary shall—

“(1) not distribute obligation authority provided by subsection (a) for such fiscal year for amounts authorized for administrative expenses and programs funded from the administrative takedown authorized by section 104(a) of title 23, United States Code, and amounts authorized for the highway use tax evasion program and the Bureau of Transportation Statistics;

“(2) not distribute an amount of obligation authority provided by subsection (a) that is equal to the unobligated balance of amounts made available from the Highway Trust Fund (other than the Mass Transit Account) for Federal-aid highway and highway safety programs for previous fiscal years the funds for which are allocated by the Secretary;

“(3) determine the ratio that—

“(A) the obligation authority provided by subsection (a) for such fiscal year less the aggregate of amounts not distributed under paragraphs (1) and (2), bears to

“(B) the total of the sums authorized to be appropriated for Federal-aid highway and highway safety construction programs (other than sums authorized to be appropriated for sections set forth in paragraphs (1) through (7) of subsection (b) and sums authorized to be appropriated for section 105 of title 23, United States Code, equal to the amount referred to in subsection (b)(8)) for such fiscal year less the aggregate of the amounts not distributed under paragraph (1) of this subsection;

“(4) distribute the obligation authority provided by subsection (a) less the aggregate amounts not distributed under paragraphs (1) and (2) for section 117 of

title 23, United States Code (relating to high priority projects program), section 201 of the Appalachian Regional Development Act of 1965 [40 App. U.S.C. 201], the Woodrow Wilson Memorial Bridge Authority Act of 1995 [Pub. L. 104-59, title IV, Nov. 28, 1995, 109 Stat. 627], and \$2,000,000,000 for such fiscal year under section 105 of such title (relating to minimum guarantee) so that amount of obligation authority available for each of such sections is equal to the amount determined by multiplying the ratio determined under paragraph (3) by the sums authorized to be appropriated for such section (except in the case of section 105, \$2,000,000,000) for such fiscal year;

“(5) distribute the obligation authority provided by subsection (a) less the aggregate amounts not distributed under paragraphs (1) and (2) and amounts distributed under paragraph (4) for each of the programs that are allocated by the Secretary under this Act [see Tables for classification] and title 23, United States Code (other than activities to which paragraph (1) applies and programs to which paragraph (4) applies) by multiplying the ratio determined under paragraph (3) by the sums authorized to be appropriated for such program for such fiscal year; and

“(6) distribute the obligation authority provided by subsection (a) less the aggregate amounts not distributed under paragraphs (1) and (2) and amounts distributed under paragraphs (4) and (5) for Federal-aid highway and highway safety construction programs (other than the minimum guarantee program, but only to the extent that amounts apportioned for the minimum guarantee program for such fiscal year exceed \$2,639,000,000, and the Appalachian development highway system program) that are apportioned by the Secretary under this Act and title 23, United States Code, in the ratio that—

“(A) sums authorized to be appropriated for such programs that are apportioned to each State for such fiscal year, bear to

“(B) the total of the sums authorized to be appropriated for such programs that are apportioned to all States for such fiscal year.

“(d) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Notwithstanding subsection (c), the Secretary shall after August 1 of each of fiscal years 1998 through 2003 revise a distribution of the obligation authority made available under subsection (c) if a State will not obligate the amount distributed during that fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year giving priority to those States having large unobligated balances of funds apportioned under sections 104 and 144 of title 23, United States Code, under section 160 of title 23, United States Code (as in effect on the day before the date of enactment of this Act [June 9, 1998]), and under section 1015 of the Intermodal Surface Transportation Act of 1991 (105 Stat. 1943-1945) [Pub. L. 102-240 set out as a note above].

“(e) APPLICABILITY OF OBLIGATION LIMITATIONS TO TRANSPORTATION RESEARCH PROGRAMS.—Obligation limitations imposed by subsection (a) shall apply to transportation research programs carried out under chapter 5 of title 23, United States Code, and under title V of this Act [see Tables for classification]; except that obligation authority made available for such programs under such limitations shall remain available for a period of 3 fiscal years.

“(f) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—Not later than 30 days after the date of the distribution of obligation authority under subsection (c) for each of fiscal years 1998 through 2003, the Secretary shall distribute to the States any funds (1) that are authorized to be appropriated for such fiscal year for Federal-aid highway programs and for carrying out subchapter I of chapter 311 of title 49, United States Code, and chapter 4 of title 23, United States Code, and (2) that the Secretary determines will not be allocated to the States, and will not be available for obligation, in such fiscal year due to the imposition of any obligation limitation

for such fiscal year. Such distribution to the States shall be made in the same ratio as the distribution of obligation authority under subsection (c)(6). The funds so distributed shall be available for any purposes described in section 133(b) of title 23, United States Code.

“(g) SPECIAL RULE.—Obligation authority distributed for a fiscal year under subsection (c)(4) for a section set forth in subsection (c)(4) shall remain available until used for obligation of funds for such section and shall be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

“(h) INCREASE IN OBLIGATION LIMIT.—Limitations on obligations imposed by subsection (a) for a fiscal year shall be increased by an amount equal to the amount determined pursuant to section 251(b)(1)(B)(ii)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(B)(ii)(I)(cc) [901(b)(1)(B)(ii)(I)(cc)]) for such fiscal year. Any such increase shall be distributed in accordance with this section.

“(i) LIMITATIONS ON OBLIGATIONS FOR ADMINISTRATIVE EXPENSES.—Notwithstanding any other provision of law, the total amount of all obligations under section 104(a) of title 23, United States Code, shall not exceed—

“(1) \$320,000,000 for fiscal year 1998;

“(2) \$350,000,000 for fiscal year 1999;

“(3) \$370,000,000 for fiscal year 2000;

“(4) \$390,000,000 for fiscal year 2001;

“(5) \$410,000,000 for fiscal year 2002; and

“(6) \$430,000,000 for fiscal year 2003.

“(j) REDUCTION IN OBLIGATION CEILING.—The limitation on obligations imposed by subsection (a) for each of fiscal years 2001 through 2003 shall be reduced by \$65,000,000.”

Pub. L. 106-69, title I, Oct. 9, 1999, 113 Stat. 994, provided in part that: “None of the funds in this Act [see Tables for classification] shall be available for the implementation or execution of programs, the obligations for which are in excess of \$27,701,350,000 for Federal-aid highways and highway safety construction programs for fiscal year 2000”.

Pub. L. 106-69, title III, §310, Oct. 9, 1999, 113 Stat. 1016, provided that:

“(a) For fiscal year 2000, the Secretary of Transportation shall—

“(1) not distribute from the obligation limitation for Federal-aid Highways amounts authorized for administrative expenses and programs funded from the administrative takedown authorized by section 104(a) of title 23, United States Code, for the highway use tax evasion program, and amounts provided under section 110 of title 23, United States Code, and for the Bureau of Transportation Statistics;

“(2) not distribute an amount from the obligation limitation for Federal-aid Highways that is equal to the unobligated balance of amounts made available from the Highway Trust Fund (other than the Mass Transit Account) for Federal-aid highways and highway safety programs for the previous fiscal year the funds for which are allocated by the Secretary;

“(3) determine the ratio that—

“(A) the obligation limitation for Federal-aid Highways less the aggregate of amounts not distributed under paragraphs (1) and (2), bears to

“(B) the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction programs (other than sums authorized to be appropriated for sections set forth in paragraphs (1) through (7) of subsection (b) and sums authorized to be appropriated for section 105 of title 23, United States Code, equal to the amount referred to in subsection (b)(8)) for such fiscal year less the aggregate of the amounts not distributed under paragraph (1) of this subsection;

“(4) distribute the obligation limitation for Federal-aid Highways less the aggregate amounts not distributed under paragraphs (1) and (2) of section 117 of title 23, United States Code (relating to high prior-

ity projects program), section 201 of the Appalachian Regional Development Act of 1965 [40 App. U.S.C. 201], the Woodrow Wilson Memorial Bridge Authority Act of 1995 [Pub. L. 104-59, title IV, Nov. 28, 1995, 109 Stat. 627], and \$2,000,000,000 for such fiscal year under section 105 of title 23, United States Code (relating to minimum guarantee) so that the amount of obligation authority available for each of such sections is equal to the amount determined by multiplying the ratio determined under paragraph (3) by the sums authorized to be appropriated for such section (except in the case of section 105, \$2,000,000,000) for such fiscal year;

“(5) distribute the obligation limitation provided for Federal-aid Highways less the aggregate amounts not distributed under paragraphs (1) and (2) and amounts distributed under paragraph (4) for each of the programs that are allocated by the Secretary under title 23, United States Code (other than activities to which paragraph (1) applies and programs to which paragraph (4) applies) by multiplying the ratio determined under paragraph (3) by the sums authorized to be appropriated for such program for such fiscal year; and

“(6) distribute the obligation limitation provided for Federal-aid Highways less the aggregate amounts not distributed under paragraphs (1) and (2) and amounts distributed under paragraphs (4) and (5) for Federal-aid highways and highway safety construction programs (other than the minimum guarantee program, but only to the extent that amounts apportioned for the minimum guarantee program for such fiscal year exceed \$2,639,000,000, and the Appalachian development highway system program) that are apportioned by the Secretary under title 23, United States Code, in the ratio that—

“(A) sums authorized to be appropriated for such programs that are apportioned to each State for such fiscal year, bear to

“(B) the total of the sums authorized to be appropriated for such programs that are apportioned to all States for such fiscal year.

“(b) EXCEPTIONS FROM OBLIGATION LIMITATION.—The obligation limitation for Federal-aid Highways shall not apply to obligations: (1) under section 125 of title 23, United States Code; (2) under section 147 of the Surface Transportation Assistance Act of 1978 [Pub. L. 95-599, set out as a note under section 144 of this title]; (3) under section 9 of the Federal-Aid Highway Act of 1981 [Pub. L. 97-134, 95 Stat. 1701]; (4) under sections 131(b) and 131(j) of the Surface Transportation Assistance Act of 1982 [Pub. L. 97-424, 96 Stat. 2119, 2123]; (5) under sections 149(b) and 149(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 [Pub. L. 100-17, 101 Stat. 198, 200]; (6) under sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. 102-240, see Tables for classification]; (7) under section 157 of title 23, United States Code, as in effect on the day before the date of the enactment of the Transportation Equity Act for the 21st Century [June 9, 1998]; and (8) under section 105 of title 23, United States Code (but, only in an amount equal to \$639,000,000 for such fiscal year).

“(c) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Notwithstanding subsection (a), the Secretary shall after August 1 for such fiscal year revise a distribution of the obligation limitation made available under subsection (a) if a State will not obligate the amount distributed during that fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year giving priority to those States having large unobligated balances of funds apportioned under sections 104 and 144 of title 23, United States Code, section 160 (as in effect on the day before the enactment of the Transportation Equity Act for the 21st Century [June 9, 1998]) of title 23, United States Code, and under section 1015 of the Intermodal Surface Transportation Act of 1991 (105 Stat. 1943-1945) [Pub. L. 102-240, set out above].

“(d) APPLICABILITY OF OBLIGATION LIMITATIONS TO TRANSPORTATION RESEARCH PROGRAMS.—The obligation limitation shall apply to transportation research programs carried out under chapter 5 of title 23, United States Code, except that obligation authority made available for such programs under such limitation shall remain available for a period of 3 fiscal years.

“(e) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—Not later than 30 days after the date of the distribution of obligation limitation under subsection (a), the Secretary shall distribute to the States any funds: (1) that are authorized to be appropriated for such fiscal year for Federal-aid highways programs (other than the program under section 160 of title 23, United States Code) and for carrying out subchapter I of chapter 311 of title 49, United States Code, and highway-related programs under chapter 4 of title 23, United States Code; and (2) that the Secretary determines will not be allocated to the States, and will not be available for obligation, in such fiscal year due to the imposition of any obligation limitation for such fiscal year. Such distribution to the States shall be made in the same ratio as the distribution of obligation authority under subsection (a)(6). The funds so distributed shall be available for any purposes described in section 133(b) of title 23, United States Code.

“(f) SPECIAL RULE.—Obligation limitation distributed for a fiscal year under subsection (a)(4) of this section for a section set forth in subsection (a)(4) shall remain available until used and shall be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.”

Similar provisions for prior fiscal years were contained in the following acts:

Pub. L. 105-277, div. A, §101(g) [title I, title III, §310], Oct. 21, 1998, 112 Stat. 2681-439, 2681-446, 2681-465.

Pub. L. 105-66, title I, title III, §310, Oct. 27, 1997, 111 Stat. 1431, 1442.

Pub. L. 104-205, title I, title III, §310, Sept. 30, 1996, 110 Stat. 2958, 2969.

Pub. L. 104-50, title I, title III, §310, Nov. 15, 1995, 109 Stat. 443, 454.

Pub. L. 103-331, title I, Sept. 30, 1994, 108 Stat. 2477; Pub. L. 104-19, title I, July 27, 1995, 109 Stat. 223.

Pub. L. 103-331, title III, §310, Sept. 30, 1994, 108 Stat. 2489, as amended by Pub. L. 104-59, title III, §338(c)(3), Nov. 28, 1995, 109 Stat. 605.

Pub. L. 103-122, title I, title III, §310, Oct. 27, 1993, 107 Stat. 1206, 1220, as amended by Pub. L. 103-211, title II, Feb. 12, 1994, 108 Stat. 20.

Pub. L. 102-388, title I, title III, §310, Oct. 6, 1992, 106 Stat. 1528, 1544.

Pub. L. 102-240, title I, §1002(a)-(g), Dec. 18, 1991, 105 Stat. 1916-1918.

Pub. L. 102-143, title I, title III, §310, Oct. 28, 1991, 105 Stat. 925, 940.

Pub. L. 101-516, title I, title III, §310, Nov. 5, 1990, 104 Stat. 2163, 2179.

Pub. L. 101-164, title I, title III, §310, Nov. 21, 1989, 103 Stat. 1077, 1092.

Pub. L. 100-457, title I, title III, §310, Sept. 30, 1988, 102 Stat. 2132, 2146.

Pub. L. 100-202, §101(l) [title I, title III, §310], Dec. 22, 1987, 101 Stat. 1329-358, 1329-365, 1329-378.

Pub. L. 100-17, title I, §105(a)-(g), Apr. 2, 1987, 101 Stat. 142-144.

Pub. L. 99-500, §101(l) [H.R. 5205, title I, title III, §313(a)-(d)], Oct. 18, 1986, 100 Stat. 1783-308, and Pub. L. 99-591, §101(l) [H.R. 5205, title I, title III, §313(a)-(d)], Oct. 30, 1986, 100 Stat. 3341-308.

Pub. L. 99-272, title IV, §4102(a)-(e), Apr. 7, 1986, 100 Stat. 112, 113.

Pub. L. 99-190, §101(e) [title I, title III, §313], Dec. 19, 1985, 99 Stat. 1267, 1275, 1285.

Pub. L. 98-473, title I, §101(i) [title I, title III, §315], Oct. 12, 1984, 98 Stat. 1944, 1951, 1962.

Pub. L. 98-78, title I, title III, §322, Aug. 15, 1983, 97 Stat. 460, 474.

Pub. L. 98-8, title I, Mar. 24, 1983, 97 Stat. 14.

Pub. L. 97-424, title I, §104(a)-(d), Jan. 6, 1983, 96 Stat. 2098.

Pub. L. 97-134, §3, Dec. 29, 1981, 95 Stat. 1699, as amended by Pub. L. 97-216, title I, July 19, 1982, 96 Stat. 187.

Pub. L. 97-35, title XI, §1106, Aug. 13, 1981, 95 Stat. 624, as amended by Pub. L. 97-424, title I, §104(e), Jan. 6, 1983, 96 Stat. 2099.

APPORTIONMENT FACTORS FOR EXPENDITURES ON SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

Provisions requiring the Secretary of Transportation to apportion for specific fiscal years sums authorized to be appropriated for such fiscal years by section 108(b) of the Federal-Aid Highway Act of 1956, set out as a note under section 101 of this title, for expenditures on the National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways] using the apportionment factors contained in certain tables in particular committee prints of the Committee on Public Works and Transportation of the House of Representatives were contained in the following acts:

Pub. L. 102-240, title I, §1001(b), Dec. 18, 1991, 105 Stat. 1915.

Pub. L. 100-17, title I, §102(a), Apr. 2, 1987, 101 Stat. 135.

Pub. L. 99-104, §1, Sept. 30, 1985, 99 Stat. 474.

Pub. L. 99-4, §1, Mar. 13, 1985, 99 Stat. 6.

Pub. L. 98-229, §1, Mar. 9, 1984, 98 Stat. 55.

Pub. L. 97-327, §3, Oct. 15, 1982, 96 Stat. 1611.

Pub. L. 97-134, §2, Dec. 29, 1981, 95 Stat. 1699.

Pub. L. 96-144, §1, Dec. 13, 1979, 93 Stat. 1084.

Pub. L. 95-599, title I, §103, Nov. 6, 1978, 92 Stat. 2689.

Pub. L. 94-280, title I, §103, May 5, 1976, 90 Stat. 426.

Pub. L. 93-87, title I, §103, Aug. 13, 1973, 87 Stat. 250.

Pub. L. 91-605, title I, §103, Dec. 31, 1970, 84 Stat. 1714.

Pub. L. 90-495, §3, Aug. 23, 1968, 82 Stat. 815.

Pub. L. 89-574, §3, Sept. 13, 1966, 80 Stat. 766.

Pub. L. 89-139, §2, Aug. 28, 1965, 79 Stat. 578.

MINIMUM APPORTIONMENT TO EACH STATE; EXPENDITURE OF EXCESS AMOUNTS

Provisions entitling each State, for specific fiscal years, to receive at least one-half of 1 per centum of the total apportionment for the Interstate System under section 104(b)(5)(A) of this title, and authorizing States to expend amounts available under these provisions which are in excess of the estimated cost of completing and of necessary resurfacing, restoring, rehabilitating, and reconstruction of the State's portion of the Interstate System for the purposes for which funds apportioned under section 104(b)(1), (2), and (6) of this title may be expended or for carrying out section 152 of this title were contained in the following acts:

Pub. L. 100-17, title I, §102(c), Apr. 2, 1987, 101 Stat. 135, as amended by Pub. L. 102-240, title I, §1001(h), Dec. 18, 1991, 105 Stat. 1916.

Pub. L. 97-424, title I, §103(a), Jan. 6, 1983, 96 Stat. 2097.

Pub. L. 97-327, §4(b), Oct. 15, 1982, 96 Stat. 1612; repealed Pub. L. 97-424, title I, §103(b), Jan. 6, 1983, 96 Stat. 2098.

Pub. L. 95-599, title I, §104(b)(1), Nov. 6, 1978, 92 Stat. 2691.

Pub. L. 94-280, title I, §105(b)(1), May 5, 1976, 90 Stat. 428.

Pub. L. 93-87, title I, §104(b), Aug. 13, 1973, 87 Stat. 252.

Pub. L. 91-605, title I, §105(b), Dec. 31, 1970, 84 Stat. 1716.

PUBLIC BOAT LAUNCHING AREAS; ACCESS RAMPS

Section 147 of Pub. L. 94-280 provided that: "Funds apportioned to States under subsections (b)(1), (b)(2), and (b)(6) of section 104 of title 23, United States Code, may be used upon the application of the State and the approval of the Secretary of Transportation for construction of access ramps from bridges under construction or which are being reconstructed, replaced, re-

paired, or otherwise altered on the Federal-aid primary, secondary, or urban system to public boat launching areas adjacent to such bridges. Approval of the Secretary shall be in accordance with guidelines developed jointly by the Secretary of Transportation and the Secretary of the Interior."

USE OF FEDERAL FUNDS DURING PERIOD BEGINNING FEBRUARY 12, 1975, AND ENDING SEPTEMBER 30, 1975

Pub. L. 94-30, §3, June 4, 1975, 89 Stat. 171, sanctioned the use of any money apportioned under section 104(b) of this title for any Federal-aid highway system in a State for any project in that State on any Federal-aid highway system, such amount to be deducted from the apportionment made after June 4, 1975 and repaid and credited to the last apportionment made for which the money was originally apportioned.

MINIMUM APPORTIONMENT FOR PRIMARY SYSTEM; ADDITIONAL APPROPRIATIONS FOR FISCAL YEARS ENDING JUNE 30, 1974, 1975, AND 1976

Section 111(b) of Pub. L. 93-87 provided that: "Notwithstanding the amendments made by subsection (a) of this section [to subsecs. (b)(1), (2), (6), (c) and (d) of this section] no State (other than the District of Columbia) shall receive an apportionment for the primary system which is less than the apportionment which such State received for such system for the fiscal year ending June 30, 1973. In order to carry out this subsection, there is authorized to be appropriated out of the Highway Trust Fund for the Federal-aid primary system, an additional \$17,000,000 for the fiscal year ending June 30, 1974, and \$15,000,000 per fiscal year for the fiscal years ending June 30, 1975, and June 30, 1976."

SECTION 102(a) OF THE FEDERAL-AID HIGHWAY ACT OF 1956

Act June 29, 1956, ch. 462, title I, §102(a), 70 Stat. 374, authorized, for the purpose of carrying out the provisions of the Federal-Aid Road Act approved July 11, 1916, additional appropriations of \$125,000,000 for the fiscal year ending June 30, 1957, \$850,000,000 for the fiscal year ending June 30, 1958, and \$875,000,000 for the fiscal year ending June 30, 1959, and provided for the percentage allocation of these funds for primary, secondary and urban systems and the manner of apportionment among the States.

APPROVAL OF ESTIMATE OF COST OF COMPLETING THE INTERSTATE SYSTEM AS BASIS FOR APPORTIONMENT OF FUNDS FOR FISCAL YEARS 1963 TO 1966

Pub. L. 87-61, title I, §102, June 29, 1961, 75 Stat. 122, approved the estimate of cost of completing the Interstate System in each State, transmitted to the Congress on Jan. 11, 1961, as the basis for making the apportionment of funds authorized for the fiscal years ending June 30, 1963, 1964, 1965, and 1966.

APPROVAL OF ESTIMATE OF COST OF COMPLETING THE INTERSTATE SYSTEM AS BASIS FOR APPORTIONMENT OF FUNDS FOR FISCAL YEARS 1960-1962

Pub. L. 85-381, §8, Apr. 16, 1958, 72 Stat. 94, as amended by Pub. L. 85-899, §1, Sept. 2, 1958, 72 Stat. 1725; Pub. L. 86-342, title I, §103, Sept. 21, 1959, 73 Stat. 611, approved the estimate of cost of completing the Interstate System in each State, transmitted to the Congress on Jan. 7, 1958, as the basis for making the apportionment of funds authorized for the fiscal years ending June 30, 1960, 1961, and 1962.

APPORTIONMENTS FOR SUBSEQUENT YEARS BASED ON REVISED ESTIMATES OF COST

Act June 29, 1956, ch. 462, title I, §108(d), 70 Stat. 379, as amended by act Sept. 2, 1958, Pub. L. 85-899, §2, 72 Stat. 1725, provided that the sums authorized for the fiscal years 1960 through 1969 be apportioned among the several States in the ratio which the estimated cost of completing the Interstate System had to the sum of



the estimated cost of completing the Interstate System in all of the States, and required the Secretary of Commerce, in cooperation with State highway departments, to make detailed revised estimates of the cost of completion of the system and to supply Congress with such revised estimate.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 105, 115, 117, 118, 119, 120, 126, 127, 130, 131, 133, 134, 136, 137, 140, 141, 142, 143, 146, 149, 151, 152, 153, 154, 157, 158, 159, 160, 161, 164, 204, 217, 303, 309, 311, 504, 505 of this title; title 49 sections 5504, 31314.

**§ 105. Minimum guarantee**

(a) GENERAL RULE.—For each of fiscal years 1998 through 2003, the Secretary shall allocate among the States amounts sufficient to ensure that each State's percentage of the total apportionments for such fiscal year of Interstate maintenance, national highway system, bridge, congestion mitigation and air quality improvement, surface transportation, metropolitan planning, minimum guarantee, high priority projects, Appalachian development highway system, and recreational trails programs shall equal the percentage listed for each State in subsection (b). The minimum amount allocated to a State under this section for a fiscal year shall be \$1,000,000.

(b) STATE PERCENTAGES.—The percentage for each State referred to in subsection (a) shall be determined in accordance with the following table:

States:	Percentage
Alabama .....	2.0269
Alaska .....	1.1915
Arizona .....	1.5581
Arkansas .....	1.3214
California .....	9.1962
Colorado .....	1.1673
Connecticut .....	1.5186
Delaware .....	0.4424
District of Columbia .....	0.3956
Florida .....	4.6176
Georgia .....	3.5104
Hawaii .....	0.5177
Idaho .....	0.7718
Illinois .....	3.3819
Indiana .....	2.3588
Iowa .....	1.2020
Kansas .....	1.1717
Kentucky .....	1.7365
Louisiana .....	1.5900
Maine .....	0.5263
Maryland .....	1.5087
Massachusetts .....	1.8638
Michigan .....	3.1535
Minnesota .....	1.4993
Mississippi .....	1.2186
Missouri .....	2.3615
Montana .....	0.9929
Nebraska .....	0.7768
Nevada .....	0.7248
New Hampshire .....	0.5163
New Jersey .....	2.5816
New Mexico .....	0.9884
New York .....	5.1628
North Carolina .....	2.8298
North Dakota .....	0.6553
Ohio .....	3.4257
Oklahoma .....	1.5419
Oregon .....	1.2183
Pennsylvania .....	4.9887
Rhode Island .....	0.5958

States:	Percentage
South Carolina .....	1.5910
South Dakota .....	0.7149
Tennessee .....	2.2646
Texas .....	7.2131
Utah .....	0.7831
Vermont .....	0.4573
Virginia .....	2.5627
Washington .....	1.7875
West Virginia .....	1.1319
Wisconsin .....	1.9916
Wyoming .....	0.6951

(c) TREATMENT OF FUNDS.—

(1) PROGRAMMATIC DISTRIBUTION.—The Secretary shall apportion the amounts made available under this section that exceed \$2,800,000,000 so that the amount apportioned to each State under this paragraph for each program referred to in subsection (a) (other than metropolitan planning, minimum guarantee, high priority projects, Appalachian development highway system, and recreational trails programs) is equal to the amount determined by multiplying the amount to be apportioned under this paragraph by the ratio that—

(A) the amount of funds apportioned to each State for each program referred to in subsection (a) (other than metropolitan planning, minimum guarantee, high priority projects, Appalachian development highway system, and recreational trails programs) for a fiscal year; bears to

(B) the total amount of funds apportioned to each State for such program for such fiscal year.

(2) REMAINING DISTRIBUTION.—The Secretary shall administer the remainder of funds made available under this section to the States in accordance with section 104(b)(3); except that requirements of paragraphs (1), (2), and (3) of section 133(d) shall not apply to amounts administered pursuant to this paragraph.

(d) AUTHORIZATION.—There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to carry out this section for each of fiscal years 1998 through 2003.

(e) SPECIAL RULE.—If in any of fiscal years 1999 through 2003, the amount authorized under subsection (d) is more than 30 percent higher than the amount authorized under subsection (d) in fiscal year 1998, the Secretary shall use the apportionment factors under sections 104 and 144 as in effect on the date of enactment of this section.

(f) GUARANTEE OF 90.5 RETURN.—

(1) IN GENERAL.—Before making any apportionment under this title for each of fiscal years 1999 through 2003, the Secretary, subject to paragraph (2), shall adjust the percentages in the table in subsection (b) to reflect the estimated percentage of estimated tax payments attributable to highway users in each State paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data is available, to ensure that no State's percentage return from such Trust Fund is less than 90.5 percent.

(2) ELIGIBILITY THRESHOLD FOR INITIAL ADJUSTMENT.—The Secretary may make an ad-

justment under paragraph (1) for a State for a fiscal year only if the State's percentage return from the Highway Trust Fund (other than the Mass Transit Account) in the table in subsection (b) was equal to 90.5 percent.

(3) CONFORMING ADJUSTMENTS.—After making any adjustments under paragraph (1) for a fiscal year, the Secretary shall proportionately adjust the remaining percentages in the table in subsection (b) to ensure that the total of the percentages in the table is equal to 100 percent for such fiscal year.

(4) LIMITATION ON ADJUSTMENTS.—After making any adjustments under paragraph (3) for a fiscal year, the Secretary shall determine whether or not any State's percentage return from the Highway Trust Fund (other than the Mass Transit Account) is less than 90.5 percent as a result of such adjustments and shall adjust the percentages in the table for such fiscal year accordingly. Adjustments of the percentages in the table under this paragraph may not result in the total of such percentages exceeding 100 percent.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 891; Pub. L. 86-624, §17(b), July 12, 1960, 74 Stat. 415; Pub. L. 89-564, title II, §206, Sept. 9, 1966, 80 Stat. 736; Pub. L. 91-605, title I, §§106(d), 132, Dec. 31, 1970, 84 Stat. 1717, 1732; Pub. L. 93-87, title I, §109(b), Aug. 13, 1973, 87 Stat. 255; Pub. L. 95-599, title I, §§111, 112, Nov. 6, 1978, 92 Stat. 2696; Pub. L. 97-424, title I, §109(a), Jan. 6, 1983, 96 Stat. 2104; Pub. L. 102-240, title I, §1105(g)(7), Dec. 18, 1991, 105 Stat. 2036; Pub. L. 105-178, title I, §1104(a), (c), June 9, 1998, 112 Stat. 127; Pub. L. 105-206, title IX, §9002(d), July 22, 1998, 112 Stat. 835.)

#### REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (e), probably means the date of enactment of Pub. L. 105-178, which amended this section generally and was approved June 9, 1998.

#### AMENDMENTS

1998—Pub. L. 105-178 amended section catchline and text generally, substituting provisions relating to minimum guarantee to each State of funds apportioned under chapter for provisions relating to programs to be submitted by State highway departments for approval by Secretary for utilization of funds apportioned under chapter.

Subsec. (a). Pub. L. 105-178, §1104(c)(1), as added by Pub. L. 105-206, §9002(d), inserted at end "The minimum amount allocated to a State under this section for a fiscal year shall be \$1,000,000."

Subsec. (c)(1). Pub. L. 105-178, §1104(c)(2), as added by Pub. L. 105-206, §9002(d), struck out "50 percent of" after "shall apportion" in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 105-178, §1104(c)(3), as added by Pub. L. 105-206, §9002(d), inserted "(other than metropolitan planning, minimum guarantee, high priority projects, Appalachian development highway system, and recreational trails programs)" after "subsection (a)".

Subsec. (c)(1)(B). Pub. L. 105-178, §1104(c)(4), as added by Pub. L. 105-206, §9002(d), substituted "each State" for "all States".

Subsec. (c)(2). Pub. L. 105-178, §1104(c)(5), as added by Pub. L. 105-206, §9002(d), substituted "administer" for "apportion" and "administered" for "apportioned".

Subsec. (f)(1). Pub. L. 105-178, §1104(c)(6)(A), as added by Pub. L. 105-206, §9002(d), inserted "percentage" before "return".

Subsec. (f)(2). Pub. L. 105-178, §1104(c)(6)(A), (B), as added by Pub. L. 105-206, §9002(d), inserted "percent-

age" before "return" and substituted "in the table in subsection (b) was equal to" for "for the preceding fiscal year was equal to or less than".

Subsec. (f)(3). Pub. L. 105-178, §1104(c)(6)(C), as added by Pub. L. 105-206, §9002(d), inserted "proportionately" before "adjust", struck out "set forth" before "in subsection (b)", and substituted "is equal to" for "do not exceed".

Subsec. (f)(4). Pub. L. 105-178, §1104(c)(6)(A), as added by Pub. L. 105-206, §9002(d), inserted "percentage" before "return".

1991—Subsec. (k). Pub. L. 102-240 added subsec. (k).

1983—Subsec. (h). Pub. L. 97-424 added subsec. (h).

1978—Subsec. (b). Pub. L. 95-599, §111, inserted provision relating to selection of program projects after consultation with local officials in situations where public roads and highways are under control and supervision of State highway departments.

Subsec. (g). Pub. L. 95-599, §112, substituted "public airports, public ports for water transportation, new town communities, and new town-intown communities," for "public airports and public ports for water transportation."

1973—Subsec. (d). Pub. L. 93-87 substituted "projects be selected by the appropriate local officials with the concurrence of the State highway department of each State and, in urbanized areas, also in accordance with the planning process required pursuant to section 134 of this title", for "projects be selected by the appropriate local officials and the State highway department in cooperation with each other".

1970—Subsecs. (d) to (f). Pub. L. 91-605, §106(d), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

Subsec. (g). Pub. L. 91-605, §132, added subsec. (g).

1966—Subsec. (e). Pub. L. 89-564 added subsec. (e).

1960—Subsec. (e). Pub. L. 86-624 repealed subsec. (e) which required the Secretary, in approving programs in Hawaii, to give preference to such projects as will expedite the completion of highways for the national defense or which will connect seaports with units of the national parks.

#### 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 this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### ACCELERATION OF PROJECTS

Section 129 of Pub. L. 97-424 provided that: "The Secretary of Transportation shall by rule or regulation establish, as soon as practicable, alternative methods for processing projects under title 23, United States Code, so as to reduce the time required from the request for project approval through the completion of construction. In carrying out this section the Secretary shall utilize the knowledge and experience resulting from the demonstration project authorized by and carried out under section 141 of the Federal-Aid Highway Act of 1976 [Pub. L. 94-280, title I, §141, May 5, 1976, 90 Stat. 444, set out as a note under section 124 of this title]."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 117, 131, 140, 150 of this title.

**§ 106. Project approval and oversight**

(a) IN GENERAL.—

(1) SUBMISSION OF PLANS, SPECIFICATIONS, AND ESTIMATES.—Except as otherwise provided in this section, each State transportation department shall submit to the Secretary for approval such plans, specifications, and estimates for each proposed project as the Secretary may require.

(2) PROJECT AGREEMENT.—The Secretary shall act on the plans, specifications, and estimates as soon as practicable after the date of their submission and shall enter into a formal project agreement with the State transportation department formalizing the conditions of the project approval.

(3) CONTRACTUAL OBLIGATION.—The execution of the project agreement shall be deemed a contractual obligation of the Federal Government for the payment of the Federal share of the cost of the project.

(4) GUIDANCE.—In taking action under this subsection, the Secretary shall be guided by section 109.

(b) PROJECT AGREEMENT.—

(1) PROVISION OF STATE FUNDS.—The project agreement shall make provision for State funds required to pay the State's non-Federal share of the cost of construction of the project and to pay for maintenance of the project after completion of construction.

(2) REPRESENTATIONS OF STATE.—If a part of the project is to be constructed at the expense of, or in cooperation with, political subdivisions of the State, the Secretary may rely on representations made by the State transportation department with respect to the arrangements or agreements made by the State transportation department and appropriate local officials for ensuring that the non-Federal contribution will be provided under paragraph (1).

(c) ASSUMPTION BY STATES OF RESPONSIBILITIES OF THE SECRETARY.—

(1) NON-INTERSTATE NHS PROJECTS.—For projects under this title that are on the National Highway System but not on the Interstate System, the State may assume the responsibilities of the Secretary under this title for design, plans, specifications, estimates, contract awards, and inspections of projects unless the State or the Secretary determines that such assumption is not appropriate.

(2) NON-NHS PROJECTS.—For projects under this title that are not on the National Highway System, the State shall assume the responsibilities of the Secretary under this title for design, plans, specifications, estimates, contract awards, and inspection of projects, unless the State determines that such assumption is not appropriate.

(3) AGREEMENT.—The Secretary and the State shall enter into an agreement relating to the extent to which the State assumes the responsibilities of the Secretary under this subsection.

(4) LIMITATION ON AUTHORITY OF SECRETARY.—The Secretary may not assume any greater responsibility than the Secretary is permitted under this title on September 30,

1997, except upon agreement by the Secretary and the State.

(d) RESPONSIBILITIES OF THE SECRETARY.—Nothing in this section, section 133, or section 149 shall affect or discharge any responsibility or obligation of the Secretary under—

(1) section 113 or 114; or

(2) any Federal law other than this title (including section 5333 of title 49).

(e) VALUE ENGINEERING ANALYSIS.—For such projects as the Secretary determines advisable, plans, specifications, and estimates for proposed projects on any Federal-aid highway shall be accompanied by a value engineering analysis or other cost reduction analysis.

(f) LIFE-CYCLE COST ANALYSIS.—

(1) USE OF LIFE-CYCLE COST ANALYSIS.—The Secretary shall develop recommendations for the States to conduct life-cycle cost analyses. The recommendations shall be based on the principles contained in section 2 of Executive Order No. 12893 and shall be developed in consultation with the American Association of State Highway and Transportation Officials. The Secretary shall not require a State to conduct a life-cycle cost analysis for any project as a result of the recommendations required under this subsection.

(2) LIFE-CYCLE COST ANALYSIS DEFINED.—In this subsection, the term "life-cycle cost analysis" means a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs, such as maintenance, user costs, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.

(g) VALUE ENGINEERING FOR NHS.—

(1) REQUIREMENT.—The Secretary shall establish a program to require States to carry out a value engineering analysis for all projects on the National Highway System with an estimated total cost of \$25,000,000 or more.

(2) VALUE ENGINEERING DEFINED.—In this subsection, the term "value engineering analysis" means a systematic process of review and analysis of a project during its design phase by a multidisciplinary team of persons not involved in the project in order to provide suggestions for reducing the total cost of the project and providing a project of equal or better quality. Such suggestions may include combining or eliminating otherwise inefficient or expensive parts of the original proposed design for the project and total redesign of the proposed project using different technologies, materials, or methods so as to accomplish the original purpose of the project.

(h) FINANCIAL PLAN.—A recipient of Federal financial assistance for a project under this title with an estimated total cost of \$1,000,000,000 or more shall submit to the Secretary an annual financial plan for the project. The plan shall be based on detailed annual estimates of the cost to complete the remaining elements of the project and on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 892; Pub. L. 88-157, §7(a), Oct. 24, 1963, 77 Stat. 278; Pub. L.

91-605, title I, §§106(e), 142, Dec. 31, 1970, 84 Stat. 1717, 1737; Pub. L. 94-280, title I, §114, May 5, 1976, 90 Stat. 436; Pub. L. 100-17, title I, §133(b)(4), Apr. 2, 1987, 101 Stat. 171; Pub. L. 102-240, title I, §§1016(b), 1018(a), Dec. 18, 1991, 105 Stat. 1945, 1948; Pub. L. 104-59, title III, §303, Nov. 28, 1995, 109 Stat. 578; Pub. L. 105-178, title I, §1305(a)-(c), June 9, 1998, 112 Stat. 227-229.)

#### REFERENCES IN TEXT

Executive Order No. 12893, referred to in subsec. (f)(1), is set out as a note under section 501 of Title 31, Money and Finance.

#### AMENDMENTS

1998—Pub. L. 105-178, §1305(a)(1), substituted “Project approval and oversight” for “Plans, specifications, and estimates” in section catchline.

Subsecs. (a) to (d). Pub. L. 105-178, §1305(a)(3), added subsecs. (a) to (d) and struck out former subsecs. (a) to (d) which related to requirement for State highway departments to submit to Secretary for approval plans, specifications, and estimates for each proposed highway project, special rules relating to resurfacing, restoring, and rehabilitating projects on National Highway System, to low-cost National Highway System projects, and to non-National Highway System projects, limitation on estimates for construction engineering, and provisions relating to value engineering or other cost reduction analysis.

Subsec. (e). Pub. L. 105-178, §1305(a)(3), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105-178, §1305(c), added subsec. (f) and struck out former subsec. (f) which read as follows: “(f) LIFE-CYCLE COST ANALYSIS.—

“(1) ESTABLISHMENT.—The Secretary shall establish a program to require States to conduct an analysis of the life-cycle costs of each usable project segment on the National Highway System with a cost of \$25,000,000 or more.

“(2) ANALYSIS OF THE LIFE-CYCLE COSTS DEFINED.—In this subsection, the term ‘analysis of the life-cycle costs’ means a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs, such as maintenance, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.”

Pub. L. 105-178, §1305(a)(2), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 105-178, §1305(a)(2), redesignated subsec. (f) as (g).

Subsec. (h). Pub. L. 105-178, §1305(b), added subsec. (h).

1995—Subsecs. (e), (f). Pub. L. 104-59 added subsecs. (e) and (f).

1991—Subsec. (a). Pub. L. 102-240, §1016(b)(1), inserted “this section and” before “section 117”.

Subsec. (b). Pub. L. 102-240, §1016(b)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: “In addition to the approval required under subsection (a) of this section, proposed specifications for projects for construction on (1) the Federal-aid secondary system, except in States where all public roads and highways are under the control and supervision of the State highway department, and (2) the Federal-aid urban system, shall be determined by the State highway department and the appropriate local road officials in cooperation with each other.”

Subsec. (c). Pub. L. 102-240, §1018(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Items included in any such estimate for construction engineering shall not exceed 15 percent of the total estimated cost of a project financed with Federal-aid highway funds, after excluding from such total estimate cost, the estimated costs of rights-of-way, preliminary engineering, and construction engineering.”

1987—Subsec. (c). Pub. L. 100-17 substituted “15 percent” for “10 per centum” and struck out at end “How-

ever, this limitation shall be 15 per centum in any State with respect to which the Secretary finds such higher limitation to be necessary.”

1976—Subsec. (c). Pub. L. 94-280 substituted “Federal-aid highway funds” for “Federal-aid primary, secondary, or urban funds” and “such total estimate cost” for “such total estimated cost” and struck out 10 per centum limitation for any project financed with interstate funds.

1970—Subsec. (b). Pub. L. 91-605, §106(e), inserted reference to the Federal-aid urban system.

Subsec. (d). Pub. L. 91-605, §142, added subsec. (d).

1963—Subsec. (c). Pub. L. 88-157 substituted “a project financed with Federal-aid primary, secondary, or urban funds” for “the project” and provided for limitation, on items included in estimates for construction engineering on projects financed with Federal-aid primary, secondary, or urban funds, of 15 percent of total estimated cost of the project where found by the Secretary to be necessary and for 10-percent limitation on projects financed with interstate funds.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### STUDY OF VALUE ENGINEERING

Section 1091 of Pub. L. 102-240 provided that:

“(a) STUDY.—The Secretary shall study the effectiveness and benefits of value engineering review programs applied to Federal-aid highway projects. Such study shall include an analysis of and the results of specialized techniques utilized in all facets of highway construction for the purpose of reduction of costs and improvement of the overall quality of Federal-aid highway projects.

“(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall report to Congress on the results of the study under subsection (a), including recommendations on how value engineering could be utilized and improved in Federal-aid highway projects.”

#### MODIFICATION OF PROJECT AGREEMENTS TO EFFECTUATE REQUIREMENT OF FOUR-LANES OF TRAFFIC

Pub. L. 89-574, §5(b), Sept. 13, 1966, 80 Stat. 767, as amended by Pub. L. 97-449, §2(a), Jan. 12, 1983, 96 Stat. 2439, authorized Secretary to modify project agreements entered into prior to Sept. 13, 1966, pursuant to section 106 of this title for purpose of effectuating amendment made by this section (amending section 109(b) of this title to add a requirement of four lanes of traffic) with respect to as much of National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways] as may be possible.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 109, 112 of this title; title 40 App. section 201.

### § 107. Acquisition of rights-of-way—Interstate System

(a) In any case in which the Secretary is requested by a State to acquire lands or interests in lands (including within the term “interests in lands”, the control of access thereto from adjoining lands) required by such State for right-of-way or other purposes in connection with the prosecution of any project for the construction, reconstruction, or improvement of any section of the Interstate System, the Secretary is au-

thorized, in the name of the United States and prior to the approval of title by the Attorney General, to acquire, enter upon, and take possession of such lands or interests in lands by purchase, donation, condemnation, or otherwise in accordance with the laws of the United States (including the Act of February 26, 1931, 46 Stat. 1421), if—

(1) the Secretary has determined either that the State is unable to acquire necessary lands or interests in lands, or is unable to acquire such lands or interests in lands with sufficient promptness; and

(2) the State has agreed with the Secretary to pay, at such time as may be specified by the Secretary an amount equal to 10 per centum of the costs incurred by the Secretary, in acquiring such lands or interests in lands, or such lesser percentage which represents the State's pro rata share of project costs as determined in accordance with subsection (c)<sup>1</sup> of section 120 of this title.

The authority granted by this section shall also apply to lands and interests in lands received as grants of land from the United States and owned or held by railroads or other corporations.

(b) The costs incurred by the Secretary in acquiring any such lands or interests in lands may include the cost of examination and abstract of title, certificate of title, advertising, and any fees incidental to such acquisition. All costs incurred by the Secretary in connection with the acquisition of any such lands or interests in lands shall be paid from the funds for construction, reconstruction, or improvement of the Interstate System apportioned to the State upon the request of which such lands or interests in lands are acquired, and any sums paid to the Secretary by such State as its share of the costs of acquisition of such lands or interests in lands shall be deposited in the Treasury to the credit of the appropriation for Federal-aid highways and shall be credited to the amount apportioned to such State as its apportionment of funds for construction, reconstruction, or improvement of the Interstate System, or shall be deducted from other moneys due the State for reimbursement from funds authorized to be appropriated under section 108(b) of the Federal-Aid Highway Act of 1956.

(c) The Secretary is further authorized and directed by proper deed, executed in the name of the United States, to convey any such lands or interests in lands acquired in any State under the provisions of this section, except the outside five feet of any such right-of-way in any State which does not provide control of access, to the State transportation department of such State or such political subdivision thereof as its laws may provide, upon such terms and conditions as to such lands or interests in lands as may be agreed upon by the Secretary and the State transportation department or political subdivisions to which the conveyance is to be made. Whenever the State makes provision for control of access satisfactory to the Secretary, the outside five feet then shall be conveyed to the State by the Secretary, as herein provided.

(d) Whenever rights-of-way, including control of access, on the Interstate System are required over lands or interests in lands owned by the United States, the Secretary may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands, and any such agency is directed to cooperate with the Secretary in this connection.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 892; Pub. L. 105-178, title I, §1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193.)

#### REFERENCES IN TEXT

Act of February 26, 1931, 46 Stat. 1421, referred to in subsec. (a), is act Feb. 26, 1931, ch. 307, 46 Stat. 1421, as amended, known as the Declaration of Taking Act, which enacted sections 258a to 258e of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Tables.

Subsection (c) of section 120 of this title, referred to in subsec. (a)(2), was struck out and a new subsec. (c) was added by Pub. L. 102-240, title I, §1021(a), Dec. 18, 1991, 105 Stat. 1950.

The Federal-Aid Highway Act of 1956, referred to in subsec. (b), is act June 29, 1956, ch. 462, 70 Stat. 374. For complete classification of this Act to the Code, see Tables. Section 108(b) of the Federal-Aid Highway Act of 1956 is set out as a note under section 101 of this title.

#### AMENDMENTS

1998—Subsec. (c). Pub. L. 105-178 substituted “State transportation department” for “State highway department” in two places.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 1770.

### § 108. Advance acquisition of real property

(a) IN GENERAL.—

(1) AVAILABILITY OF FUNDS.—For the purpose of facilitating the timely and economical acquisition of real property for a transportation improvement eligible for funding under this title, the Secretary, upon the request of a State, may make available, for the acquisition of real property, such funds apportioned to the State as may be expended on the transportation improvement, under such rules and regulations as the Secretary may issue.

(2) CONSTRUCTION.—The agreement between the Secretary and the State for the reimbursement of the cost of the real property shall provide for the actual construction of the transportation improvement within a period not to exceed 20 years following the fiscal year for which the request is made, unless the Secretary determines that a longer period is reasonable.

(b) Federal participation in the cost of rights-of-way acquired under subsection (a) of this section shall not exceed the Federal pro rata share applicable to the class of funds from which Federal reimbursement is made.

(c) EARLY ACQUISITION OF RIGHTS-OF-WAY.—

(1) GENERAL RULE.—Subject to paragraph (2), funds apportioned to a State under this title may be used to participate in the payment of—

<sup>1</sup> See References in Text note below.

(A) costs incurred by the State for acquisition of rights-of-way, acquired in advance of any Federal approval or authorization, if the rights-of-way are subsequently incorporated into a project eligible for surface transportation program funds; and

(B) costs incurred by the State for the acquisition of land necessary to preserve environmental and scenic values.

(2) TERMS AND CONDITIONS.—The Federal share payable of the costs described in paragraph (1) shall be eligible for reimbursement out of funds apportioned to a State under this title when the rights-of-way acquired are incorporated into a project eligible for surface transportation program funds, if the State demonstrates to the Secretary and the Secretary finds that—

(A) any land acquired, and relocation assistance provided, complied with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(B) the requirements of title VI of the Civil Rights Act of 1964 have been complied with;

(C) the State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition;

(D) the acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to section 135 of this title;

(E) the alternative for which the right-of-way is acquired is selected by the State pursuant to regulations to be issued by the Secretary which provide for the consideration of the environmental impacts of various alternatives;

(F) before the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act has been completed for the project for which the right-of-way was acquired by the State, and the acquisition has been approved by the Secretary under this Act,<sup>1</sup> and in compliance with section 303 of title 49, section 7 of the Endangered Species Act, and all other applicable environmental laws shall be identified by the Secretary in regulations; and

(G) before the time that the cost incurred by a State is approved for Federal participation, both the Secretary and the Administrator of the Environmental Protection Agency have concurred that the property acquired in advance of Federal approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 893; Pub. L. 86-35, § 1, May 29, 1959, 73 Stat. 62; Pub. L. 90-495, § 7(a), (b), Aug. 23, 1968, 82 Stat. 818; Pub. L. 93-87, title I, § 113, Aug. 13, 1973, 87 Stat. 257; Pub. L.

94-280, title I, § 115, May 5, 1976, 90 Stat. 436; Pub. L. 102-240, title I, § 1017(a), (b), Dec. 18, 1991, 105 Stat. 1947; Pub. L. 102-388, title III, § 346, Oct. 6, 1992, 106 Stat. 1553; Pub. L. 103-429, § 3(2), Oct. 31, 1994, 108 Stat. 4377; Pub. L. 105-178, title I, §§ 1211(e)(1), 1301(a), June 9, 1998, 112 Stat. 188, 225.)

#### REFERENCES IN TEXT

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (c)(2)(A), is act Jan. 2, 1971, Pub. L. 91-646, 84 Stat. 1894, as amended, and which is classified principally to chapter 61 (§ 4601 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 4601 of Title 42 and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(B), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 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 2000a of Title 42 and Tables.

The National Environmental Policy Act, referred to in subsec. (c)(2)(F), probably means the National Environmental Policy Act of 1969, 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.

This Act, referred to in subsec. (c)(2)(F), probably means Pub. L. 102-240, Dec. 18, 1991, 105 Stat. 1914, known as the Intermodal Surface Transportation Efficiency Act of 1991. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 101 of Title 49, Transportation, and Tables.

Section 7 of the Endangered Species Act, referred to in subsec. (c)(2)(F), probably means section 7 of the Endangered Species Act of 1973, which is classified to section 1536 of Title 16, Conservation.

#### AMENDMENTS

1998—Pub. L. 105-178, § 1301(a), substituted “Advance acquisition of real property” for “Advance acquisition of rights-of-way” in section catchline.

Subsec. (a). Pub. L. 105-178, § 1301(a), added subsec. (a) and struck out former subsec. (a) which read as follows: “For the purpose of facilitating the acquisition of rights-of-way on any Federal-aid highway in the most expeditious and economical manner, and recognizing that the acquisition of rights-of-way requires lengthy planning and negotiations if it is to be done at a reasonable cost, the Secretary, upon the request of the State highway department, is authorized to make available the funds apportioned to any State which may be expended on such highway for acquisition of rights-of-way, in anticipation of construction and under such rules and regulations as the Secretary may prescribe. The agreement between the Secretary and the State highway department for the reimbursement of the cost of such rights-of-way shall provide for the actual construction of a road on such rights-of-way within a period not exceeding 20 years following the fiscal year in which such request is made unless a longer period is determined to be reasonable by the Secretary.”

Subsecs. (c), (d). Pub. L. 105-178, § 1211(e)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to establishment and administration of right-of-way revolving fund.

1994—Subsec. (d)(2)(F). Pub. L. 103-429 substituted “section 303 of title 49” for “section 4(f) of the Department of Transportation Act”.

1992—Subsec. (a). Pub. L. 102-388, § 346(1), (2), substituted “Federal-aid highway” for “of the Federal-aid

<sup>1</sup> See References in Text note below.

highway systems, including the Interstate System,” and “which may be expended on such highway” for “for expenditure on any of the Federal-aid highway systems, including the Interstate System.”

Subsec. (c)(2). Pub. L. 102-388, §346(3), inserted “and passenger transit facilities”.

Subsec. (c)(3). Pub. L. 102-388, §346(5), which directed the substitution of “of the type funded” for “on the federal-aid system of which such project is to be part,” was executed by making the substitution for “on the Federal-aid system of which such project is to be a part,” to reflect the probable intent of Congress.

Pub. L. 102-388, §346(4), substituted “project” for “highway” after “construction of a” in first and second sentences.

1991—Subsecs. (a), (c)(3). Pub. L. 102-240, §1017(a), substituted “20” for “ten”.

Subsec. (d). Pub. L. 102-240, §1017(b), added subsec. (d). 1976—Subsec. (a). Pub. L. 94-280, §115(b), inserted “unless a longer period is determined to be reasonable by the Secretary” after “request is made” in last sentence.

Subsec. (c)(2). Pub. L. 94-280, §115(a), struck out “made pursuant to section 133 or chapter 5 of this title” after “relocation payments” in last sentence.

Subsec. (c)(3). Pub. L. 94-280, §115(c), inserted “or later” after “earlier” in first sentence.

1973—Subsec. (a). Pub. L. 93-87, §113(a), substituted “ten” for “seven” years in last sentence.

Subsec. (c)(3). Pub. L. 93-87, §113(b), substituted “ten” for “seven” years in first sentence.

1968—Subsec. (b). Pub. L. 90-495, §7(a), substituted “subsection (a) of this section” for “this section”.

Subsec. (c). Pub. L. 90-495, §7(b), added subsec. (c).

1959—Subsec. (a). Pub. L. 86-35 increased from five to seven years the period in which actual construction shall commence on rights-of-way acquired in anticipation of such construction.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

#### TRANSITION PROVISIONS

Pub. L. 105-178, title I, §1211(e)(2), June 9, 1998, 112 Stat. 188, provided that:

“(A) IN GENERAL.—Funds advanced to a State by the Secretary from the right-of-way revolving fund established by section 108(c) of title 23, United States Code, prior to the date of enactment of this Act [June 9, 1998] shall remain available to the State for use on the projects for which the funds were advanced for a period of 20 years from the date on which the funds were advanced.

“(B) CREDIT TO HIGHWAY TRUST FUND.—With respect to a project for which funds have been advanced from the right-of-way revolving fund, upon the termination of the 20-year period referred to in subparagraph (A), when actual construction is commenced, or upon approval by the Secretary of the plans, specifications, and estimates for the actual construction of the project on the right-of-way, whichever occurs first—

“(i) the Highway Trust Fund (other than the Mass Transit Account) shall be credited with an amount equal to the Federal share of the funds advanced, as provided in section 120 of title 23, United States Code, out of any Federal-aid highway funds apportioned to the State in which the project is located and available for obligation for projects of the type funded; and

“(ii) the State shall reimburse the Secretary in an amount equal to the non-Federal share of the funds advanced for deposit in, and credit to, the Highway Trust Fund (other than the Mass Transit Account).”

#### PRESERVATION OF TRANSPORTATION CORRIDORS REPORT

Section 1017(c) of Pub. L. 102-240 provided that: “The Secretary, in consultation with the States, shall report to Congress within 2 years after the date of the enactment of this Act [Dec. 18, 1991], a national list of the rights-of-way identified by the metropolitan planning organizations and the States (under sections 134 and 135 of title 23, United States Code), including the total mileage involved, an estimate of the total costs, and a strategy for preventing further loss of rights-of-way including the desirability of creating a transportation right-of-way land bank to preserve vital corridors.”

#### AUTHORIZATION OF APPROPRIATIONS TO RIGHT-OF-WAY REVOLVING FUND; APPORTIONMENT; REVERSION OF AMOUNTS NOT ADVANCED OR OBLIGATED

Section 7(c)–(e) of Pub. L. 90-495 provided that \$100,000,000 for the fiscal year ending June 30, 1970, \$100,000,000 for the fiscal year ending June 30, 1971, and \$100,000,000 for the fiscal year ending June 30, 1972, be transferred from the highway trust fund to the right-of-way revolving fund established by subsec. (c) of this section, authorized the Secretary to apportion these funds and required that funds apportioned to a State remain available for obligation for advances until Oct. 1 of the fiscal year in which the apportionment was made and any funds not advanced or obligated by such date revert to the right-of-way revolving fund for distribution to other States.

#### STUDY OF ADVANCE ACQUISITION OF RIGHTS-OF-WAY

Pub. L. 89-574, §10, Sept. 13, 1966, 80 Stat. 769, as amended by Pub. L. 97-449, §2(a), Jan. 12, 1983, 96 Stat. 2439, directed the Secretary to make a full and complete investigation and study of the advance acquisition of rights-of-way for future construction of highways on the Federal-aid highway systems, with particular reference to the provision of adequate time for the removal and disposal of improvements located on rights-of-way and the relocation of affected individuals, businesses, institutions, and organizations, and the tax status of such property after acquisition and before its use for highway purposes, and the methods for financing advance right-of-way acquisition by both the State governments and the Federal Government, including the possible creation of revolving funds for such purpose. The Secretary was required to submit a report of results of such study to Congress not later than July 1, 1967, together with his recommendations.

#### INCREASED LIMITATION PERIOD APPLICABLE TO CERTAIN CONTRACTS

Section 2 of Pub. L. 86-35 provided that agreements entered into before May 29, 1959 by the Secretary of Commerce and a State highway department under authority of section 110(a) of the Federal-Aid Highway Act of 1956, or section 108(a) of title 23 of the United States Code shall be deemed to provide for actual construction of a road on such rights-of-way within a period of seven years following the fiscal year in which such request was made.

#### § 109. Standards

(a) IN GENERAL.—The Secretary shall ensure that the plans and specifications for each proposed highway project under this chapter provide for a facility that will—

(1) adequately serve the existing and planned future traffic of the highway in a manner that is conducive to safety, durability, and economy of maintenance; and

(2) be designed and constructed in accordance with criteria best suited to accomplish

the objectives described in paragraph (1) and to conform to the particular needs of each locality.

(b) The geometric and construction standards to be adopted for the Interstate System shall be those approved by the Secretary in cooperation with the State transportation departments. Such standards, as applied to each actual construction project, shall be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary, under section 106 of this title, of the plans, specifications, and estimates for actual construction of such project. Such standards shall in all cases provide for at least four lanes of traffic. The right-of-way width of the Interstate System shall be adequate to permit construction of projects on the Interstate System to such standards. The Secretary shall apply such standards uniformly throughout all the States.

(c) DESIGN CRITERIA FOR NATIONAL HIGHWAY SYSTEM.—

(1) IN GENERAL.—A design for new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, or rehabilitation of a highway on the National Highway System (other than a highway also on the Interstate System) may take into account, in addition to the criteria described in subsection (a)—

(A) the constructed and natural environment of the area;

(B) the environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity; and

(C) access for other modes of transportation.

(2) DEVELOPMENT OF CRITERIA.—The Secretary, in cooperation with State transportation departments, may develop criteria to implement paragraph (1). In developing criteria under this paragraph, the Secretary shall consider the results of the committee process of the American Association of State Highway and Transportation Officials as used in adopting and publishing "A Policy on Geometric Design of Highways and Streets", including comments submitted by interested parties as part of such process.

(d) On any highway project in which Federal funds hereafter participate, or on any such project constructed since December 20, 1944, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any public authority or other agency, shall be subject to the approval of the State transportation department with the concurrence of the Secretary, who is directed to concur only in such installations as will promote the safe and efficient utilization of the highways.

(e) No funds shall be approved for expenditure on any Federal-aid highway, or highway affected under chapter 2 of this title, unless proper safety protective devices complying with safety standards determined by the Secretary at that time as being adequate shall be installed or be in op-

eration at any highway and railroad grade crossing or drawbridge on that portion of the highway with respect to which such expenditures are to be made.

(f) The Secretary shall not, as a condition precedent to his approval under section 106 of this title, require any State to acquire title to, or control of, any marginal land along the proposed highway in addition to that reasonably necessary for road surfaces, median strips, bike-ways, gutters, ditches, and side slopes, and of sufficient width to provide service roads for adjacent property to permit safe access at controlled locations in order to expedite traffic, promote safety, and minimize roadside parking.

(g) The Secretary shall issue within 30 days after the day of enactment of the Federal-Aid Highway Act of 1970 guidelines for minimizing possible soil erosion from highway construction. Such guidelines shall apply to all proposed projects with respect to which plans, specifications, and estimates are approved by the Secretary after the issuance of such guidelines.

(h) Not later than July 1, 1972, the Secretary, after consultation with appropriate Federal and State officials, shall submit to Congress, and not later than 90 days after such submission, promulgate guidelines designed to assure that possible adverse economic, social, and environmental effects relating to any proposed project on any Federal-aid system have been fully considered in developing such project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects and the following:

(1) air, noise, and water pollution;

(2) destruction or disruption of man-made and natural resources, aesthetic values, community cohesion and the availability of public facilities and services;

(3) adverse employment effects, and tax and property values losses;

(4) injurious displacement of people, businesses and farms; and

(5) disruption of desirable community and regional growth.

Such guidelines shall apply to all proposed projects with respect to which plans, specifications, and estimates are approved by the Secretary after the issuance of such guidelines.

(i) The Secretary, after consultation with appropriate Federal, State, and local officials, shall develop and promulgate standards for highway noise levels compatible with different land uses and after July 1, 1972, shall not approve plans and specifications for any proposed project on any Federal-aid system for which location approval has not yet been secured unless he determines that such plans and specifications include adequate measures to implement the appropriate noise level standards. The Secretary, after consultation with the Administrator of the Environmental Protection Agency and appropriate Federal, State, and local officials, may promulgate standards for the control of highway noise levels for highways on any Federal-aid system for which project approval has been secured prior to July 1, 1972. The Secretary may



approve any project on a Federal-aid system to which noise-level standards are made applicable under the preceding sentence for the purpose of carrying out such standards. Such project may include, but is not limited to, the acquisition of additional rights-of-way, the construction of physical barriers, and landscaping. Sums apportioned for the Federal-aid system on which such project will be located shall be available to finance the Federal share of such project. Such project shall be deemed a highway project for all purposes of this title.

(j) The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall develop and promulgate guidelines to assure that highways constructed pursuant to this title are consistent with any approved plan for—

(1) the implementation of a national ambient air quality standard for each pollutant for which an area is designated as a nonattainment area under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)); or

(2) the maintenance of a national ambient air quality standard in an area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area for the standard and that is required to develop a maintenance plan under section 175A of the Clean Air Act (42 U.S.C. 7505a).

(k) The Secretary shall not approve any project involving approaches to a bridge under this title, if such project and bridge will significantly affect the traffic volume and the highway system of a contiguous State without first taking into full consideration the views of that State.

(l)(1) In determining whether any right-of-way on any Federal-aid highway should be used for accommodating any utility facility, the Secretary shall—

(A) first ascertain the effect such use will have on highway and traffic safety, since in no case shall any use be authorized or otherwise permitted, under this or any other provision of law, which would adversely affect safety;

(B) evaluate the direct and indirect environmental and economic effects of any loss of productive agricultural land or any impairment of the productivity of any agricultural land which would result from the disapproval of the use of such right-of-way for the accommodation of such utility facility; and

(C) consider such environmental and economic effects together with any interference with or impairment of the use of the highway in such right-of-way which would result from the use of such right-of-way for the accommodation of such utility facility.

(2) For the purpose of this subsection—

(A) the term “utility facility” means any privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system,

which directly or indirectly serves the public; and

(B) the term “right-of-way” means any real property, or interest therein, acquired, dedicated, or reserved for the construction, operation, and maintenance of a highway.

(m) PROTECTION OF NONMOTORIZED TRANSPORTATION TRAFFIC.—The Secretary shall not approve any project or take any regulatory action under this title that will result in the severance of an existing major route or have significant adverse impact on the safety for nonmotorized transportation traffic and light motorcycles, unless such project or regulatory action provides for a reasonable alternate route or such a route exists.

(n) It is the intent of Congress that any project for resurfacing, restoring, or rehabilitating any highway, other than a highway access to which is fully controlled, in which Federal funds participate shall be constructed in accordance with standards to preserve and extend the service life of highways and enhance highway safety.

(o) COMPLIANCE WITH STATE LAWS FOR NON-NHS PROJECTS.—Projects (other than highway projects on the National Highway System) shall be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards.

(p) SCENIC AND HISTORIC VALUES.—Notwithstanding subsections (b) and (c), the Secretary may approve a project for the National Highway System if the project is designed to—

(1) allow for the preservation of environmental, scenic, or historic values;

(2) ensure safe use of the facility; and

(3) comply with subsection (a).

(q) PHASE CONSTRUCTION.—Safety considerations for a project under this title may be met by phase construction consistent with the operative safety management system established in accordance with section 303 or in accordance with a statewide transportation improvement program approved by the Secretary.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 894; Pub. L. 88-157, §4, Oct. 24, 1963, 77 Stat. 277; Pub. L. 89-574, §§5(a), 14, Sept. 13, 1966, 80 Stat. 767, 771; Pub. L. 91-605, title I, §136(a), (b), Dec. 31, 1970, 84 Stat. 1734; Pub. L. 93-87, title I, §§114, 152(2), 156, Aug. 13, 1973, 87 Stat. 257, 276, 277; Pub. L. 95-599, title I, §§113, 116(d), 141(f), (g), Nov. 6, 1978, 92 Stat. 2696, 2699, 2711; Pub. L. 96-106, §3, Nov. 9, 1979, 93 Stat. 797; Pub. L. 97-424, title I, §110(a), Jan. 6, 1983, 96 Stat. 2105; Pub. L. 102-240, title I, §1016(c)-(f)(1), Dec. 18, 1991, 105 Stat. 1946; Pub. L. 104-59, title III, §§304, 305(a), Nov. 28, 1995, 109 Stat. 579, 580; Pub. L. 105-178, title I, §§1202(c), 1212(a)(2)(A), 1306, June 9, 1998, 112 Stat. 169, 193, 229.)

#### REFERENCES IN TEXT

The day of enactment of the Federal-Aid Highway Act of 1970, referred to in subsec. (g), is Dec. 31, 1970.

#### AMENDMENTS

1998—Subsecs. (b), (c)(2). Pub. L. 105-178, §1212(a)(2)(A)(ii), substituted “State transportation departments” for “State highway departments”.

Subsec. (d). Pub. L. 105-178, §1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department”.

Subsec. (m). Pub. L. 105-178, §1306(a), redesignated subsec. (n) as (m) and struck out former subsec. (m) which read as follows: "The Secretary shall issue guidelines describing the criteria applicable to the Interstate System in order to insure that the condition of these routes is maintained at the level required by the purposes for which they were designed. The initial guidelines shall be issued no later than October 1, 1979."

Subsec. (n). Pub. L. 105-178, §1306(a)(2), redesignated subsec. (o) as (n). Former subsec. (n) redesignated (m).

Pub. L. 105-178, §1202(c), inserted heading and amended text of subsec. (n) generally. Prior to amendment, text read as follows: "The Secretary shall not approve any project under this title that will result in the severance or destruction of an existing major route for nonmotorized transportation traffic and light motorcycles, unless such project provides a reasonably alternate route or such a route exists."

Subsecs. (o) to (q). Pub. L. 105-178, §1306(a)(2), (b), added subsec. (q) and redesignated former subsecs. (p) and (q) as (o) and (p), respectively. Former subsec. (o) redesignated (n).

1995—Subsec. (a). Pub. L. 104-59, §304(1), added subsec. (a) and struck out former subsec. (a) which read as follows: "The Secretary shall not approve plans and specifications for proposed highway projects under this chapter if they fail to provide for a facility (1) that will adequately meet the existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance; (2) that will be designed and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality."

Subsec. (c). Pub. L. 104-59, §304(2), added subsec. (c) and struck out former subsec. (c) which read as follows: "(c) DESIGN AND CONSTRUCTION STANDARDS FOR NHS.—Design and construction standards to be adopted for new construction on the National Highway System, for reconstruction on the National Highway System, and for resurfacing, restoring, and rehabilitating multilane limited access highways on the National Highway System shall be those approved by the Secretary in cooperation with the State highway departments. All eligible work for such projects shall meet or exceed such standards."

Subsec. (j). Pub. L. 104-59, §305(a), substituted "plan for—" and pars. (1) and (2) for "plan for the implementation of any ambient air quality standard for any air quality control region designated pursuant to the Clean Air Act, as amended."

Subsec. (q). Pub. L. 104-59, §304(3), added subsec. (q) and struck out former subsec. (q) which read as follows:

"(q) HISTORIC AND SCENIC VALUES.—If a proposed project under sections 103(e)(4), 133, or 144 involves a historic facility or is located in an area of historic or scenic value, the Secretary may approve such project notwithstanding the requirements of subsections (a) and (b) of this section and section 133(c) if such project is designed to standards that allow for the preservation of such historic or scenic value and such project is designed with mitigation measures to allow preservation of such value and ensure safe use of the facility."

1991—Subsec. (a). Pub. L. 102-240, §1016(f)(1)(A), substituted "highway projects under this chapter" for "projects on any Federal-aid system".

Subsec. (c). Pub. L. 102-240, §1016(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Projects on the Federal-aid secondary system in which Federal funds participate shall be constructed according to specifications that will provide all-weather service and permit maintenance at a reasonable cost."

Subsec. (l)(1). Pub. L. 102-240, §1016(f)(1)(B), substituted "highway" for "system" in introductory provisions.

Subsecs. (p), (q). Pub. L. 102-240, §1016(d), (e), added subsecs. (p) and (q).

1983—Subsec. (o). Pub. L. 97-424 added subsec. (o).

1979—Subsec. (l)(1)(A). Pub. L. 96-106 struck out "any aspect of" after "adversely affect".

1978—Subsec. (f). Pub. L. 95-599, §141(f), inserted "bikeways" after "surfaces, median strips,".

Subsec. (l). Pub. L. 95-599, §113, added subsec. (l).

Subsec. (m). Pub. L. 95-599, §116(d), added subsec. (m).

Subsec. (n). Pub. L. 95-599, §141(g), added subsec. (n).

1973—Subsec. (g). Pub. L. 93-87, §152(2), substituted "Act" for "Rct", thus correcting the popular name to read "Federal-Aid Highway Act of 1970".

Subsec. (i). Pub. L. 93-87, §114, authorized promulgation of noise-level standards for highways on any Federal-aid system for which project approval has been secured prior to July 1, 1972, and approval of any project on a Federal-aid system to which noise-level standards are made applicable, described the range of the projects, made money available for financing Federal share of the project, and deemed such project a highway project for all purposes of this title.

Subsec. (k). Pub. L. 93-87, §156, added subsec. (k).

1970—Subsec. (g). Pub. L. 91-605, §136(a), substituted provisions ordering the Secretary to issue within 30 days after Dec. 31, 1970, guidelines, which will apply to all proposed projects approved by the Secretary after their issuance, for minimizing soil erosion from highway construction for provisions authorizing the Secretary to consult with the Secretary of Agriculture respecting guidelines for minimizing soil erosion from highway construction and report such guidelines to Congress not later than July 1, 1967.

Subsecs. (h) to (j). Pub. L. 91-605, §136(b), added subsecs. (h) to (j).

1966—Subsec. (b). Pub. L. 89-574, §5(a), required that in all cases the standards provide for at least four lanes of traffic.

Subsec. (g). Pub. L. 89-574, §14, added subsec. (g).

1963—Subsec. (b). Pub. L. 88-157 substituted "Such standards, as applied to each actual construction project, shall be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary, under section 106 of this title, of the plans, specifications, and estimates for actual construction of such project" for "Such standards shall be adequate to accommodate the types and volumes of traffic forecast for the year 1975", struck out "up" before "to such standards" and inserted "all" in phrase "throughout all the States".

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### INTERNATIONAL ROUGHNESS INDEX

Pub. L. 105-178, title I, §1213(b), June 9, 1998, 112 Stat. 200, provided that:

"(1) STUDY.—The Comptroller General of the United States shall conduct a study on the international roughness index that is used as an indicator of pavement quality on the Federal-aid highway system.

"(2) REQUIRED ELEMENTS.—The study shall specify the extent of usage of the index and the extent to which the international roughness index measurement is reliable across different manufacturers and types of pavement.

"(3) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act [June 9, 1998], the Comptroller General shall submit to Congress a report on the results of the study."

#### ENVIRONMENTAL STREAMLINING

Pub. L. 105-178, title I, §1309, June 9, 1998, 112 Stat. 232, as amended by Pub. L. 105-206, title IX, §9004(c), July 22, 1998, 112 Stat. 843, provided that:

“(a) COORDINATED ENVIRONMENTAL REVIEW PROCESS.—

“(1) DEVELOPMENT AND IMPLEMENTATION.—The Secretary shall develop and implement a coordinated environmental review process for highway construction and mass transit projects that require—

“(A) the preparation of an environmental impact statement or environmental assessment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), except that the Secretary may decide not to apply this section to the preparation of an environmental assessment under such Act; or

“(B) the conduct of any other environmental review, analysis, opinion, or issuance of an environmental permit, license, or approval by operation of Federal law.

“(2) MEMORANDUM OF UNDERSTANDING.—

“(A) IN GENERAL.—The coordinated environmental review process for each project shall ensure that, whenever practicable (as specified in this section), all environmental reviews, analyses, opinions, and any permits, licenses, or approvals that must be issued or made by any Federal agency for the project concerned shall be conducted concurrently and completed within a cooperatively determined time period. Such process for a project or class of project may be incorporated into a memorandum of understanding between the Department of Transportation and Federal agencies (and, where appropriate, State agencies).

“(B) ESTABLISHMENT OF TIME PERIODS.—In establishing the time period referred to in subparagraph (A), and any time periods for review within such period, the Department and all such agencies shall take into account their respective resources and statutory commitments.

“(b) ELEMENTS OF COORDINATED ENVIRONMENTAL REVIEW PROCESS.—For each project, the coordinated environmental review process established under this section shall provide, at a minimum, for the following elements:

“(1) FEDERAL AGENCY IDENTIFICATION.—The Secretary shall, at the earliest possible time, identify all potential Federal agencies that—

“(A) have jurisdiction by law over environmental-related issues that may be affected by the project and the analysis of which would be part of any environmental document required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

“(B) may be required by Federal law to independently—

“(i) conduct an environmental-related review or analysis; or

“(ii) determine whether to issue a permit, license, or approval or render an opinion on the environmental impact of the project.

“(2) TIME LIMITATIONS AND CONCURRENT REVIEW.—The Secretary and the head of each Federal agency identified under paragraph (1)—

“(A)(i) shall jointly develop and establish time periods for review for—

“(I) all Federal agency comments with respect to any environmental review documents required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for the project; and

“(II) all other independent Federal agency environmental analyses, reviews, opinions, and decisions on any permits, licenses, and approvals that must be issued or made for the project;

whereby each such Federal agency's review shall be undertaken and completed within such established time periods for review; or

“(ii) may enter into an agreement to establish such time periods for review with respect to a class of project; and

“(B) shall ensure, in establishing such time periods for review, that the conduct of any such analysis, review, opinion, and decision is undertaken concurrently with all other environmental reviews for the project, including the reviews required by the

National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); except that such review may not be concurrent if the affected Federal agency can demonstrate that such concurrent review would result in a significant adverse impact to the environment or substantively alter the operation of Federal law or would not be possible without information developed as part of the environmental review process.

“(3) FACTORS TO BE CONSIDERED.—Time periods for review established under this section shall be consistent with the time periods established by the Council on Environmental Quality under sections 1501.8 and 1506.10 of title 40, Code of Federal Regulations.

“(4) EXTENSIONS.—The Secretary shall extend any time periods for review under this section if, upon good cause shown, the Secretary and any Federal agency concerned determine that additional time for analysis and review is needed as a result of new information that has been discovered that could not reasonably have been anticipated when the Federal agency's time periods for review were established. Any memorandum of understanding shall be modified to incorporate any mutually agreed-upon extensions.

“(c) DISPUTE RESOLUTION.—When the Secretary determines that a Federal agency which is subject to a time period for its environmental review or analysis under this section has failed to complete such review, analysis, opinion, or decision on issuing any permit, license, or approval within the established time period or within any agreed-upon extension to such time period, the Secretary may, after notice and consultation with such agency, close the record on the matter before the Secretary. If the Secretary finds, after timely compliance with this section, that an environmental issue related to the project that an affected Federal agency has jurisdiction over by operation of Federal law has not been resolved, the Secretary and the head of the Federal agency shall resolve the matter not later than 30 days after the date of the finding by the Secretary.

“(d) PARTICIPATION OF STATE AGENCIES.—For any project eligible for assistance under chapter 1 of title 23, United States Code, or chapter 53 of title 49, United States Code, a State, by operation of State law, may require that all State agencies that have jurisdiction by State or Federal law over environmental-related issues that may be affected by the project, or that are required to issue any environmental-related reviews, analyses, opinions, or determinations on issuing any permits, licenses, or approvals for the project, be subject to the coordinated environmental review process established under this section unless the Secretary determines that a State's participation would not be in the public interest. For a State to require State agencies to participate in the review process, all affected agencies of the State shall be subject to the review process.

“(e) ASSISTANCE TO AFFECTED FEDERAL AGENCIES.—

“(1) IN GENERAL.—The Secretary may approve a request by a State or recipient to provide funds for a highway project made available under chapter 1 of title 23, United States Code, or for a mass transit project made available under chapter 53 of title 49, United States Code, to the State for the project subject to the coordinated environmental review process established under this section to affected Federal agencies to provide the resources necessary to meet any time limits established under this section.

“(2) AMOUNTS.—Such requests under paragraph (1) shall be approved only—

“(A) for the additional amounts that the Secretary determines are necessary for the affected Federal agencies to meet the time limits for environmental review; and

“(B) if such time limits are less than the customary time necessary for such review.

“(f) JUDICIAL REVIEW AND SAVINGS CLAUSE.—

“(1) JUDICIAL REVIEW.—Nothing in this section shall affect the reviewability of any final Federal agency action in a district court of the United States or in the court of any State.

“(2) SAVINGS CLAUSE.—Nothing in this section shall affect the applicability of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or any other Federal environmental statute or affect the responsibility of any Federal officer to comply with or enforce any such statute.

“(g) FEDERAL AGENCY DEFINED.—In this section, the term ‘Federal agency’ means any Federal agency or any State agency carrying out affected responsibilities required by operation of Federal law.”

#### ROADSIDE SAFETY TECHNOLOGIES

Pub. L. 105-178, title I, §1402, June 9, 1998, 112 Stat. 236, as amended by Pub. L. 105-206, title IX, §9005(c), July 22, 1998, 112 Stat. 848, provided that:

“(a) CRASH CUSHIONS.—

“(1) GUIDANCE.—Not later than 18 months after the date of enactment of this Act [June 9, 1998], the Secretary shall issue guidance regarding the benefits and safety performance of redirective and nonredirective crash cushions in different road applications, taking into consideration roadway conditions, operating speed limits, the location of the crash cushion in the right-of-way, and any other relevant factors. The guidance shall include recommendations on the most appropriate circumstances for utilization of redirective and nonredirective crash cushions.

“(2) USE OF GUIDANCE.—States shall use the guidance issued under this subsection in evaluating the safety and cost-effectiveness of utilizing different crash cushion designs and determining whether redirective or nonredirective crash cushions or other safety appurtenances should be installed at specific highway locations.

“(b) TRAFFIC FLOW AND SAFETY APPLICATIONS OF ROAD BARRIERS.—

“(1) STUDY.—The Secretary shall conduct a study on the technologies and methods to enhance safety, streamline construction, and improve capacity by providing positive separation at all times between traffic, equipment, and workers on highway construction projects. The study shall also address how such technologies can be used to improve capacity and safety at those specific highway, bridge, and other appropriate locations where reversible lane, contraflow, and high occupancy vehicle lane operations are implemented during peak traffic periods.

“(2) USES TO CONSIDER.—In conducting the study, the Secretary shall consider, at a minimum, uses of positive separation technologies related to—

“(A) separating workers from traffic flow when work is in progress;

“(B) providing additional safe work space by utilizing adjacent and available traffic lanes during off-peak hours;

“(C) rapid deployment to allow for daily or periodic restoration of lanes for use by traffic during peak hours as needed;

“(D) mitigating congestion caused by construction by—

“(i) opening all adjacent and available lanes to traffic during peak traffic hours; or

“(ii) using reversible lanes to optimize capacity of the highway by adjusting to directional traffic flow; and

“(E) permanent use of positive separation technologies to create contraflow or reversible lanes to increase the capacity of congested highways, bridges, and tunnels.

“(3) REPORT.—Not later than 18 months after the date of enactment of this Act [June 9, 1998], the Secretary shall submit to Congress a report on the results of the study. The report shall include findings and recommendations for the use of the technologies referred to in paragraph (2) to provide positive separation on appropriate projects.”

#### METRIC REQUIREMENTS

Pub. L. 104-59, title II, §205(c), Nov. 28, 1995, 109 Stat. 577, as amended by Pub. L. 105-178, title I, §1211(d), June 9, 1998, 112 Stat. 188, provided that:

“(1) PLACEMENT AND MODIFICATION OF SIGNS.—The Secretary shall not require the States to expend any Federal or State funds to construct, erect, or otherwise place or to modify any sign relating to a speed limit, distance, or other measurement on a highway for the purpose of having such sign establish such speed limit, distance, or other measurement using the metric system.

“(2) OTHER ACTIONS.—The Secretary shall not require that any State use or plan to use the metric system with respect to designing or advertising, or preparing plans, specifications, estimates, or other documents, for a Federal-aid highway project eligible for assistance under title 23, United States Code.

“(3) DEFINITIONS.—In this subsection, the following definitions apply:

“(A) HIGHWAY.—The term ‘highway’ has the meaning such term has under section 101 of title 23, United States Code.

“(B) METRIC SYSTEM.—The term ‘metric system’ has the meaning the term ‘metric system of measurement’ has under section 4 of the Metric Conversion Act of 1975 (15 U.S.C. 205c).”

#### TYPE II NOISE BARRIERS

Section 339(b) of Pub. L. 104-59 provided that:

“(1) GENERAL RULE.—No funds made available out of the Highway Trust Fund may be used to construct Type II noise barriers (as defined by section 772.5(i) of title 23, Code of Federal Regulations) pursuant to subsections (h) and (i) of section 109 of title 23, United States Code, if such barriers were not part of a project approved by the Secretary before the date of the enactment of this Act [Nov. 28, 1995].

“(2) EXCEPTIONS.—Paragraph (1) shall not apply to construction of Type II noise barriers along lands that were developed or were under substantial construction before approval of the acquisition of the rights-of-ways for, or construction of, the existing highway.”

#### HIGHWAY SIGNS FOR NATIONAL HIGHWAY SYSTEM

Section 359(b) of Pub. L. 104-59 provided that:

“(1) STUDY.—The Secretary shall conduct a study to determine the cost, need, and efficacy of establishing a highway sign for identifying routes on the National Highway System. In conducting the study, the Secretary shall make a determination concerning whether to identify National Highway System route numbers.

“(2) REPORT.—Not later than March 1, 1997, the Secretary shall transmit to Congress a report on the results of the study.”

#### USE OF RECYCLED PAVING MATERIAL

Section 1038 of Pub. L. 102-240, as amended by Pub. L. 104-59, title II, §205(b), title III, §327, Nov. 28, 1995, 109 Stat. 577, 592, provided that:

“(a) ASPHALT PAVEMENT CONTAINING RECYCLED RUBBER DEMONSTRATION PROGRAM.—Notwithstanding any other provision of title 23, United States Code, or regulation or policy of the Department of Transportation, the Secretary (or a State acting as the Department's agent) may not disapprove a highway project under chapter 1 of title 23, United States Code, on the ground that the project includes the use of asphalt pavement containing recycled rubber. Under this subsection, a patented application process for recycled rubber shall be eligible for approval under the same conditions that an unpatented process is eligible for approval.

“(b) STUDIES.—

“(1) IN GENERAL.—The Secretary and the Administrator of the Environmental Protection Agency shall coordinate and conduct, in cooperation with the States, a study to determine—

“(A) the threat to human health and the environment associated with the production and use of asphalt pavement containing recycled rubber;

“(B) the degree to which asphalt pavement containing recycled rubber can be recycled; and

“(C) the performance of the asphalt pavement containing recycled rubber under various climate and use conditions.

“(2) DIVISION OF RESPONSIBILITIES.—The Administrator shall conduct the part of the study relating to paragraph (1)(A) and the Secretary shall conduct the part of the study relating to paragraph (1)(C). The Administrator and the Secretary shall jointly conduct the study relating to paragraph (1)(B).

“(3) ADDITIONAL STUDY.—The Secretary and the Administrator, in cooperation with the States, shall jointly conduct a study to determine the economic savings, technical performance qualities, threats to human health and the environment, and environmental benefits of using recycled materials in highway devices and appurtenances and highway projects, including asphalt containing over 80 percent reclaimed asphalt, asphalt containing recycled glass, and asphalt containing recycled plastic.

“(4) ADDITIONAL ELEMENTS.—In conducting the study under paragraph (3), the Secretary and the Administrator shall examine utilization of various technologies by States and shall examine the current practices of all States relating to the reuse and disposal of materials used in federally assisted highway projects.

“(5) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 18, 1991], the Secretary and the Administrator shall transmit to Congress a report on the results of the studies conducted under this subsection, including a detailed analysis of the economic savings and technical performance qualities of using such recycled materials in federally assisted highway projects and the environmental benefits of using such recycled materials in such highway projects in terms of reducing air emissions, conserving natural resources, and reducing disposal of the materials in landfills.

“(c) DOT GUIDANCE.—

“(1) INFORMATION GATHERING AND DISTRIBUTION.—The Secretary shall gather information and recommendations concerning the use of asphalt containing recycled rubber in highway projects from those States that have extensively evaluated and experimented with the use of such asphalt and implemented such projects and shall make available such information and recommendations on the use of such asphalt to those States which indicate an interest in the use of such asphalt.

“(2) ENCOURAGEMENT OF USE.—The Secretary should encourage the use of recycled materials determined to be appropriate by the studies pursuant to subsection (b) in federally assisted highway projects. Procuring agencies shall comply with all applicable guidelines or regulations issued by the Administrator of the Environmental Protection Agency.

“(d) ASPHALT PAVEMENT CONTAINING RECYCLED RUBBER.—

“(1) CRUMB RUBBER MODIFIER RESEARCH.—Not later than 180 days after the date of the enactment of the National Highway System Designation Act of 1995 [Nov. 28, 1995], the Secretary shall develop testing procedures and conduct research to develop performance grade classifications, in accordance with the strategic highway research program carried out under section 307(d) of title 23, United States Code, for crumb rubber modifier binders. The testing procedures and performance grade classifications should be developed in consultation with representatives of the crumb rubber modifier industry and other interested parties (including the asphalt paving industry) with experience in the development of the procedures and classifications.

“(2) CRUMB RUBBER MODIFIER PROGRAM DEVELOPMENT.—

“(A) IN GENERAL.—The Secretary may make grants to States to develop programs to use crumb rubber from scrap tires to modify asphalt pavements.

“(B) USE OF GRANT FUNDS.—Grant funds made available to States under this paragraph shall be used—

“(i) to develop mix designs for crumb rubber modified asphalt pavements;

“(ii) for the placement and evaluation of crumb rubber modified asphalt pavement field tests; and

“(iii) for the expansion of State crumb rubber modifier programs in existence on the date the grant is made available.

“(e) DEFINITIONS.—For purpose of this section—

“(1) the term ‘asphalt pavement containing recycled rubber’ means any mixture of asphalt and crumb rubber derived from whole scrap tires, such that the physical properties of the asphalt are modified through the mixture, for use in pavement maintenance, rehabilitation, or construction applications; and

“(2) the term ‘recycled rubber’ is any crumb rubber derived from processing whole scrap tires or shredded tire material taken from automobiles, trucks, or other equipment owned and operated in the United States.”

#### SURVEY AND REPORT ON UPGRADING OF DESIGN STANDARDS

Section 1049 of Pub. L. 102-240 directed Secretary to conduct a survey to identify current State standards relating to geometric design, traffic control devices, roadside safety, safety appurtenance design, uniform traffic control devices, and sign legibility and directional clarity for all Federal-aid highways and, not later than 2 years after Dec. 18, 1991, to transmit to Congress a report on the results of the survey and the crashworthiness of traffic lights, traffic signs, guardrails, impact attenuators, concrete barrier treatments, and breakaway utility poles for bridges and roadways currently used by States.

#### EROSION CONTROL GUIDELINES

Section 1057 of title I of Pub. L. 102-240 provided that:

“(a) DEVELOPMENT.—The Secretary shall develop erosion control guidelines for States to follow in carrying out construction projects funded in whole or in part under this title [see Tables for classification].

“(b) MORE STRINGENT STATE REQUIREMENTS.—Guidelines developed under subsection (a) shall not preempt any requirement made by or under State law if such requirement is more stringent than the guidelines.

“(c) CONSISTENCY WITH OTHER PROGRAMS.—Guidelines developed under subsection (a) shall be consistent with nonpoint source management programs under section 319 of the Federal Water Pollution Control Act [33 U.S.C. 1329] and coastal nonpoint pollution control guidance under section 6217(g) of the Omnibus Budget Reconciliation Act of 1990 [16 U.S.C. 1455b(g)].”

#### ROADSIDE BARRIER TECHNOLOGY

Section 1058 of Pub. L. 102-240, as amended by Pub. L. 104-59, title III, §328, Nov. 28, 1995, 109 Stat. 593, provided that:

“(a) REQUIREMENT FOR INNOVATIVE BARRIERS.—Not less than 2½ percent of the mileage of new or replacement permanent or temporary crashworthy barriers included in awarded contracts along Federal-aid highways within the boundaries of a State in each calendar year shall be innovative crashworthy safety barriers.

“(b) CERTIFICATION.—Each State shall annually certify to the Secretary its compliance with the requirements of this section.

“(c) DEFINITION OF INNOVATIVE CRASHWORTHY SAFETY BARRIER.—For purposes of this section, the term ‘innovative crashworthy safety barrier’ means a barrier, other than a guardrail or guiderail, classified by the Federal Highway Administration as ‘experimental’ or that was classified as ‘operational’ after January 1, 1985, and that meets or surpasses the requirements of the National Cooperative Highway Research Program 350 for longitudinal barriers.”

#### ROADSIDE BARRIERS AND SAFETY APPURTENANCES

Section 1073 of Pub. L. 102-240 provided that:

“(a) INITIATION OF RULEMAKING PROCEEDING.—Not later than 30 days after the date of the enactment of

this Act [Dec. 18, 1991], the Secretary shall initiate a rulemaking proceeding to revise the guidelines and establish standards for installation of roadside barriers and other safety appurtenances, including longitudinal barriers, end terminals, and crash cushions. Such rulemaking shall reflect state-of-the-art designs, testing, and evaluation criteria contained in the National Cooperative Highway Research Program Report 230, relating to approval standards which provide an enhanced level of crashworthy performance to accommodate vans, mini-vans, pickup trucks, and 4-wheel drive vehicles.

“(b) FINAL RULE.—Not later than 1 year after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall complete the rulemaking proceeding initiated under subsection (a), and issue a final rule regarding the implementation of revised guidelines and standards for acceptable roadside barriers and other safety appurtenances, including longitudinal barriers, end terminals, and crash cushions. Such revised guidelines and standards shall accommodate vans, mini-vans, pickup trucks, and 4-wheel drive vehicles and shall be applicable to the refurbishment and replacement of existing roadside barriers and safety appurtenances as well as to the installation of new roadside barriers and safety appurtenances.”

STUDIES RELATING TO ESTABLISHMENT OF STANDARDS FOR RESURFACING, RESTORATION, AND REHABILITATION OF HIGHWAYS AND TO ESTABLISHMENT OF UNIFORM STANDARDS AND CRITERIA FOR TESTING AND INSPECTING HIGHWAYS AND BRIDGES

Section 110(b), (c) of Pub. L. 97-424 provided that:

“(b) The Secretary of Transportation shall enter into appropriate arrangements with the National Academy of Sciences (1) to conduct a study of the safety cost-effectiveness of geometric design criteria of standards currently in effect for construction and reconstruction of highways, other than highways access to which is fully controlled, to determine the most appropriate minimum standards to apply to resurfacing, restoration, and rehabilitation projects on such highways, which study shall include a study of the cost effectiveness of the hot dip galvanizing process for the installation, repair, or replacement of exposed structural and miscellaneous steel, and (2) to propose standards to preserve and extend the service life of such highways and enhance highway safety. The National Academy of Sciences shall conduct such study in cooperation with the National Transportation Safety Board, the Congressional Budget Office, and the American Association of State Highway and Transportation Officials. Upon completion of such study, the National Academy of Sciences shall submit such study and its proposed standards to the Secretary of Transportation for review. Within ninety days after submission of such standards to the Secretary of Transportation, the Secretary shall submit such study and the proposed standards of the National Academy of Sciences, together with the recommendations of the Secretary, to Congress for approval.

“(c)(1) The Secretary of Transportation is directed to coordinate a study with the National Bureau of Standards, the American Society for Testing and Materials, and other organizations as deemed appropriate, (A) to determine the existing quality of design, construction, products, use, and systems for highways and bridges; (B) to determine the need for uniform standards and criteria for design, processing, products, and applications, including personnel training and implementation of enforcement techniques; and (C) to determine the manpower needs and costs of developing a national system for the evaluation and accreditation of testing and inspection agencies.

“(2) The Secretary shall submit such study to the Congress not later than one year after the date of enactment of this section [Jan. 6, 1983].”

EXPENDITURE OF FEDERAL FUNDS FOR HIGHWAY SIGNS USING METRIC SYSTEM

Section 144 of Pub. L. 95-599, as amended by Pub. L. 96-106, § 14, Nov. 9, 1979, 93 Stat. 798, which prohibited

use of Federal funds for signing solely in the metric system, was repealed by Pub. L. 102-240, title I, § 1053, Dec. 18, 1991, 105 Stat. 2001.

MODIFICATION OF PROJECT AGREEMENTS TO EFFECTUATE REQUIREMENT OF FOUR-LANES OF TRAFFIC

Authorization to modify projects agreements entered into prior to September 13, 1966, to effectuate the amendment of this section by Pub. L. 89-574 which added the requirement of four-lanes of traffic, see section 5(b) of Pub. L. 89-574, set out as a note under section 106 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 106, 115, 142 of this title.

§ 110. Revenue aligned budget authority

(a) IN GENERAL.—

(1) ALLOCATION.—On October 15 of fiscal year 2000 and each fiscal year thereafter, the Secretary shall allocate for such fiscal year an amount of funds equal to the amount determined pursuant to section 251(b)(1)(B)(ii)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(B)(ii)(I)(cc))<sup>1</sup> if the amount determined pursuant to such section for such fiscal year is greater than zero.

(2) REDUCTION.—If the amount determined pursuant to section 251(b)(1)(B)(ii)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(B)(ii)(I)(cc))<sup>1</sup> for fiscal year 2000 or any fiscal year thereafter is less than zero, the Secretary on October 1 of the succeeding fiscal year shall reduce proportionately the amount of sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out each of the Federal-aid highway and highway safety construction programs (other than emergency relief) and the motor carrier safety grant program by an aggregate amount equal to the amount determined pursuant to such section.

(b) GENERAL DISTRIBUTION.—The Secretary shall—

(1) determine the ratio that—

(A) the sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for each of the for<sup>2</sup> Federal-aid highway and highway safety construction programs (other than the minimum guarantee program) and the motor carrier safety grant program for which funds are allocated from such Trust Fund by the Secretary under this title, the Transportation Equity Act for the 21st Century, and subchapter I of chapter 311 of title 49 for a fiscal year, bears to

(B) the total of all sums authorized to be appropriated from such Trust Fund for such programs for such fiscal year;

(2) multiply the ratio determined under paragraph (1) by the total amount of funds to be allocated under subsection (a)(1) for such fiscal year;

<sup>1</sup>So in original. Probably should be “(2 U.S.C. 901(b)(1)(B)(ii)(I)(cc))”.

<sup>2</sup>So in original. The word “for” probably should not appear.

(3) allocate the amount determined under paragraph (2) among such programs in the ratio that—

(A) the sums authorized to be appropriated from such Trust Fund for each of such programs for such fiscal year, bears to

(B) the sums authorized to be appropriated from such Trust Fund for all such programs for such fiscal year; and

(4) allocate the remainder of the funds to be allocated under subsection (a)(1) for such fiscal year to the States in the ratio that—

(A) the total of all funds authorized to be appropriated from such Trust Fund for Federal-aid highway and highway safety construction programs that are apportioned to each State for such fiscal year but for this section, bears to

(B) the total of all funds authorized to be appropriated from such Trust Fund for such programs that are apportioned to all States for such fiscal year but for this section.

(c) STATE PROGRAMMATIC DISTRIBUTION.—Of the funds to be apportioned to each State under subsection (b)(4) for a fiscal year, the Secretary shall ensure that such funds are apportioned for the Interstate and National Highway System program, the bridge program, the surface transportation program, and the congestion mitigation air quality improvement program in the same ratio that each State is apportioned funds for such programs for such fiscal year but for this section.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to carry out this section for fiscal years beginning after September 30, 1998.

(e) After making any calculation necessary to implement this section for fiscal year 2001, the amount available under paragraph (a)(1) shall be increased by \$128,752,000. The amounts added under this subsection shall not apply to any calculation in any other fiscal year.

(f) For fiscal year 2001, prior to making any distribution under this section, \$22,029,000 of the allocation under paragraph (a)(1) shall be available only for each program authorized under chapter 53 of title 49, United States Code, and title III of Public Law 105-178, in proportion to each such program's share of the total authorization in section 5338 (other than 5338(h)) of such title and sections 3037 and 3038 of such Public Law, under the terms and conditions of chapter 53 of such title.

(g) For fiscal year 2001, prior to making any distribution under this section, \$399,000 of the allocation under paragraph (a)(1) shall be available only for motor carrier safety programs under sections 31104 and 31107 of title 49, United States Code; \$274,000 for NHTSA operations and research under section 403 of title 23, United States Code; and \$787,000 for NHTSA highway traffic safety grants under chapter 4 of title 23, United States Code.

(Added and amended Pub. L. 105-178, title I, §1105(a), (c), June 9, 1998, 112 Stat. 130; Pub. L. 105-206, title IX, §9002(e), July 22, 1998, 112 Stat. 835; Pub. L. 106-113, div. B, §1000(a)(5) [title III,

§304], Nov. 29, 1999, 113 Stat. 1536, 1501A-306; Pub. L. 106-159, title I, §102(a)(2), Dec. 9, 1999, 113 Stat. 1752.)

#### REFERENCES IN TEXT

The Transportation Equity Act for the 21st Century, referred to in subsec. (b)(1)(A), is Pub. L. 105-178, June 9, 1998, 112 Stat. 107, as amended. For complete classification of this Act to the Code, see section 1(a) of Pub. L. 105-178, set out as a Short Title of 1998 Amendment note under section 101 of this title and Tables.

Title III of Public Law 105-178, referred to in subsec. (f), is title III of Pub. L. 105-178, June 9, 1998, 112 Stat. 338, as amended, known as the Federal Transit Act of 1998. Sections 3037 and 3038 of title III of Pub. L. 105-178 are set out as notes under sections 5309 and 5310, respectively, of Title 49, Transportation. For complete classification of title III to the Code, see Short Title of 1998 Amendment note set out under section 5101 of Title 49 and Tables.

#### CODIFICATION

Another section 110 was renumbered section 126 of this title.

#### PRIOR PROVISIONS

A prior section 110, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 894, related to project agreements, prior to repeal by Pub. L. 105-178, title I, §1105(a), June 9, 1998, 112 Stat. 130.

#### AMENDMENTS

1999—Subsec. (a)(2). Pub. L. 106-159, §102(a)(2)(A), inserted “and the motor carrier safety grant program” after “relief”.

Subsec. (b)(1)(A). Pub. L. 106-159, §102(a)(2)(B), inserted “and the motor carrier safety grant program” after “program”, substituted “title,” for “title and”, and inserted “, and subchapter I of chapter 311 of title 49” after “21st Century”.

Subsecs. (e) to (g). Pub. L. 106-113, which directed amendment of section 110 by adding subsecs. (e) to (g) at the end, was executed to this section to reflect the probable intent of Congress. See Codification note above.

1998—Subsec. (a). Pub. L. 105-178, §1105(c)(1), as added by Pub. L. 105-206, §9002(e), substituted “In general” for “Determination of amount” in heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “On October 15 of fiscal year 1999, and each fiscal year thereafter, the Secretary shall allocate an amount of funds equal to the amount determined pursuant to section 251(b)(1)(B)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(B)(I)(cc)).”

Subsec. (b)(2), (4). Pub. L. 105-178, §1105(c)(2), as added by Pub. L. 105-206, §9002(e), substituted “subsection (a)(1)” for “subsection (a)”.

Subsec. (c). Pub. L. 105-178, §1105(c)(3), as added by Pub. L. 105-206, §9002(e), substituted “the Interstate and National Highway System program” for “the Interstate Maintenance program, the National Highway System program”.

#### 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 this title.

### § 111. Agreements relating to use of and access to rights-of-way—Interstate System

(a) IN GENERAL.—All agreements between the Secretary and the State transportation depart-

ment for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. Such agreements shall also contain a clause providing that the State will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the Interstate System. Such agreements may, however, authorize a State or political subdivision thereof to use or permit the use of the airspace above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway, as will not require or permit vehicular access to such space directly from such established grade line of the highway, or otherwise interfere in any way with the free flow of traffic on the Interstate System. Nothing in this section, or in any agreement entered into under this section, shall require the discontinuance, obstruction, or removal of any establishment for serving motor vehicle users on any highway which has been, or is hereafter, designated as a highway or route on the Interstate System (1) if such establishment (A) was in existence before January 1, 1960, (B) is owned by a State, and (C) is operated through concessionaries or otherwise, and (2) if all access to, and exits from, such establishment conform to the standards established for such a highway under this title.

(b) **VENDING MACHINES.**—Notwithstanding subsection (a), any State may permit the placement of vending machines in rest and recreation areas, and in safety rest areas, constructed or located on rights-of-way of the Interstate System in such State. Such vending machines may only dispense such food, drink, and other articles as the State transportation department determines are appropriate and desirable. Such vending machines may only be operated by the State. In permitting the placement of vending machines, the State shall give priority to vending machines which are operated through the State licensing agency designated pursuant to section 2(a)(5) of the Act of June 20, 1936, commonly known as the “Randolph-Sheppard Act” (20 U.S.C. 107a(a)(5)). The costs of installation, operation, and maintenance of vending machines shall not be eligible for Federal assistance under this title.

(c) **MOTORIST CALL BOXES.**—

(1) **IN GENERAL.**—Notwithstanding subsection (a), a State may permit the placement of motorist call boxes on rights-of-way of the National Highway System. Such motorist call boxes may include the identification and sponsorship logos of such call boxes.

(2) **SPONSORSHIP LOGOS.**—

(A) **APPROVAL BY STATE AND LOCAL AGENCIES.**—All call box installations displaying sponsorship logos under this subsection shall be approved by the highway agencies having jurisdiction of the highway on which they are located.

(B) **SIZE ON BOX.**—A sponsorship logo may be placed on the call box in a dimension not

to exceed the size of the call box or a total dimension in excess of 12 inches by 18 inches.

(C) **SIZE ON IDENTIFICATION SIGN.**—Sponsorship logos in a dimension not to exceed 12 inches by 30 inches may be displayed on a call box identification sign affixed to the call box post.

(D) **SPACING OF SIGNS.**—Sponsorship logos affixed to an identification sign on a call box post may be located on the rights-of-way at intervals not more frequently than 1 per every 5 miles.

(E) **DISTRIBUTION THROUGHOUT STATE.**—Within a State, at least 20 percent of the call boxes displaying sponsorship logos shall be located on highways outside of urbanized areas with a population greater than 50,000.

(3) **NONSAFETY HAZARDS.**—The call boxes and their location, posts, foundations, and mountings shall be consistent with requirements of the Manual on Uniform Traffic Control Devices or any requirements deemed necessary by the Secretary to assure that the call boxes shall not be a safety hazard to motorists.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 895; Pub. L. 87-61, title I, §104(a), June 29, 1961, 75 Stat. 122; Pub. L. 95-599, title I, §114, Nov. 6, 1978, 92 Stat. 2697; Pub. L. 100-17, title I, §110(a), Apr. 2, 1987, 101 Stat. 146; Pub. L. 104-59, title III, §306, Nov. 28, 1995, 109 Stat. 580; Pub. L. 105-178, title I, §1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193.)

#### AMENDMENTS

1998—Subsecs. (a), (b). Pub. L. 105-178 substituted “State transportation department” for “State highway department”.

1995—Subsec. (c). Pub. L. 104-59 added subsec. (c).

1987—Pub. L. 100-17 designated existing provision as subsec. (a), inserted heading for subsec. (a), and added subsec. (b).

1978—Pub. L. 95-599 inserted provision listing situations which would not require the discontinuance, obstruction, or removal of any establishment for serving motor vehicle users.

1961—Pub. L. 87-61 substituted “to use or permit the use of the airspace above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway, as will not require or permit vehicular access to such space directly from such established grade line of the highway, or otherwise interfere” for “to use the airspace above and below the established grade line of the highway pavement for the parking of motor vehicles provided such use does not interfere”.

#### VENDING MACHINES; PLACEMENT IN REST, RECREATION, AND SAFETY REST AREAS; STATE OPERATION OF MACHINES

Pub. L. 97-424, title I, §111, Jan. 6, 1983, 96 Stat. 2106, provided that notwithstanding section 111 of this title before Oct. 1, 1983, any State could permit placement of vending machines in rest and recreation areas and in safety rest areas constructed or located on rights-of-way of National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways] in such State. Such vending machines could only dispense such food, drink, and other articles as the State highway department determined were appropriate and desirable. Such vending machines could only be operated by the State. In permitting the placement of vending machines under this section, the State had to give priority to vending machines which were operated through the State licensing agency designated pursuant to section 2(a)(5) of the Act



of June 20, 1936, commonly known as the Randolph-Sheppard Act (20 U.S.C. 107a(a)(5)).

DEMONSTRATION PROJECT FOR VENDING MACHINES IN  
REST AND RECREATION AREAS

Section 153 of Pub. L. 95-599 authorized Secretary of Transportation to implement a demonstration project respecting placement of vending machines in rest and recreation areas and to report not later than two years after Nov. 6, 1978, on results of such project.

REVISION OF AGREEMENTS RELATING TO UTILIZATION OF  
SPACE ON RIGHTS-OF-WAY

Section 104(b) of Pub. L. 87-61 authorized Secretary of Commerce [now Transportation], on application, to revise any agreement made prior to June 29, 1961, to extent that such agreement relates to utilization of space on rights-of-way on National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways] to conform to section 111 of this title as amended by subsection (a).

**§ 112. Letting of contracts**

(a) In all cases where the construction is to be performed by the State transportation department or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary. The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition.

(b) BIDDING REQUIREMENTS.—

(1) IN GENERAL.—Subject to paragraph (2), construction of each project, subject to the provisions of subsection (a) of this section, shall be performed by contract awarded by competitive bidding, unless the State transportation department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists. Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility. No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications.

(2) CONTRACTING FOR ENGINEERING AND DESIGN SERVICES.—

(A) GENERAL RULE.—Each contract for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services with respect to a project subject to the provisions of subsection (a) of this section shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 or equivalent State qualifications-based requirements.

(B) APPLICABILITY.—

(i) IN A COMPLYING STATE.—If, on the date of the enactment of this paragraph, the services described in subparagraph (A) may be awarded in a State in the manner

described in subparagraph (A), subparagraph (A) shall apply in such State beginning on such date of enactment.

(ii) IN A NONCOMPLYING STATE.—In the case of any other State, subparagraph (A) shall apply in such State beginning on the earlier of (I) August 1, 1989, or (II) the 10th day following the close of the 1st regular session of the legislature of a State which begins after the date of the enactment of this paragraph.

(C) PERFORMANCE AND AUDITS.—Any contract or subcontract awarded in accordance with subparagraph (A), whether funded in whole or in part with Federal-aid highway funds, shall be performed and audited in compliance with cost principles contained in the Federal Acquisition Regulations of part 31 of title 48, Code of Federal Regulations.

(D) INDIRECT COST RATES.—Instead of performing its own audits, a recipient of funds under a contract or subcontract awarded in accordance with subparagraph (A) shall accept indirect cost rates established in accordance with the Federal Acquisition Regulations for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

(E) APPLICATION OF RATES.—Once a firm's indirect cost rates are accepted under this paragraph, the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and shall not be limited by administrative or de facto ceilings of any kind.

(F) PRENOTIFICATION; CONFIDENTIALITY OF DATA.—A recipient of funds requesting or using the cost and rate data described in subparagraph (E) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided, in whole or in part, to another firm or to any government agency which is not part of the group of agencies sharing cost data under this paragraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

(G) STATE OPTION.—Subparagraphs (C), (D), (E), and (F) shall take effect 1 year after the date of the enactment of this subparagraph; except that if a State, during such 1-year period, adopts by statute an alternative process intended to promote engineering and design quality and ensure maximum competition by professional companies of all sizes providing engineering and design services, such subparagraphs shall not apply with respect to the State. If the Secretary determines that the legislature of the State did not convene and adjourn a full regular session during such 1-year period, the Secretary may extend such 1-year period until the adjournment of the next regular session of the legislature.

(c) The Secretary shall require as a condition precedent to his approval of each contract

awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this section, a sworn statement, executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract.

(d) No contract awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this section, shall be entered into by any State transportation department or local subdivision of the State without compliance with the provisions of this section, and without the prior concurrence of the Secretary in the award thereof.

(e) STANDARDIZED CONTRACT CLAUSE CONCERNING SITE CONDITIONS.—

(1) GENERAL RULE.—The Secretary shall issue regulations establishing and requiring, for inclusion in each contract entered into with respect to any project approved under section 106 of this title a contract clause, developed in accordance with guidelines established by the Secretary, which equitably addresses each of the following:

(A) Site conditions.

(B) Suspensions of work ordered by the State (other than a suspension of work caused by the fault of the contractor or by weather).

(C) Material changes in the scope of work specified in the contract.

The guidelines established by the Secretary shall not require arbitration.

(2) LIMITATION ON APPLICABILITY.—Paragraph (1) shall apply in a State except to the extent that such State adopts or has adopted by statute a formal procedure for the development of a contract clause described in paragraph (1) or adopts or has adopted a statute which does not permit inclusion of such a contract clause.

(f) The provisions of this section shall not be applicable to contracts for projects on the Federal-aid secondary system in those States where the Secretary has discharged his responsibility pursuant to section 117<sup>1</sup> of this title, except where employees of a political subdivision of a State are working on a project outside of such political subdivision.

(g) SELECTION PROCESS.—A State may procure, under a single contract, the services of a consultant to prepare any environmental impact assessments or analyses required for a project, including environmental impact statements, as well as subsequent engineering and design work on the project if the State conducts a review that assesses the objectivity of the environmental assessment, environmental analysis, or environmental impact statement prior to its submission to the Secretary.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 895; Pub. L. 90-495, § 22(c), Aug. 23, 1968, 82 Stat. 827; Pub. L. 96-470, title I, § 112(b)(1), Oct. 19, 1980, 94 Stat.

2239; Pub. L. 97-424, title I, § 112, Jan. 6, 1983, 96 Stat. 2106; Pub. L. 100-17, title I, § 111, Apr. 2, 1987, 101 Stat. 147; Pub. L. 104-59, title III, § 307(a), Nov. 28, 1995, 109 Stat. 581; Pub. L. 105-178, title I, §§ 1205, 1212(a)(2)(A)(i), 1307(a), (b), June 9, 1998, 112 Stat. 184, 193, 229, 230.)

#### AMENDMENT OF SECTION

*Pub. L. 105-178, title I, § 1307(a), (b), (e), June 9, 1998, 112 Stat. 229-231, provided that, effective 3 years after June 9, 1998, this section is amended as follows:*

*(1) Subsection (b) of this section is amended—*

*(A) In the first sentence of paragraph (1) by striking “paragraph (2)” and inserting “paragraphs (2) and (3)”.*

*(B) In paragraph (2)(A) by striking “Each” and inserting “Subject to paragraph (3), each”.*

*(C) By adding at the end the following:*

*(3) DESIGN-BUILD CONTRACTING.—*

*(A) IN GENERAL.—A State transportation department or local transportation agency may award a design-build contract for a qualified project described in subparagraph (C) using any procurement process permitted by applicable State and local law.*

*(B) LIMITATION ON FINAL DESIGN.—Final design under a design-build contract referred to in subparagraph (A) shall not commence before compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).*

*(C) QUALIFIED PROJECTS.—A qualified project referred to in subparagraph (A) is a project under this chapter for which—*

*(i) the Secretary has approved the use of design-build contracting described in subparagraph (A) under criteria specified in regulations issued by the Secretary; and*

*(ii) the total costs are estimated to exceed—*

*(I) in the case of a project that involves installation of an intelligent transportation system, \$5,000,000; and*

*(II) in the case of any other project, \$50,000,000.*

*(D) DESIGN-BUILD CONTRACT DEFINED.—In this paragraph, the term “design-build contract” means an agreement that provides for design and construction of a project by a contractor, regardless of whether the agreement is in the form of a design-build contract, a franchise agreement, or any other form of contract approved by the Secretary.*

*(2) Subsection (e)(2) of this section is amended—*

*(A) By striking “Paragraph” and inserting the following:*

*“(A) STATE LAW.—Paragraph”.*

*(B) By adding at the end the following:*

*(B) DESIGN-BUILD CONTRACTS.—Paragraph (1) shall not apply to any design-build contract approved under subsection (b)(3).*

*(C) By aligning the remainder of the text of subparagraph (A) (as designated by paragraph (1) of this subsection) with subparagraph (B) of such section (as added by paragraph (2) of this subsection).*

#### REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (b)(2)(A), is act June

<sup>1</sup> See References in Text note below.

30, 1949, ch. 288, 63 Stat. 377, as amended. Title IX of the Federal Property and Administrative Services Act is classified generally to subchapter VI (§541 et seq.) of chapter 10 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (b)(2)(B), is the date of enactment of Pub. L. 100-17, which was approved Apr. 2, 1987.

The date of the enactment of this subparagraph, referred to in subsec. (b)(2)(G), is the date of enactment of Pub. L. 104-59, which was approved Nov. 28, 1995.

Section 117 of this title, referred to in subsec. (f), relating to certification acceptance, was repealed and a new section 117, relating to high priority projects program, was enacted by Pub. L. 105-178, title I, §1601(a), June 9, 1998, 112 Stat. 255.

#### AMENDMENTS

1998—Subsecs. (a), (b)(1). Pub. L. 105-178, §1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department”.

Subsec. (b)(2)(B)(i). Pub. L. 105-178, §1205(a), struck out before period at end “, except to the extent that such State adopts by statute a formal procedure for the procurement of such services”.

Subsec. (b)(2)(B)(ii). Pub. L. 105-178, §1205(a), struck out before period at end “, except to the extent that such State adopts or has adopted by statute a formal procedure for the procurement of the services described in subparagraph (A)”.

Subsec. (d). Pub. L. 105-178, §1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department”.

Subsec. (g). Pub. L. 105-178, §1205(b), added subsec. (g). 1995—Subsec. (b)(2)(C) to (G). Pub. L. 104-59 added subpars. (C) to (G).

1987—Subsec. (b). Pub. L. 100-17, §111(a), (b), (d), inserted subsec. heading, designated existing provisions as par. (1), inserted par. (1) heading, substituted “Subject to paragraph (2), construction” for “Construction” and inserted “or that an emergency exists”, added par. (2), and realigned margins.

Subsecs. (e), (f). Pub. L. 100-17, §111(c), added subsec. (e) and redesignated former subsec. (e) as (f).

1983—Subsec. (b). Pub. L. 97-424, §112(1), substituted “unless the State highway department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective” for “unless the Secretary shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest” after “by competitive bidding.”

Subsec. (e). Pub. L. 97-424, §112(2), inserted exception relating to a situation where employees of a political subdivision of a State are working on a project outside of such political subdivision.

1980—Subsec. (b). Pub. L. 96-470 struck out provision that all findings by the Secretary that a method other than competitive bidding is in the public interest be reported in writing to the Committees on Public Works of the Senate and the House of Representatives.

1968—Subsec. (b). Pub. L. 90-495 required that contracts for the construction of each project be awarded only on the basis of the lowest responsive bid by a bidder meeting established criteria of responsibility and required that, to be imposed as a condition precedent, requirements and obligations have been specifically set forth in the advertised specifications.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-178, title I, §1307(e), June 9, 1998, 112 Stat. 231, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section] take effect 3 years after the date of enactment of this Act [June 9, 1998].

“(2) TRANSITION PROVISION.—

“(A) IN GENERAL.—During the period before issuance of the regulations under subsection (c) [set out

below], the Secretary may approve, in accordance with an experimental program described in subsection (d) [set out below], design-build contracts to be awarded using any process permitted by applicable State and local law; except that final design under any such contract shall not commence before compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

“(B) PREVIOUSLY AWARDED CONTRACTS.—The Secretary may approve design-build contracts awarded before the date of enactment of this Act.

“(C) DESIGN-BUILD CONTRACT DEFINED.—In this paragraph, the term ‘design-build contract’ means an agreement that provides for design and construction of a project by a contractor, regardless of whether the agreement is in the form of a design-build contract, a franchise agreement, or any other form of contract approved by the Secretary.”

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

#### REGULATIONS

Pub. L. 105-178, title I, §1307(c), June 9, 1998, 112 Stat. 230, provided that:

“(1) IN GENERAL.—Not later than the effective date specified in subsection (e) [see Effective Date of 1998 Amendment note above], after consultation with the American Association of State Highway and Transportation Officials and representatives from affected industries, the Secretary shall issue regulations to carry out the amendments made by this section [amending this section].

“(2) CONTENTS.—The regulations shall—

“(A) identify the criteria to be used by the Secretary in approving the use by a State transportation department or local transportation agency of design-build contracting; and

“(B) establish the procedures to be followed by a State transportation department or local transportation agency for obtaining the Secretary’s approval of the use of design-build contracting by the department or agency.”

#### EFFECT ON EXPERIMENTAL PROGRAM

Pub. L. 105-178, title I, §1307(d), June 9, 1998, 112 Stat. 231, provided that: “Nothing in this section [amending this section and enacting provisions set out as notes under this section] or the amendments made by this section affects the authority to carry out, or any project carried out under, any experimental program concerning design-build contracting that is being carried out by the Secretary as of the date of enactment of this Act [June 9, 1998].”

#### REPORT TO CONGRESS

Pub. L. 105-178, title I, §1307(f), June 9, 1998, 112 Stat. 231, provided that:

“(1) IN GENERAL.—Not later than 5 years after the date of enactment of this Act [June 9, 1998], the Secretary shall submit to Congress a report on the effectiveness of design-build contracting procedures.

“(2) CONTENTS.—The report shall contain—

“(A) an assessment of the effect of design-build contracting on project quality, project cost, and timeliness of project delivery;

“(B) recommendations on the appropriate level of design for design-build procurements;

“(C) an assessment of the impact of design-build contracting on small businesses;

“(D) assessment of the subjectivity used in design-build contracting; and

“(E) such recommendations concerning design-build contracting procedures as the Secretary determines to be appropriate.”

#### PRIVATE SECTOR INVOLVEMENT PROGRAM

Pub. L. 102-240, title I, §1060, Dec. 18, 1991, 105 Stat. 2003, provided that:

“(a) ESTABLISHMENT.—The Secretary shall establish a private sector involvement program to encourage States to contract with private firms for engineering and design services in carrying out Federal-aid highway projects when it would be cost effective.

“(b) GRANTS TO STATES.—

“(1) IN GENERAL.—In conducting the program under this section, the Secretary may make grants in each of fiscal years 1992, 1993, 1994, 1995, 1996, and 1997 to not less than 3 States which the Secretary determines have implemented in the fiscal year preceding the fiscal year of the grant the most effective programs for increasing the percentage of funds expended for contracting with private firms (including small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals) for engineering and design services in carrying out Federal-aid highway projects.

“(2) USE OF GRANTS.—A grant received by a State under this subsection may be used by the State only for awarding contracts for engineering and design services to carry out projects and activities for which Federal funds may be obligated under title 23, United States Code.

“(3) FUNDING.—There are authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 1992 through 1997. Such sums shall remain available until expended.

“(c) REPORT BY FHWA.—Not later than 120 days after the date of the enactment of this Act [Dec. 18, 1991], the Administrator of the Federal Highway Administration shall submit to the Secretary a report on the amount of funds expended by each State in fiscal years 1980 through 1990 on contracts with private sector engineering and design firms in carrying out Federal-aid highway projects. The Secretary shall use information in the report to evaluate State engineering and design programs for the purpose of awarding grants under subsection (b).

“(d) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall transmit to Congress a report on implementation of the program established under this section.

“(e) ENGINEERING AND DESIGN SERVICES DEFINED.—The term ‘engineering and design services’ means any category of service described in section 112(b) of title 23, United States Code.

“(f) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall issue regulations to carry out this section.”

#### PILOT PROGRAM FOR UNIFORM AUDIT PROCEDURES

Pub. L. 102-240, title I, §1092, Dec. 18, 1991, 105 Stat. 2024, directed Secretary to establish pilot program to include no more than 10 States under which any contract or subcontract awarded in accordance with subsec. (b)(2)(A) of this section was to be performed and audited in compliance with cost principles contained in Federal acquisition regulations of part 41 of title 48 of Code of Federal Regulations, provided for indirect cost rates in lieu of performing audits, and required each State participating in pilot program to report to Secretary not later than 3 years after Dec. 18, 1991, on results of program, prior to repeal by Pub. L. 104-59, title III, §307(b), Nov. 28, 1995, 109 Stat. 582. See subsec. (b)(2)(C) to (F) of this section.

#### EVALUATION OF STATE PROCUREMENT PRACTICES

Pub. L. 102-240, title VI, §6014, Dec. 18, 1991, 105 Stat. 2181, directed Secretary to conduct a study to evaluate whether or not current procurement practices of State departments and agencies were adequate to ensure that highway and transit systems were designed, constructed, and maintained so as to achieve a high quality for such systems at the lowest overall cost and, not later than 2 years after Dec. 18, 1991, to transmit to

Congress a report on the results of the study, together with an assessment of the need for establishing a national policy on transportation quality assurance and recommendations for appropriate legislative and administrative actions.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 210 of this title; title 49 section 5325.

### § 113. Prevailing rate of wage

(a) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on the construction work performed on highway projects on the Federal-aid highways authorized under the highway laws providing for the expenditure of Federal funds upon the Federal-aid systems, shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931, known as the Davis-Bacon Act (40 U.S.C. 276a).

(b) In carrying out the duties of subsection (a) of this section, the Secretary of Labor shall consult with the highway department of the State in which a project on any of the Federal-aid systems is to be performed. After giving due regard to the information thus obtained, he shall make a predetermination of the minimum wages to be paid laborers and mechanics in accordance with the provisions of subsection (a) of this section which shall be set out in each project advertisement for bids and in each bid proposal form and shall be made a part of the contract covering the project.

(c) The provisions of the section shall not be applicable to employment pursuant to apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal employment opportunity in connection with Federal-aid highway construction programs.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 895; Pub. L. 90-495, §12(a), Aug. 23, 1968, 82 Stat. 821; Pub. L. 97-424, title I, §149, Jan. 6, 1983, 96 Stat. 2131; Pub. L. 100-17, title I, §133(b)(5), Apr. 2, 1987, 101 Stat. 171; Pub. L. 102-240, title I, §1006(g)(2), Dec. 18, 1991, 105 Stat. 1927.)

#### REFERENCES IN TEXT

Act of March 3, 1931, known as the Davis-Bacon Act (40 U.S.C. 276a), referred to in subsec. (a), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

#### AMENDMENTS

1991—Subsec. (a). Pub. L. 102-240, which directed substitution of “highways” for “systems, the primary and secondary, as well as their extension in urban areas, and the Interstate system,” was executed by making the substitution for the quoted words which in the original contained the word “extensions” rather than “extension”, to reflect the probable intent of Congress.

1987—Subsec. (a). Pub. L. 100-17 substituted “March 3, 1931” for “August 30, 1935” and “276a” for “267a”.

1983—Subsec. (a). Pub. L. 97-424 struck out “initial” after “subcontractors on the”.

1968—Subsec. (a). Pub. L. 90-495 extended wage rate provisions to the construction of all Federal-aid highway projects by amending provisions limiting them only to the Interstate System.

Subsec. (b). Pub. L. 90-495 substituted “any of the Federal-aid systems” for “the Interstate System”.

Subsec. (c). Pub. L. 90-495 added subsec. (c).

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title.

### § 114. Construction

(a) CONSTRUCTION WORK IN GENERAL.—The construction of any highways or portions of highways located on a Federal-aid system shall be undertaken by the respective State transportation departments or under their direct supervision. Except as provided in section 117<sup>1</sup> of this title, such construction shall be subject to the inspection and approval of the Secretary. The construction work and labor in each State shall be performed under the direct supervision of the State transportation department and in accordance with the laws of that State and applicable Federal laws. Construction may be begun as soon as funds are available for expenditure pursuant to subsection (a) of section 118 of this title. After July 1, 1973, the State transportation department shall not erect on any project where actual construction is in progress and visible to highway users any informational signs other than official traffic control devices conforming with standards developed by the Secretary of Transportation.

(b) CONVICT LABOR AND CONVICT PRODUCED MATERIALS.—

(1) LIMITATION ON CONVICT LABOR.—Convict labor shall not be used in construction of highways or portions of highways located on a Federal-aid system unless it is labor performed by convicts who are on parole, supervised release, or probation.

(2) LIMITATION ON CONVICT PRODUCED MATERIALS.—Materials produced after July 1, 1991, by convict labor may only be used in such construction—

(A) if such materials are produced by convicts who are on parole, supervised release, or probation from a prison; or

(B) if such materials are produced by convicts in a qualified prison facility and the amount of such materials produced in such facility for use in such construction during any 12-month period does not exceed the amount of such materials produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

(3) QUALIFIED PRISON FACILITY DEFINED.—As used in this subsection, “qualified prison facility” means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in construction of highways or portions of highways located on a Federal-aid system.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 86-657, §8(f), July 14, 1960, 74 Stat. 525; Pub. L. 93-87, title I, §115, Aug. 13, 1973, 87 Stat. 258; Pub. L. 97-424, title I, §148, Jan. 6, 1983, 96 Stat. 2131; Pub. L. 98-473, title II, §226, Oct. 12, 1984, 98 Stat. 2030; Pub. L. 100-17, title I, §112(a), (b)(1), Apr. 2, 1987, 101 Stat. 148; Pub. L. 102-240, title I, §1019, Dec. 18, 1991, 105 Stat. 1948; Pub. L. 105-178, title I, §1212(a)(2)(A), June 9, 1998, 112 Stat. 193.)

#### REFERENCES IN TEXT

Section 117 of this title, referred to in subsec. (a), relating to certification acceptance, was repealed and a new section 117, relating to high priority projects program, was enacted by Pub. L. 105-178, title I, §1601(a), June 9, 1998, 112 Stat. 255.

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178 substituted “State transportation department” for “State highway department” in two places and “State transportation departments” for “State highway departments”.

1991—Subsec. (b)(2). Pub. L. 102-240, inserted “after July 1, 1991,” after “Materials produced” in introductory provisions.

1987—Subsec. (a). Pub. L. 100-17, §112(b)(1), inserted heading.

Subsec. (b). Pub. L. 100-17, §112(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Convict labor or materials produced by convict labor shall not be used in such construction unless it is labor performed by convicts who are on parole or probation.”

1984—Subsec. (b). Pub. L. 98-473 which directed the insertion of “, supervised release,” after “parole” effective Nov. 1, 1987, was not executed, because of intervening general amendment of subsec. (b) by Pub. L. 100-17, §112(a), which contained “, supervised release,” after “parole” wherever appearing.

1983—Subsec. (b). Pub. L. 97-424 inserted “or materials produced by convict labor” after “Convict labor”.

1973—Subsec. (a). Pub. L. 93-87 amended last sentence generally. Prior to amendment, last sentence read as follows: “On any project where actual construction is in progress and visible to highway users, the State highway department shall erect such informational sign or signs as prescribed by the Secretary, identifying the project and the respective amounts contributed therefor by the State and Federal Governments.”

1960—Subsec. (a). Pub. L. 86-657 required State highway departments to erect, on any project where actual construction is in progress and visible to highway users, such informational sign or signs as prescribed by the Secretary, identifying the project and the respective contributions therefor by the State and Federal Governments.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the

<sup>1</sup> See References in Text note below.

taking effect of this amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

#### MATERIALS PRODUCED BY CONVICT LABOR

Pub. L. 101-162, title II, §202, Nov. 21, 1989, 103 Stat. 1002, provided that: "During fiscal year 1990 and hereafter, materials produced by convict labor may be used in the construction of any highways or portion of highways located on Federal-aid systems, as described in section 103 of title 23, United States Code."

Similar fiscal year provisions were contained in the following appropriation acts:

Pub. L. 100-459, title II, §202, Oct. 1, 1988, 102 Stat. 2199.

Pub. L. 100-202, §101(a) [title II, §202], Dec. 22, 1987, 101 Stat. 1329, 1329-15.

Pub. L. 99-500, §101(b) [title II, §202], Oct. 18, 1986, 100 Stat. 1783-39, 1783-51, and Pub. L. 99-591, §101(b) [title II, §202], Oct. 30, 1986, 100 Stat. 3341-39, 3341-51.

Pub. L. 99-180, title II, §202, Dec. 13, 1985, 99 Stat. 1146.

Pub. L. 98-411, title II, §202, Aug. 30, 1984, 98 Stat. 1558, repealed by Pub. L. 100-17, title I, §112(b)(2), Apr. 2, 1987, 101 Stat. 149.

Pub. L. 98-166, title II, §202, Nov. 28, 1983, 97 Stat. 1085.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title.

### § 115. Advance construction

(a) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT, SURFACE TRANSPORTATION, BRIDGE, PLANNING, AND RESEARCH PROJECTS.—

(1) GENERAL RULE.—Subject to paragraph (2), when a State—

(A)(i) has obligated all funds apportioned or allocated to it under section 104(b)(2), 104(b)(3), 104(f), 144, or 505 of this title, or

(ii) has used or demonstrates that it will use all obligation authority allocated to it for Federal-aid highways and highway safety construction, and

(B) proceeds with a project funded under such an apportionment or allocation without the aid of Federal funds in accordance with all procedures and all requirements applicable to such a project, except insofar as such procedures and requirements limit the State to implementation of projects with the aid of Federal funds previously apportioned or allocated to it or limit a State to implementation of a project with obligation authority previously allocated to it for Federal-aid highways and highway safety construction,

the Secretary, upon approval of an application of the State, is authorized to pay to the State the Federal share of the cost of the project when additional funds are apportioned or allocated to the State under such section or when additional obligation authority is allocated to it.

(2) PLANS, SPECIFICATIONS, AND APPLICABLE STANDARDS.—The Secretary may only make payments to a State with respect to a project if—

(A) prior to commencement of the project the Secretary approves the project in the same manner as the Secretary approves other projects, and

(B) the project conforms to the applicable standards under this title.

(b) INTERSTATE AND NATIONAL HIGHWAY SYSTEM PROJECTS.—When a State proceeds to con-

struct any project on the National Highway System or the Interstate System without the aid of Federal funds in accordance with all procedures and all requirements applicable to such a project, except insofar as such procedures and requirements limit the State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon approval of application of the State, is authorized to pay to the State the Federal share of the cost of construction of the project when additional funds are apportioned to the State under section 104(b)(1) or 104(b)(4), as the case may be, if—

(1) prior to the construction of the project the Secretary approves the plans and specifications therefor in the same manner as other projects, and

(2) the project conforms to the applicable standards under section 109 of this title.

(c) INCLUSION IN TRANSPORTATION IMPROVEMENT PROGRAM.—The Secretary may approve an application for a project under this section only if the project is included in the transportation improvement program of the State developed under section 135(f).

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 90-495, §25(a), (b), Aug. 23, 1968, 82 Stat. 828, 829; Pub. L. 93-643, §111, Jan. 4, 1975, 88 Stat. 2285; Pub. L. 96-106, §4, Nov. 9, 1979, 93 Stat. 797; Pub. L. 97-424, title I, §113, Jan. 6, 1983, 96 Stat. 2106; Pub. L. 100-17, title I, §113(a)-(d)(1), Apr. 2, 1987, 101 Stat. 149, 150; Pub. L. 102-302, §103, June 22, 1992, 106 Stat. 252; Pub. L. 104-59, title III, §308, Nov. 28, 1995, 109 Stat. 582; Pub. L. 105-178, title I, §§1103(l)(3)(A), 1106(c)(1)(A), 1226(a), title V, §5119(d), June 9, 1998, 112 Stat. 126, 136, 452; Pub. L. 105-206, title IX, §9003(a), July 22, 1998, 112 Stat. 837.)

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178, §1106(c)(1)(A)(i), struck out "Substitute," before "Congestion" in heading.

Subsec. (a)(1)(A)(i). Pub. L. 105-178, §§1106(c)(1)(A)(ii), 5119(d), struck out "103(e)(4)(H)," after "under section" and substituted "or 505" for "or 307".

Subsec. (b). Pub. L. 105-178, §1226(a)(1), as added by Pub. L. 105-206, §9003(a), struck out designation and heading of par. (1), redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, realigned margins, and struck out former pars. (2) and (3), which related to bond interest for projects under construction on Jan. 1, 1983, and directed that Federal share of cost of construction would include amount of bond interest but not in excess of estimated costs over actual costs.

Subsec. (b)(1). Pub. L. 105-178, §1103(l)(3)(A), substituted "104(b)(4)" for "104(b)(5)".

Subsecs. (c), (d). Pub. L. 105-178, §1226(a)(2), (3), as added by Pub. L. 105-206, §9003(a), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: "In determining the apportionment for any fiscal year under the provisions of section 103(e)(4), 104, 134, 144., or 307 of this title, any such project constructed by a State without the aid of Federal funds shall not be considered completed until an application under the provisions of this section with respect to such project has been approved by the Secretary."

1995—Subsec. (d). Pub. L. 104-59 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

"(d) LIMITATION ON ADVANCED FUNDING.—The Secretary may not approve an application under this sec-

tion unless an authorization for section 103(e)(4), 104, 144, or 307 of this title, as the case may be, is in effect for the fiscal year for which the application is sought beyond the currently authorized funds for each State. No applications may be approved which will exceed the State's expected apportionment of such authorizations."

1992—Subsec. (a). Pub. L. 102-302, §103(1), in heading substituted "SUBSTITUTE, CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT, SURFACE TRANSPORTATION, BRIDGE, PLANNING, AND RESEARCH PROJECTS" for "SUBSTITUTE, URBAN, SECONDARY, BRIDGE, PLANNING, RESEARCH, AND SAFETY CONSTRUCTION PROJECTS".

Subsec. (a)(1)(A)(i). Pub. L. 102-302, §103(2)(A), added cl. (i) and struck out former cl. (i) which read as follows: "has obligated all funds apportioned or allocated to it under section 103(e)(4)(H), section 104(b)(2), section 104(b)(6), section 104(f), section 130, section 144, section 152, or section 307 of this title, or".

Subsec. (a)(2)(A). Pub. L. 102-302, §103(2)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: "prior to commencement of the project the Secretary approves the plans and specifications therefor in the same manner as other projects, and".

Subsec. (a)(3). Pub. L. 102-302, §103(2)(C), struck out par. (3) which read as follows: "LIMITATION WITH RESPECT TO CURRENTLY AUTHORIZED FUNDS.—The Secretary may not approve an application under this section unless an authorization for section 103(e)(4), 104, 130, 144, 152, or 307 of this title, as the case may be, is in effect for the fiscal year for which the application is sought beyond the currently authorized funds for such State. No application may be approved which will exceed the State's expected apportionment of such authorizations. This paragraph shall have no effect during the period beginning January 1, 1987, and ending September 30, 1990."

Subsec. (b). Pub. L. 102-302, §103(3), (4), in heading substituted "NATIONAL HIGHWAY SYSTEM" for "PRIMARY" and in par. (1) substituted "National Highway System" for "Federal-aid primary system".

Subsec. (c). Pub. L. 102-302, §103(5), struck out "152" after "144."

Subsec. (d). Pub. L. 102-302, §103(6), added subsec. (d) and struck out former subsec. (d) which read as follows: "LIMITATION ON ADVANCED FUNDING FOR FISCAL YEARS 1987-1990.—The Secretary may not approve an application of a State under this section with respect to a project with funds apportioned, or currently authorized to be apportioned, under section 103(e)(4)(H), 104, 130, 144, 152, or 307 if the amount of approved applications with respect to such projects exceeds the total of unobligated funds apportioned or allocated to the State under such section, plus such State's expected apportionment under such section from existing authorizations plus an amount equal to such State's expected apportionment under such section (other than section 104(b)(5)(A)) for one additional fiscal year. This subsection shall only be effective during the period beginning January 1, 1987, and ending September 30, 1990."

1987—Pub. L. 100-17, §113(d)(1)(A), substituted "Advance construction" for "Construction by States in advance of apportionment" in section catchline.

Subsec. (a). Pub. L. 100-17, §113(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

"(1) When a State has obligated all funds apportioned or allocated to it under section 103(e)(4), 104, or 144 of this title, other than Interstate funds, and proceeds to construct any highway substitute, Federal-aid system, or bridge project, respectively, other than an Interstate project funded under section 104(b)(5) of this title, without the aid of Federal funds in accordance with all procedures and all requirements applicable to such a project, except insofar as such procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to such State the Federal share of the costs of construc-

tion of such project when additional funds are apportioned to such State under section 103(e)(4), 104, or 144, respectively, of this title if—

"(A) prior to the construction of the project the Secretary approves the plans and specifications therefor in the same manner as other projects, and

"(B) the project conforms to the applicable standards adopted under section 109 of this title.

"(2) The Secretary may not approve an application under this section unless an authorization for section 103(e)(4), 104, or 144 of this title, as the case may be, is in effect for the fiscal year for which the application is sought beyond the currently authorized funds for such State. No application may be approved which will exceed the State's expected apportionment of such authorizations."

Subsec. (b). Pub. L. 100-17, §113(b), inserted heading.

Subsec. (b)(1). Pub. L. 100-17, §113(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "When a State proceeds to construct any project on the Interstate System without the aid of Federal funds, as that System may be designated at that time, in accordance with all procedures and all requirements applicable to projects on such System, except insofar as such procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to such State the Federal share of the cost of construction of such project when additional funds are apportioned to such State under section 104 of this title if—

"(A) prior to the construction of the project the Secretary approves the plans and specifications therefor in the same manner as other projects on the Interstate System, and

"(B) the project conforms to the applicable standards under section 109 of this title."

Subsec. (b)(2), (3). Pub. L. 100-17, §113(d)(1)(B)–(D), inserted headings and aligned pars. (2) and (3) with par. (1), as amended.

Subsec. (c). Pub. L. 100-17, §113(d)(1)(E), (F), inserted heading and substituted "134, 144, 152, or 307" for "or 144".

Subsec. (d). Pub. L. 100-17, §113(c), added subsec. (d).

1983—Subsec. (a). Pub. L. 97-424, §113(c), designated existing provisions as pars. (1) and (2) and designated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1); in par. (1) as so redesignated, substituted "When a State has obligated all funds appropriated or allocated to it under section 103(e)(4), 104, or 144 of this title, other than "interstate funds, and proceeds to construct any highway substitute, Federal-aid system, or bridge project, respectively, other than an Interstate project funded under section 104(b)(5) of this title, without the aid of Federal funds in accordance with all procedures and all requirements applicable to such a project, except insofar as such procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to such State the Federal share of the costs of construction of such project when additional funds are apportioned to such State under section 103(e)(4), 104, or 144, respectively, of this title if—" for "When a State has obligated all funds for any of the Federal-aid systems, other than the Interstate System, apportioned to it under section 104 of this title, and proceeds to construct any project without the aid of Federal funds, including one or more parts of any project, on any of the Federal-aid systems in such State, other than the Interstate System, as any of those systems may be designated at that time, in accordance with all procedures and all requirements applicable to projects on any such system, except insofar as such procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to

such State the Federal share of the costs of construction of such project when additional funds are apportioned to such State under section 104 of this title if—"; in subpar. (A) thereof struck out "on the Federal-aid system involved" after "other projects"; and in par. (2) as so designated inserted "for section 103(e)(4), 104, or 144 of this title, as the case may be," after "unless authorization", and made a new sentence of existing provisions, beginning with "No application".

Subsec. (b)(2). Pub. L. 97-424, §113(a), substituted "1983" for "1978" wherever appearing.

Subsec. (b)(3). Pub. L. 97-424, §113(b), added par. (3).

Subsec. (c). Pub. L. 97-424, §113(d), substituted "section 103(e)(4), 104, or 144" for "section 104" after "provisions of".

1979—Subsec. (b). Pub. L. 96-106 designated existing provisions as par. (1) and cls. (1) and (2) thereof as subpars. (A) and (B) and added par. (2).

1975—Subsec. (a). Pub. L. 93-643, §111(a), substituted "other than the Interstate System" for "including the Interstate System" in two places.

Subsecs. (b), (c). Pub. L. 93-643, §111(b), added subsec. (b) and redesignated former subsec. (b) as (c).

1968—Subsec. (a). Pub. L. 90-495, §25(a), extended advance construction authority to all the Federal-aid highway systems rather than just the Interstate System but provided that anticipation of future apportionments by States should only be permitted for those years for which authorizations have been established by law.

Subsec. (b). Pub. L. 90-495, §25(b), struck out reference to subsec. (b)(5) of section 104 of this title.

#### 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 this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

### § 116. Maintenance

(a) It shall be the duty of the State transportation department to maintain, or cause to be maintained, any project constructed under the provisions of this chapter or constructed under the provisions of prior Acts. The State's obligation to the United States to maintain any such project shall cease when it no longer constitutes a part of a Federal-aid system.

(b) In any State wherein the State transportation department is without legal authority to maintain a project constructed on the Federal-aid secondary system, or within a municipality, such highway<sup>1</sup> department shall enter into a formal agreement for its maintenance with the appropriate officials of the county or municipality in which such project is located.

(c) If at any time the Secretary shall find that any project constructed under the provisions of this chapter or constructed under the provisions of prior Acts, is not being properly maintained, he shall call such fact to the attention of the State transportation department. If, within ninety days after receipt of such notice, such project has not been put in proper condition of

maintenance, the Secretary shall withhold approval of further projects of all types in the State highway district, municipality, county, other political or administrative subdivision of the State, or the entire State in which such project is located, whichever the Secretary deems most appropriate, until such project shall have been put in proper condition of maintenance.

(d) PREVENTIVE MAINTENANCE.—A preventive maintenance activity shall be eligible for Federal assistance under this title if the State demonstrates to the satisfaction of the Secretary that the activity is a cost-effective means of extending the useful life of a Federal-aid highway.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 86-70, §21(d)(2), (e)(3), June 25, 1959, 73 Stat. 145, 146; Pub. L. 90-495, §26, Aug. 23, 1968, 82 Stat. 829; Pub. L. 95-599, title I, §124(d), Nov. 6, 1978, 92 Stat. 2705; Pub. L. 97-424, title I, §114, Jan. 6, 1983, 96 Stat. 2107; Pub. L. 100-17, title I, §125(b)(2), Apr. 2, 1987, 101 Stat. 167; Pub. L. 104-59, title III, §309, Nov. 28, 1995, 109 Stat. 582; Pub. L. 105-178, title I, §1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193.)

#### AMENDMENTS

1998—Subsecs. (a) to (c). Pub. L. 105-178 substituted "State transportation department" for "State highway department".

1995—Subsec. (d). Pub. L. 104-59 added subsec. (d).

1987—Subsecs. (d), (e). Pub. L. 100-17 struck out subsecs. (d) and (e) which read as follows:

"(d) The Secretary in consultation with the State highway departments and interested and knowledgeable private organizations and individuals shall as soon as possible establish national bridge inspection standards in order to provide for the proper safety inspection of bridges. Such standards shall specify in detail the method by which inspections shall be conducted by the State highway departments, the maximum time lapse between inspections and the qualifications for those charged with the responsibility for carrying out such inspections. Each State shall be required to maintain written reports to be available to the Secretary pursuant to such inspections together with a notation of the action taken pursuant to the findings of such inspections. Each State shall be required to maintain a current inventory of all bridges.

"(e) The Secretary shall establish in cooperation with the State highway departments a program designed to train appropriate employees of the Federal Government and the State governments to carry out bridge inspections. Such a program shall be revised from time to time in light of new or improved techniques. For the purposes of this section the Secretary may use funds made available pursuant to the provisions of section 104(a) and section 307(a) of this title."

1983—Subsec. (c). Pub. L. 97-424 substituted "State highway district, municipality, county, other political or administrative subdivision of the State, or the entire State in which such project is located, whichever the Secretary deems most appropriate," for "entire State" after "all types in the", and struck out exception for a situation where such project was subject to an agreement pursuant to subsection (b) of this section, in which case approval was to have been withheld only for secondary or urban projects in the county or municipality where such project is located.

1978—Subsec. (d). Pub. L. 95-599 struck out provisions limiting provisions of the subsection to the Federal-aid system.

1968—Subsecs. (d), (e). Pub. L. 90-495 added subsecs. (d) and (e).

1959—Subsec. (a). Pub. L. 86-70, §21(e)(3), substituted "It" for "Except as provided in subsection (d) of this section, it".

<sup>1</sup> So in original. Probably should be "transportation". See 1998 Amendment note.



Subsec. (d). Pub. L. 86-70, §21(d)(2), repealed subsec. (d) which related to expenditure of funds apportioned to the Territory of Alaska and contributed by the Territory for the maintenance of roads.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by section 21(d)(2) of Pub. L. 86-70 effective July 1, 1959, see section 21(d) of Pub. L. 86-70, set out as a note under section 103 of this title.

Amendment by section 21(e)(3) of Pub. L. 86-70 effective July 1, 1959, see section 21(e) of Pub. L. 86-70, set out as a note under section 101 of this title.

ESTABLISHMENT OF MINIMUM FEDERAL GUIDELINES FOR MAINTENANCE; STUDY BY NATIONAL ACADEMY OF SCIENCES AND REPORT

Section 163 of Pub. L. 100-17 directed Secretary to enter into appropriate arrangements with the National Academy of Sciences to conduct a complete investigation of the appropriateness of establishing minimum Federal guidelines for maintenance of the Federal-aid primary, secondary, and urban systems and, not later than 18 months after entering into appropriate arrangements, the National Academy of Sciences was to submit to Secretary and Congress a report on the results of the investigation and study together with recommendations (including legislative and administrative recommendations) concerning establishment of minimum Federal guidelines for maintenance of the Federal-aid primary, secondary, and urban systems.

**§ 117. High priority projects program**

(a) **AUTHORIZATION OF HIGH PRIORITY PROJECTS.**—The Secretary is authorized to carry out high priority projects with funds made available to carry out the high priority projects program under this section. Of amounts made available to carry out this section, the Secretary, subject to subsection (b), shall make available to carry out each project described in section 1602 of the Transportation Equity Act for the 21st Century the amount listed for such project in such section. Any amounts made available to carry out such program that are not allocated for projects described in such section shall be available to the Secretary, subject to subsection (b), to carry out such other high priority projects as the Secretary determines appropriate.

(b) **ALLOCATION PERCENTAGES.**—For each project to be carried out with funds made available to carry out the high priority projects program under this section—

- (1) 11 percent of such amount shall be available for obligation beginning in fiscal year 1998;
- (2) 15 percent of such amount shall be available for obligation beginning in fiscal year 1999;
- (3) 18 percent of such amount shall be available for obligation beginning in fiscal year 2000;
- (4) 18 percent of such amount shall be available for obligation beginning in fiscal year 2001;
- (5) 19 percent of such amount shall be available for obligation beginning in fiscal year 2002; and
- (6) 19 percent of such amount shall be available for obligation beginning in fiscal year 2003.

(c) **FEDERAL SHARE.**—The Federal share payable on account of any project carried out with funds made available to carry out this section shall be 80 percent of the total cost thereof.

(d) **DELEGATION TO STATES.**—Subject to the provisions of this title, the Secretary shall delegate responsibility for carrying out a project or projects, with funds made available to carry out this section, to the State in which such project or projects are located upon request of such State.

(e) **ADVANCE CONSTRUCTION.**—When a State which has been delegated responsibility for a project under this section—

(1) has obligated all funds allocated under this section and section 1602 of the Transportation Equity Act for the 21st Century for such project; and

(2) proceeds to construct such project without the aid of Federal funds in accordance with all procedures and all requirements applicable to such project, except insofar as such procedures and requirements limit the State to the construction of projects with the aid of Federal funds previously allocated to it;

the Secretary, upon the approval of the application of a State, shall pay to the State the Federal share of the cost of construction of the project when additional funds are allocated for such project under this section and section 1602 of the Transportation Equity Act for the 21st Century.

(f) **PERIOD OF AVAILABILITY.**—Funds made available to carry out this section shall remain available until expended.

(g) **AVAILABILITY OF OBLIGATION LIMITATION.**—Obligation authority attributable to funds made available to carry out this section shall only be available for the purposes of this section and shall remain available until obligated pursuant to section 1102(g) of the Transportation Equity Act for the 21st Century.

(h) **TREATMENT.**—Funds allocated to a State in accordance with this section shall be treated as amounts in addition to the amounts a State is apportioned under sections 104, 105, and 144 for programmatic purposes.

(Added Pub. L. 105-178, title I, §1601(a), June 9, 1998, 112 Stat. 255.)

REFERENCES IN TEXT

Section 1602 of the Transportation Equity Act for the 21st Century, referred to in subsecs. (a) and (e), is section 1602 of Pub. L. 105-178, title I, June 9, 1998, 112 Stat. 256, which is not classified to the Code.

Section 1102(g) of the Transportation Equity Act for the 21st Century, referred to in subsec. (g), is section 1102(g) of Pub. L. 105-178, which is set out as a note under section 104 of this title.

PRIOR PROVISIONS

A prior section 117, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 897; Pub. L. 93-87, title I, §116(a), Aug. 13, 1973, 87 Stat. 258; Pub. L. 94-280, title I, §116, May 5, 1976, 90 Stat. 436; Pub. L. 97-449, §5(d)(1), Jan. 12, 1983, 96 Stat. 2442; Pub. L. 102-240, title I, §1016(f)(2), Dec. 18, 1991, 105 Stat. 1946, related to certification acceptance, prior to repeal by Pub. L. 105-178, title I, §1601(a), June 9, 1998, 112 Stat. 255.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 112, 114, 145 of this title.

**§ 118. Availability of funds**

(a) **DATE AVAILABLE FOR OBLIGATION.**—Except as otherwise specifically provided, authorizations from the Highway Trust Fund (other than the Mass Transit Account) to carry out this title shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first.

(b) **PERIOD OF AVAILABILITY.**—

(1) **INTERSTATE CONSTRUCTION FUNDS.**—Funds apportioned or allocated for Interstate construction in a State (other than Massachusetts) shall remain available for obligation in that State until the last day of the fiscal year in which they are apportioned or allocated. Sums not obligated by the last day of the fiscal year in which they are apportioned or allocated shall be allocated to other States, except Massachusetts, at the discretion of the Secretary. All sums apportioned or allocated on or after October 1, 1994, shall remain available in the State until expended. All sums apportioned or allocated to Massachusetts on or after October 1, 1989, shall remain available until expended.

(2) **OTHER FUNDS.**—Except as otherwise specifically provided, funds apportioned or allocated pursuant to this title (other than for Interstate construction) in a State shall remain available for obligation in that State for a period of 3 years after the last day of the fiscal year for which the funds are authorized. Any amounts so apportioned or allocated that remain unobligated at the end of that period shall lapse.

(c) **SET ASIDES FOR INTERSTATE DISCRETIONARY PROJECTS.**—

(1) **IN GENERAL.**—Before any apportionment is made under section 104(b)(4), the Secretary shall set aside \$50,000,000 in fiscal year 1998 and \$100,000,000 in each of fiscal years 1999 through 2003 for obligation by the Secretary for projects for resurfacing, restoring, rehabilitating, and reconstructing any route or portion thereof on the Interstate System (other than any highway designated as a part of the Interstate System under section 139 (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century)) and any toll road on the Interstate System not subject to an agreement under section 119(e) (as in effect on December 17, 1991).

(2) **SELECTION CRITERIA.**—The amounts set aside under paragraph (1) shall be made available by the Secretary to any State applying for such funds if the Secretary determines that—

(A) the State has obligated or demonstrates that it will obligate in the fiscal year all of its apportionments under section 104(b)(4) other than an amount that, by itself, is insufficient to pay the Federal share of the cost of a project for resurfacing, restoring, rehabilitating, and reconstructing the Interstate System that has been submitted by the State to the Secretary for approval; and

(B) the applicant is willing and able to—

(i) obligate the funds within 1 year of the date the funds are made available;

(ii) apply the funds to a ready-to-commence project; and

(iii) in the case of construction work, begin work within 90 days after obligation.

(3) **PRIORITY CONSIDERATION FOR CERTAIN PROJECTS.**—In selecting projects to fund under paragraph (1), the Secretary shall give priority consideration to any project the cost of which exceeds \$10,000,000 on any high volume route in an urban area or a high truck-volume route in a rural area.

(4) **PERIOD OF AVAILABILITY OF DISCRETIONARY FUNDS.**—Sums made available pursuant to this subsection shall remain available until expended.

(d) **EFFECT OF RELEASE OF FUNDS.**—Any Federal-aid highway funds released by the final payment on a project, or by the modification of the project agreement, shall be credited to the same program funding category previously apportioned to the State and shall be immediately available for expenditure.

(e)<sup>1</sup> Funds made available to the State of Alaska and the Commonwealth of Puerto Rico under this title may be expended for construction of access and development roads that will serve resource development, recreational, residential, commercial, industrial, or other like purposes.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 897; Pub. L. 89-574, §7(a), Sept. 13, 1966, 80 Stat. 768; Pub. L. 94-280, title I, §117(a), May 5, 1976, 90 Stat. 436; Pub. L. 95-599, title I, §115(a), Nov. 6, 1978, 92 Stat. 2697; Pub. L. 96-106, §5(a), Nov. 9, 1979, 93 Stat. 797; Pub. L. 97-424, title I, §115, Jan. 6, 1983, 96 Stat. 2107; Pub. L. 100-17, title I, §§114(a)-(c), (e)(2)-(4), 115, Apr. 2, 1987, 101 Stat. 150-153; Pub. L. 102-240, title I, §1020, Dec. 18, 1991, 105 Stat. 1948; Pub. L. 102-388, title IV, §409, Oct. 6, 1992, 106 Stat. 1565; Pub. L. 105-178, title I, §§1106(c)(1)(B), 1107(b), 1226(b), June 9, 1998, 112 Stat. 136, 137; Pub. L. 105-206, title IX, §9003(a), July 22, 1998, 112 Stat. 837.)

**REFERENCES IN TEXT**

The date of enactment of the Transportation Equity Act for the 21st Century, referred to in subsec. (c)(1), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

**AMENDMENTS**

1998—Subsec. (b). Pub. L. 105-178, §1226(b)(1), as added by Pub. L. 105-206, §9003(a), struck out “; Discretionary Projects” after “Availability” in heading.

Subsec. (c). Pub. L. 105-178, §1107(b), reenacted heading without change and amended text of subsec. (c) generally. Prior to amendment, text related to set asides for interstate discretionary projects, including set asides for construction projects and for 4R projects.

Subsec. (d). Pub. L. 105-178, §1106(c)(1)(B), which directed the redesignation of subsec. (e) as (d) and the striking out of former subsec. (d), was executed by redesignating the subsec. (e) added by Pub. L. 105-178, §1226(b)(2) as (d), and striking out former subsec. (d), to reflect the probable intent of Congress. Former subsec. (d) read as follows: “In addition to amounts otherwise available to carry out this section, an amount equal to the amount by which the unobligated apportionment for the Interstate System in any State is reduced under section 103(e)(4) of this title on account of the with-

<sup>1</sup> See 1998 Amendment note below.

drawal of a route or portion thereof on the Interstate System, which withdrawal is approved after the date of enactment of this subsection, shall be available to the Secretary for obligation in accordance with subsection (b)(1) of this section.”

Subsec. (e). Pub. L. 105-178, §1106(c)(1)(B)(ii), redesignated subsec. (f) as (e). Subsec. (e) as added by Pub. L. 105-178, §1226(b)(2), redesignated (d), to reflect the probable intent of Congress.

Pub. L. 105-178, §1226(b)(2), as added by Pub. L. 105-226, §9003(a), which directed the addition of subsec. (e) and the striking out of former subsec. (e), was executed by adding subsec. (e) and striking out the former subsec. (e) as in effect before the redesignation of subsecs. (e) and (f) as (d) and (e), respectively, by Pub. L. 105-178, §1106(c)(1)(B)(ii), to reflect the probable intent of Congress. Former subsec. (e) read as follows: “The total payments to any State shall not at any time during a current fiscal year exceed the total of all apportionments to such State in accordance with section 104 of this title for such fiscal year and all preceding fiscal years.”

Subsec. (f). Pub. L. 105-178, §1106(c)(1)(B)(ii), redesignated subsec. (f) as (e).

1992—Subsec. (b)(1). Pub. L. 102-388 substituted “construction in a State (other than Massachusetts)” for “construction in a State” and “after October 1, 1989” for “before October 1, 1989”.

1991—Subsec. (a). Pub. L. 102-240, §1020(a), added subsec. (a) and struck out former subsec. (a) which read as follows: “On and after the date that the Secretary has certified to each State highway department the sums apportioned to each Federal-aid system or part thereof pursuant to an authorization under this title, or under prior Acts, such sums shall be available for expenditure under the provisions of this title.”

Subsec. (b). Pub. L. 102-240, §1020(a), added subsec. (b) and struck out former subsec. (b) which contained provisions relating to periods of availability of non-Interstate funds, Interstate construction funds, and funds for resurfacing, restoring, rehabilitating and reconstructing Interstate System, and provisions deeming obligation of funds as equivalent to expenditure and relating to effect of release of funds.

Subsec. (c)(1). Pub. L. 102-240, §1020(b)(1), (2), substituted “1992” for “1983” and “\$100,000,000” for “\$300,000,000”.

Subsec. (c)(2). Pub. L. 102-240, §1020(b)(3), added par. (2) and struck out former par. (2) which read as follows: “SET ASIDE FOR 4R PROJECTS.—Before any apportionment is made under section 104(b)(5)(B) of this title, the Secretary shall set aside \$200,000,000 for obligation by the Secretary in accordance with subsection (b)(3) of this section and subject to section 149(d) of the Federal-Aid Highway Act of 1987.”

Subsec. (d). Pub. L. 102-240, §1020(c), substituted “(b)(1)” for “(b)(2)”.

Subsec. (f). Pub. L. 102-240, §1020(d), struck out “on a Federal-aid system” after “roads”.

1987—Pub. L. 100-17, §114(e)(2), substituted “Availability of funds” for “Availability of sums apportioned” in section catchline.

Subsec. (b). Pub. L. 100-17, §114(e)(3)(A), inserted heading.

Subsec. (b)(1). Pub. L. 100-17, §114(e)(3)(B), (D), inserted heading and aligned par. (1) with par. (2) as amended.

Subsec. (b)(2). Pub. L. 100-17, §114(a), amended par. (2) generally, revising and restating as subpars. (A) to (F) provisions formerly contained in an undivided paragraph.

Subsec. (b)(3). Pub. L. 100-17, §114(c), amended par. (3) generally, revising and restating as subpars. (A) to (D) provisions formerly contained in an undivided paragraph.

Subsec. (b)(4). Pub. L. 100-17, §114(e)(3)(C), (D), inserted heading and aligned par. (4) with par. (2) as amended.

Subsec. (c). Pub. L. 100-17, §114(b), (e)(4), inserted heading, designated existing provisions as par. (1), in-

serted par. (1) heading, substituted “Subject to section 149(d) of the Federal-Aid Highway Act of 1987, such amount” for “Such amount” in par. (1), added par. (2), and aligned par. (1) with par. (2).

Subsec. (f). Pub. L. 100-17, §115, inserted “and the Commonwealth of Puerto Rico” after “the State of Alaska”.

1983—Subsec. (b). Pub. L. 97-424, §115(a), designated existing provisions as pars. (1) through (4), in par. (2) as so designated, substituted “for projects on the Interstate System (other than projects for which sums are apportioned under section 104(b)(5)(B)) in accordance with the following priorities: First, for high cost projects which directly contribute to the completion of an Interstate segment which is not open to traffic; and second, for projects of high cost in relation to a State’s apportionment. Sums may only be made available under this paragraph in any State” for “to any other State applying for such funds for the Interstate System,” after “available by the Secretary”, struck out former cl. (1), which had required readiness to obligate funds within one year of the date the funds are made available, redesignated former cls. (2) and (3) as (A) and (B), respectively; and in par. (3) as so designated, struck out “and any amounts so apportioned remaining unexpended at the end of such period shall lapse” after “such sums are authorized”, inserted provision relating to the disposition of funds not obligated within the prescribed time period, and inserted further provision that sums made available under this paragraph shall remain available until expended.

Subsecs. (c) to (f). Pub. L. 97-424, §115(b), added subsecs. (c) and (d) and redesignated former subsecs. (c) and (d) as (e) and (f), respectively.

1979—Subsec. (b). Pub. L. 96-106 substituted “shall continue to be available for expenditure in that State for a period of two years after the close of the fiscal year for which such sums are authorized and any amounts so apportioned remaining unexpended at the end of such period shall lapse” for “remaining unexpended at the end of the period of its availability shall lapse”.

1978—Subsec. (b). Pub. L. 95-599 substituted provisions relating to the availability of funds until the end of the fiscal year for provisions relating to the availability of funds until two years after the close of the fiscal year and substituted provisions establishing requirements for eligibility for funds for provisions calling for immediate reapportionment of unexpended funds.

1976—Subsec. (b). Pub. L. 94-280, in revising text, provided for a separate three year period of availability of sums apportioned to a Federal-aid system (other than the Interstate System), increased from the previously applicable two year period; continued the existing two year period for sums apportioned to the Interstate System; substituted provision for reapportionment of sums, apportioned to the States for the Interstate System under section 104(b)(4)(A), under section 104(b)(5)(A) of this title and for lapse of sums apportioned to the Interstate System under section 104(b)(4)(B) of this title for prior provision for reapportionment of sums, apportioned to the States for the Interstate System under section 104(b)(4) and (5), under section 104(b)(5) of this title; and substituted provisions deeming there to be an expenditure of sums apportioned to a Federal-aid system if a sum equal to the total of the sums apportioned to the State for the fiscal year and previous fiscal years is obligated for prior provision deeming an expenditure to exist if a sum equal to the total of the sums apportioned to the States for the fiscal year and previous fiscal years is covered by formal project agreements providing for the expenditure of funds authorized by each Act which contains provisions authorizing the appropriation of funds for Federal-aid highways.

1966—Subsec. (d). Pub. L. 89-574 added subsec. (d).

#### 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 this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Section 5(b) of Pub. L. 96-106 provided that: "The amendment made by subsection (a) of this section [amending this section] shall apply to all amounts apportioned under section 104(b)(5)(B) of title 23, United States Code, for the fiscal year 1978 and for subsequent fiscal years."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 114, 127, 159, 163, 322 of this title; title 40 section 818; title 40 App. section 201; title 49 section 31314.

### § 119. Interstate maintenance program

#### (a) IN GENERAL.—

(1) **PROJECTS.**—The Secretary may approve projects for resurfacing, restoring, rehabilitating, and reconstructing—

(A) routes on the Interstate System designated under section 103(c)(1) and, in Alaska and Puerto Rico, under section 103(c)(4)(A);

(B) routes on the Interstate System designated before the date of enactment of the Transportation Equity Act for the 21st Century under subsections (a) and (b) of section 139 (as in effect on the day before the date of enactment of such Act); and

(C) any segments that become part of the Interstate System under section 1105(e)(5) of the Intermodal Surface Transportation Efficiency Act of 1991.

(2) **TOLL ROADS.**—The Secretary may approve a project pursuant to this subsection on a toll road only if such road is subject to a Secretarial agreement provided for in section 129 or continued in effect by section 1012(d) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1939) and not voided by the Secretary under section 120(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (101 Stat. 159).

(3) **FUNDING.**—Sums authorized to be appropriated to carry out this section shall be out of the Highway Trust Fund and shall be apportioned in accordance with section 104(b)(4).

(b) **TRANSFER OF INTERSTATE CONSTRUCTION APPORTIONMENTS.**—Upon application by a State (other than the State of Massachusetts) and approval by the Secretary, the Secretary may transfer to the apportionments to such State under section 104(b)(1) or 104(b)(4) any amount of the funds apportioned to such State for any fiscal year under section 104(b)(5)(A) (as in effect on the date before the date of enactment of the Transportation Equity Act for the 21st Century)

if such amount does not exceed the Federal share of the costs of construction of segments of the Interstate System open to traffic in such State (other than high occupancy vehicle lanes) included in the most recent interstate cost estimate. Upon transfer of such amount, the construction on which such amount is based on open-to-traffic segments of the Interstate System in such State as included in the latest interstate cost estimate shall be ineligible and shall not be included in future interstate cost estimates approved or adjusted under section 104(b)(5)(A) (as in effect on the date before the date of enactment of the Transportation Equity Act for the 21st Century).

(c) **TRANSFER OF FUNDS FOR SURFACE TRANSPORTATION PROGRAM PROJECTS.**—

(1) **UPON CERTIFICATION ACCEPTANCE.**—If a State certifies to the Secretary that any part of the sums apportioned to the State under section 104(b)(4) of this title are in excess of the needs of the State for resurfacing, restoring, or rehabilitating Interstate System routes and the State is adequately maintaining the Interstate System and the Secretary accepts such certification, the State may transfer such excess part to its apportionment under sections 104(b)(1) and 104(b)(3).

(2) **UNCONDITIONAL.**—Notwithstanding paragraph (1), a State may transfer to its apportionment under sections 104(b)(1) and 104(b)(3) of this title—

(A) in fiscal year 1987, an amount not to exceed 20 percent of the funds apportioned to the State under section 104(b)(4) which are not obligated at the time of the transfer; and

(B) in any fiscal year thereafter, an amount not to exceed 20 percent of the funds apportioned to the State under section 104(b)(4) for such fiscal year.

(d) **LIMITATION ON NEW CAPACITY.**—Notwithstanding any other provision of this title, the portion of the cost of any project undertaken pursuant to this section that is attributable to the expansion of the capacity of any Interstate highway or bridge, where such new capacity consists of one or more new travel lanes that are not high-occupancy vehicle lanes or auxiliary lanes, shall not be eligible for funding under this section.

(Added Pub. L. 95-599, title I, §116(a), Nov. 6, 1978, 92 Stat. 2698; amended Pub. L. 96-106, §18, Nov. 9, 1979, 93 Stat. 799; Pub. L. 97-134, §§6, 7, Dec. 29, 1981, 95 Stat. 1701; Pub. L. 97-424, title I, §116(a)(1), (2), (b), (c), Jan. 6, 1983, 96 Stat. 2109; Pub. L. 98-229, §8(b), Mar. 9, 1984, 98 Stat. 56; Pub. L. 99-190, §101(e) [title III, §327], Dec. 19, 1985, 99 Stat. 1267, 1289; Pub. L. 100-17, title I, §116(a)-(c)(1), Apr. 2, 1987, 101 Stat. 154, 155; Pub. L. 100-202, §101(l) [title III, §347(b)], Dec. 22, 1987, 101 Stat. 1329-358, 1329-388; Pub. L. 102-240, title I, §1009(a), (b), (e)(1), (3)-(5), Dec. 18, 1991, 105 Stat. 1933, 1934; Pub. L. 105-178, title I, §1107(a), (d), June 9, 1998, 112 Stat. 137; Pub. L. 105-206, title IX, §9002(f), July 22, 1998, 112 Stat. 836.)

#### REFERENCES IN TEXT

The date of enactment of the Transportation Equity Act for the 21st Century, referred to in subsecs. (a)(1)(B) and (b), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

Section 1105(e)(5) of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (a)(1)(C), is section 1105(e)(5) of Pub. L. 102-240 (see 109 Stat. 597) which is not classified to the Code.

Section 1012(d) of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (a)(2), is section 1012(d) of Pub. L. 102-240, which is set out as a note under section 129 of this title.

Section 120(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, referred to in subsec. (a)(2), is section 120(c) of Pub. L. 100-17, which is not classified to the Code.

#### PRIOR PROVISIONS

A prior section 119, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 899, related to administration of Federal aid for highways in Alaska, prior to repeal by Pub. L. 86-70, §21(d)(3), June 25, 1959, 73 Stat. 145, effective July 1, 1959.

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178, §1107(a)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “The Secretary may approve projects for resurfacing, restoring and rehabilitating routes on the Interstate System designated under sections 103 and 139(c) of this title and routes on the Interstate System designated before the date of enactment of this sentence under section 139(a) and (b) of this title; except that the Secretary may only approve a project pursuant to this subsection on a toll road if such road is subject to a Secretarial agreement provided for in subsection (e). Sums authorized to be appropriated for this section shall be out of the Highway Trust Fund and shall be apportioned in accordance with section 104(b)(5)(B) of this title.”

Subsec. (b). Pub. L. 105-178, §1107(d)(1), as added by Pub. L. 105-206, §9002(f), substituted “104(b)(4)” for “104(b)(5)(B)” in first sentence and “104(b)(5)(A) (as in effect on the date before the date of enactment of the Transportation Equity Act for the 21st Century)” for “104(b)(5)(A)” in two places.

Pub. L. 105-178, §1107(a)(2), (3), redesignated subsec. (d) as (b) and struck out former subsec. (b) which read as follows: “Not later than one year after the date of issuance of initial guidelines under section 109(m) of this title each State shall have a program for the Interstate system in accordance with such guidelines. Each State shall certify on January 1st of each year that it has such a program and the Interstate system is maintained in accordance with that program. If a State fails to certify as required or if the Secretary determines a State is not adequately maintaining the Interstate system in accordance with such program then the next apportionment of funds to such State for the Interstate system shall be reduced by amounts equal to 10 per centum of the amount which would otherwise be apportioned to such State under section 104 of this title. If, within one year from the date the apportionment for a State is reduced under this subsection, the Secretary determines that such State is maintaining the Interstate system in accordance with the guidelines the apportionment of such State shall be increased by an amount equal to the reduction. If the Secretary does not make such a determination within such one year period the amount so withheld shall be reapportioned to all other eligible States.”

Subsec. (c). Pub. L. 105-178, §1107(d)(2), as added by Pub. L. 105-206, §9002(f), substituted “104(b)(4)” for “104(b)(5)(B)” wherever appearing.

Pub. L. 105-178, §1107(a)(2), (3), redesignated subsec. (f) as (c) and struck out heading and text of former subsec. (c). Text read as follows: “Activities authorized in subsection (a) may include the reconstruction of bridges, interchanges, and over crossings along existing Interstate routes, including the acquisition of right-of-way where necessary, but shall not include the construction of new travel lanes other than high occupancy vehicle lanes or auxiliary lanes.”

Subsec. (d). Pub. L. 105-178, §1107(a)(3), redesignated subsec. (g) as (d). Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 105-178, §1107(a)(2), struck out heading and text of subsec. (e). Text read as follows: “Preventive maintenance activities shall be eligible under this section when a State can demonstrate, through its pavement management system, that such activities are a cost-effective means of extending Interstate pavement life.”

Subsecs. (f), (g). Pub. L. 105-178, §1107(a)(3), redesignated subsecs. (f) and (g) as (c) and (d), respectively.

1991—Pub. L. 102-240, §1009(e)(1), substituted “maintenance program” for “System resurfacing” in section catchline.

Subsec. (a). Pub. L. 102-240, §1009(e)(5)(A), (B), substituted “and rehabilitating” for “, rehabilitating, and reconstructing” and struck out at end “The Federal share for any project under this subsection shall be that set forth in section 120(c) of this title.”

Subsec. (c). Pub. L. 102-240, §1009(e)(3), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Reconstructing as authorized in subsection (a) of this section may include, but is not limited to, the addition of travel lanes and the construction and reconstruction of interchanges and overcrossings along existing completed interstate routes, including the acquisition of right-of-way where necessary.”

Subsec. (e). Pub. L. 102-240, §1009(e)(4), amended subsec. (e) generally, substituting present provisions for provisions authorizing Secretary to approve projects on toll roads only after reaching agreement with State highway department and public authorities that road will become free upon collection of tolls sufficient to liquidate cost of road and outstanding bonds and cost of maintenance, operation and debt service during period of toll collections, provisions relating to repayment to Federal Treasury, or reduction in apportionment, if road did not become free after collection of sufficient tolls, and provisions requiring pre-existing agreements to be treated as agreements under subsec. (e).

Subsec. (f). Pub. L. 102-240, §1009(e)(5)(C), substituted “Surface Transportation Program” for “Primary System” in heading.

Subsec. (f)(1). Pub. L. 102-240, §1009(b), (e)(5)(D), (E), substituted “or rehabilitating” for “rehabilitating, or reconstructing”, substituted “sections 104(b)(1) and 104(b)(3)” for “section 104(b)(1)”, and inserted “the State is adequately maintaining the Interstate System and” after “routes and”.

Subsec. (f)(2). Pub. L. 102-240, §1009(e)(5)(E), substituted “sections 104(b)(1) and 104(b)(3)” for “section 104(b)(1)” in introductory provisions.

Subsec. (g). Pub. L. 102-240, §1009(a), added subsec. (g). 1987—Subsec. (a). Pub. L. 100-17, §116(c)(1), substituted “subsection (e)” for “section 105 of the Federal-Aid Highway Act of 1978”.

Subsec. (d). Pub. L. 100-17, §116(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “Upon application by a State and approval by the Secretary, the Secretary may authorize the transfer of so much of the amount apportioned to such State for any fiscal year under paragraph (5)(A) of subsection (b) of section 104 of this title, as does not exceed the Federal share of the cost of segments of the Interstate System open to traffic in such State (other than high occupancy vehicle lanes), in the most recent cost estimate, to the apportionment under paragraph (5)(B) of subsection (b) of section 104 of this title, except that not more than 50 per centum of the total apportionment under such paragraph (5)(A) for a fiscal year shall be transferred under this subsection for such fiscal year. The next cost estimate submitted to Congress under paragraph (5)(A) of subsection (b) of such section 104 of the cost of completing segments of the Interstate System open to traffic in that State (other than high occupancy vehicle lanes) shall be reduced for such State in an amount equal to the amount transferred under this subsection. Notwithstanding any other provision of law, and for the purposes of this subsection,

the phrase 'segments of the interstate system open to traffic' shall include a proposed four-lane, limited access highway, 6.4 miles in length, the construction of which will relocate to a southern alignment a portion of an existing interstate highway which was originally built without the aid of funds authorized by section 108(b) of the Federal-Aid Highway Act of 1956, as amended, and which connects to the east with an interstate highway on which tolls are charged. The construction of the proposed highway shall include a bridge over the Monongahela River."

Subsec. (e). Pub. L. 100-17, §116(b), added subsec. (e).  
Subsec. (f). Pub. L. 100-202 substituted "amount not to exceed" for "amount equal to" in par. (2)(B).

Pub. L. 100-17, §116(b), added subsec. (f).

1985—Subsec. (d). Pub. L. 99-190 inserted provisions which brought within the phrase "segments of the interstate system open to traffic" a proposed four-lane limited access highway, 6.4 miles in length, the construction of which will relocate to a southern alignment a portion of an existing highway originally built without the aid of Federal funds, connecting to the east with an interstate highway on which tolls are charged, with the proposed highway to include a bridge over the Monongahela River.

1984—Subsec. (a). Pub. L. 98-229 substituted provision authorizing the Secretary to approve projects designated under sections 103 and 139(c) of this title and routes on the Interstate System designated before Mar. 9, 1984, under section 139(a) and (b) of this title for provision authorizing the Secretary, beginning with funds apportioned for the fiscal year 1980, to approve projects under sections 103 and 139(c) of this title and, beginning with funds apportioned for fiscal year 1984, to approve routes or portions thereof on the Interstate System designated before Jan. 6, 1983, under section 139(a) of this title, which routes or portions were so designated in conjunction with the withdrawal of approval of another route or portion on the Interstate System under section 103(e)(4) of this title and provision that the Federal share be that as set forth in section 120(c) of this title for provision that the Federal share be that as set forth in section 120(a) of this title and that effective on or after Dec. 29, 1981, the Federal share be that as set forth in section 120(c) of this title.

1983—Subsec. (a). Pub. L. 97-424, §116(a)(1), inserted provision that, additionally, beginning with funds apportioned for fiscal year 1984, the Secretary may approve projects for resurfacing, restoring, rehabilitating, and reconstructing those routes or portions thereof on the Interstate System designated before Jan. 6, 1983, under section 139(a) of this title (other than routes on toll roads not subject to a Secretarial agreement provided for in section 105 of the Federal-Aid Highway Act of 1978) which routes or portions were so designated in conjunction with the withdrawal of approval of another route or portion thereof on the Interstate System under section 103(e)(4) of this title.

Pub. L. 97-424, §116(a)(2), substituted "under this subsection" for "designated under sections 103 and 139(c) of this title" before "shall be that set forth in section 120(c) of this title".

Subsecs. (b), (c). Pub. L. 97-424, §116(b), redesignated the second of two sections designated (b) as (c).

Subsec. (d). Pub. L. 97-424, §116(c), added subsec. (d).

1981—Subsec. (a). Pub. L. 97-134, §§6(a), 7, substituted "rehabilitating, and reconstructing routes of the Interstate System designated under sections 103 and 139(c) of this title" for "and rehabilitating those lanes in use for more than five years on the Interstate System", and inserted provision that effective on and after Dec. 29, 1981, the Federal share for projects financed by funds apportioned under section 104(b)(5)(B) of this title for resurfacing, restoring, rehabilitating, and reconstructing routes of the Interstate System designated under sections 103 and 139(c) of this title shall be that set forth in section 120(c) of this title.

Subsec. (b). Pub. L. 97-134, §6(b), added subsec. (b) providing that reconstruction may include the addition of travel lanes and the construction and reconstruction

of interchanges and overcrossings along existing completed interstate routes, including the acquisition of right-of-way where necessary.

1979—Subsec. (b). Pub. L. 96-106 substituted "January 1st" for "October 1st" and "next apportionment of funds to such State" for "funds apportioned to such State for that fiscal year".

#### 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 this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### INTERSTATE NEEDS STUDY

Pub. L. 105-178, title I, §1107(c), June 9, 1998, 112 Stat. 138, provided that:

"(1) STUDY.—The Secretary shall conduct, in cooperation with States and affected metropolitan planning organizations, a study to determine—

"(A) the expected condition of the Interstate System over the next 10 years and the needs of States and metropolitan planning organizations to reconstruct and improve the Interstate System;

"(B) the resources necessary to maintain and improve the Interstate System; and

"(C) the means to ensure that the Nation's surface transportation program can—

"(i) address the needs identified in subparagraph (A); and

"(ii) allow for States to address any extraordinary needs.

"(2) REPORT.—Not later than January 1, 2000, the Secretary shall transmit to Congress a report on the results of the study."

#### GUIDANCE TO STATES

Section 1009(c) of Pub. L. 102-240 provided that: "The Secretary shall develop and make available to the States criteria for determining—

"(1) what share of any project funded under section 119 of title 23, United States Code, is attributable to the expansion of the capacity of an Interstate highway or bridge; and

"(2) what constitutes adequate maintenance of the Interstate System for the purposes of section 119(f)(1) of title 23, United States Code."

#### INNOVATIVE TECHNOLOGIES

Section 142 of Pub. L. 97-424 provided that:

"(a) The Congress hereby finds and declares that it is in the national interest to encourage and promote utilization by the States of highway and bridge surfacing, resurfacing, or restoration materials which are produced from recycled materials or which contain asphalt additives to strengthen the materials. Such materials conserve energy and reduce the cost of resurfacing or restoring our highways.

"(b) The Secretary of Transportation is hereby authorized for each of the fiscal years through September 30, 1985, to increase the Federal share as provided in sections 119, 120, and 144 of title 23, United States Code, by 5 per centum of any project submitted by the State highway departments which contains in the plans, specifications, and estimates submitted pursuant to section 106, of title 23, United States Code, the use of

the materials described in subsection (a). To be eligible for such supplemental Federal assistance, significant amounts of asphalt additives or recycled materials must be used in each project approved by the Secretary.

“(c) The Secretary shall establish a procedure within ninety days of the date of enactment of this Act [Jan. 6, 1983] for increasing the Federal share under this section.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 118, 129 of this title.

### § 120. Federal share payable

#### (a) INTERSTATE SYSTEM PROJECTS.—

(1) IN GENERAL.—Except as otherwise provided in this chapter, the Federal share payable on account of any project on the Interstate System (including a project to add high occupancy vehicle lanes and a project to add auxiliary lanes but excluding a project to add any other lanes) shall be 90 percent of the total cost thereof, plus a percentage of the remaining 10 percent of such cost in any State containing unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 percent of the total area of all lands therein, equal to the percentage that the area of such lands in such State is of its total area; except that such Federal share payable on any project in any State shall not exceed 95 percent of the total cost of such project.

(2) STATE-DETERMINED LOWER FEDERAL SHARE.—In the case of any project subject to paragraph (1), a State may determine a lower Federal share than the Federal share determined under such paragraph.

(b) OTHER PROJECTS.—Except as otherwise provided in this title, the Federal share payable on account of any project or activity carried out under this title (other than a project subject to subsection (a)) shall be—

(1) 80 percent of the cost thereof, except that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments, exceeding 5 percent of the total area of all lands therein, the Federal share, for purposes of this chapter, shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area; or

(2) 80 percent of the cost thereof, except that in the case of any State containing nontaxable Indian lands, individual and tribal, public domain lands (both reserved and unreserved), national forests, and national parks and monuments, the Federal share, for purposes of this chapter, shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State is of its total area;

except that the Federal share payable on any project in a State shall not exceed 95 percent of the total cost of any such project. In any case where a State elects to have the Federal share provided in paragraph (2) of this subsection, the

State must enter into an agreement with the Secretary covering a period of not less than 1 year, requiring such State to use solely for purposes eligible for assistance under this title (other than paying its share of projects approved under this title) during the period covered by such agreement the difference between the State's share as provided in paragraph (2) and what its share would be if it elected to pay the share provided in paragraph (1) for all projects subject to such agreement. In the case of any project subject to this subsection, a State may determine a lower Federal share than the Federal share determined under the preceding sentences of this subsection.

(c) INCREASED FEDERAL SHARE FOR CERTAIN SAFETY PROJECTS.—The Federal share payable on account of any project for traffic control signalization, safety rest areas, pavement marking, commuter carpooling and vanpooling, rail-highway crossing closure, or installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier endtreatments, break-away utility poles, or priority control systems for emergency vehicles or transit vehicles at signalized intersections may amount to 100 percent of the cost of construction of such projects; except that not more than 10 percent of all sums apportioned for all the Federal-aid systems for any fiscal year in accordance with section 104 of this title shall be used under this subsection. In this subsection, the term “safety rest area” means an area where motor vehicle operators can park their vehicles and rest, where food, fuel, and lodging services are not available, and that is located on a segment of highway with respect to which the Secretary determines there is a shortage of public and private areas at which motor vehicle operators can park their vehicles and rest.

(d) The Secretary may rely on a statement from the Secretary of the Interior as to the area of the lands referred to in subsections (a) and (b) of this section. The Secretary of the Interior is authorized and directed to provide such statement annually.

(e) EMERGENCY RELIEF.—The Federal share payable on account of any repair or reconstruction provided for by funds made available under section 125 of this title on account of any project on a Federal-aid highway, including the Interstate System, shall not exceed the Federal share payable on a project on such system<sup>1</sup> as provided in subsections (a) and (b) of this section; except that (1) the Federal share payable for eligible emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the costs thereof; and (2) the Federal share payable on account of any repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads may amount to 100 percent of the cost thereof. The total cost of a project may not exceed the cost of repair or reconstruction of a comparable

<sup>1</sup> So in original. Probably should be “such highway”.

facility. As used in this section with respect to bridges and in section 144 of this title, "a comparable facility" shall mean a facility which meets the current geometric and construction standards required for the types and volume of traffic which such facility will carry over its design life.

(f) The Secretary is authorized to cooperate with the State transportation departments and with the Department of the Interior in the construction of Federal-aid highways within Indian reservations and national parks and monuments under the jurisdiction of the Department of the Interior and to pay the amount assumed therefor from the funds apportioned in accordance with section 104 of this title to the State wherein the reservations and national parks and monuments are located.

(g) At the request of any State, the Secretary may from time to time enter into agreements with such State to reimburse the State for the Federal share of the costs of preliminary and construction engineering at an agreed percentage of actual construction costs for each project, in lieu of the actual engineering costs for such project. The Secretary shall annually review each such agreement to insure that such percentage reasonably represents the engineering costs actually incurred by such State.

(h) Notwithstanding any other provision of this section or of this title, the Federal share payable on account of any project under this title in the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands shall be 100 per centum of the total cost of the project.

(i) INCREASED NON-FEDERAL SHARE.—Notwithstanding any other provision of this title and subject to such criteria as the Secretary may establish, a State may contribute an amount in excess of the non-Federal share of a project under this title so as to decrease the Federal share payable on such project.

(j) CREDIT FOR NON-FEDERAL SHARE.—

(1) ELIGIBILITY.—A State may use as a credit toward the non-Federal share requirement for any funds made available to carry out this title (other than the emergency relief program authorized by section 125) or chapter 53 of title 49 toll revenues that are generated and used by public, quasi-public, and private agencies to build, improve, or maintain highways, bridges, or tunnels that serve the public purpose of interstate commerce. Such public, quasi-public, or private agencies shall have built, improved, or maintained such facilities without Federal funds.

(2) MAINTENANCE OF EFFORT.—

(A) IN GENERAL.—The credit for any non-Federal share provided under this subsection shall not reduce nor replace State funds required to match Federal funds for any program under this title.

(B) CONDITION ON RECEIPT OF CREDIT.—To receive a credit under paragraph (1) for a fiscal year, a State shall enter into such agreement as the Secretary may require to ensure that the State will maintain its non-Federal transportation capital expenditures in such fiscal year at or above the average level of such expenditures for the preceding 3 fiscal

years; except that if, for any 1 of the preceding 3 fiscal years, the non-Federal transportation capital expenditures of the State were at a level that was greater than 130 percent of the average level of such expenditures for the other 2 of the preceding 3 fiscal years, the agreement shall ensure that the State will maintain its non-Federal transportation capital expenditures in the fiscal year of the credit at or above the average level of such expenditures for the other 2 fiscal years.

(C) TRANSPORTATION CAPITAL EXPENDITURES DEFINED.—In subparagraph (B), the term "non-Federal transportation capital expenditures" includes any payments made by the State for issuance of transportation-related bonds.

(3) TREATMENT.—

(A) LIMITATION ON LIABILITY.—Use of a credit for a non-Federal share under this subsection that is received from a public, quasi-public, or private agency—

(i) shall not expose the agency to additional liability, additional regulation, or additional administrative oversight; and

(ii) shall not subject the agency to any additional Federal design standards or laws (including regulations) as a result of providing the non-Federal share other than those to which the agency is already subject.

(B) CHARTERED MULTISTATE AGENCIES.—When a credit that is received from a chartered multistate agency is applied to a non-Federal share under this subsection, such credit shall be applied equally to all charter States.

(k) USE OF FEDERAL LAND MANAGEMENT AGENCY FUNDS.—Notwithstanding any other provision of law, the funds appropriated to any Federal land management agency may be used to pay the non-Federal share of the cost of any Federal-aid highway project the Federal share of which is funded under section 104.

(l) USE OF FEDERAL LANDS HIGHWAYS PROGRAM FUNDS.—Notwithstanding any other provision of law, the funds authorized to be appropriated to carry out the Federal lands highways program under section 204 may be used to pay the non-Federal share of the cost of any project that is funded under section 104 and that provides access to or within Federal or Indian lands.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 898; Pub. L. 86-70, §21(d)(4), (e)(4), June 25, 1959, 73 Stat. 145, 146; Pub. L. 86-342, title I, §107(b), Sept. 21, 1959, 73 Stat. 613; Pub. L. 86-657, §3, July 14, 1960, 74 Stat. 522; Pub. L. 88-658, Oct. 13, 1964, 78 Stat. 1090; Pub. L. 89-574, §9(a), Sept. 13, 1966, 80 Stat. 769; Pub. L. 90-495, §§27(b), 34, Aug. 23, 1968, 82 Stat. 829, 835; Pub. L. 91-605, title I, §§106(f), 108(a), 109(b), 128, Dec. 31, 1970, 84 Stat. 1718, 1719, 1731; Pub. L. 95-599, title I, §§117, 129(a)-(c), (i), Nov. 6, 1978, 92 Stat. 2699, 2707, 2708; Pub. L. 97-424, title I, §§109(b), 117, 123(a), 153(f), 156(c), Jan. 6, 1983, 96 Stat. 2105, 2109, 2113, 2133, 2134; Pub. L. 98-78, title III, §318, Aug. 15, 1983, 97 Stat. 473; Pub. L. 100-17, title I, §117(a)-(c)(1), (d), (e), Apr. 2, 1987, 101 Stat. 155, 156; Pub. L. 102-240, title I, §§1021(a), (b), 1022(a), Dec. 18, 1991, 105



Stat. 1950, 1951; Pub. L. 104-59, title III, §310(a), Nov. 28, 1995, 109 Stat. 582; Pub. L. 104-205, title III, §353(a), Sept. 30, 1996, 110 Stat. 2980; Pub. L. 105-178, title I, §§ 1111(a)-(c), 1113(a), (c), formerly (d), 1115(a), (f)(1), 1212(a)(2)(A)(ii), June 9, 1998, 112 Stat. 145, 151, 152, 154, 193; Pub. L. 105-206, title IX, §§9002(i), 9006(a)(2), July 22, 1998, 112 Stat. 836, 848.)

## AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178, §1111(a)(1), designated existing provisions as par. (1), inserted heading, realigned margins, and added par. (2).

Subsec. (b). Pub. L. 105-178, §1111(a)(2), inserted at end of concluding provisions “In the case of any project subject to this subsection, a State may determine a lower Federal share than the Federal share determined under the preceding sentences of this subsection.”

Subsec. (c). Pub. L. 105-178, §1111(b), inserted “or transit vehicles” after “emergency vehicles” in first sentence.

Subsec. (e). Pub. L. 105-178, §1113(c), formerly §1113(d), renumbered §1113(c) by Pub. L. 105-206, §9006(a)(2), substituted “and (b)” for “and (c)” and “180 days” for “90 days”.

Pub. L. 105-178, §1113(a), substituted “highway” for “highway system” in first sentence.

Subsec. (f). Pub. L. 105-178, §1212(a)(2)(A)(ii), substituted “State transportation departments” for “State highway departments”.

Subsec. (j). Pub. L. 105-178, §1115(f)(1), as added by Pub. L. 105-206, §9002(i), redesignated subsec. (j), relating to use of Federal land management agency funds, as (k).

Pub. L. 105-178, §1115(a), added subsec. (j) relating to use of Federal land management agency funds.

Pub. L. 105-178, §1111(c), added subsec. (j) relating to credit for non-Federal share.

Subsec. (k). Pub. L. 105-178, §1115(f)(1), as added by Pub. L. 105-206, §9002(i), redesignated subsec. (j), relating to use of Federal land management agency funds, as (k). Former subsec. (k) redesignated (l).

Pub. L. 105-178, §1115(a), added subsec. (k).

Subsec. (l). Pub. L. 105-178, §1115(f)(1), as added by Pub. L. 105-206, §9002(i), redesignated subsec. (k) as (l).

1996—Subsec. (c). Pub. L. 104-205 inserted “rail-highway crossing closure,” after “carpooling and vanpooling.”

1995—Subsec. (c). Pub. L. 104-59 inserted “safety rest areas,” after “signalization,” and inserted sentence at end defining “safety rest area”.

1991—Subsecs. (a) to (c). Pub. L. 102-240, §1021(a), added subsecs. (a) to (c) and struck out former subsec. (a) which contained provisions relating to Federal share of Federal-aid primary, secondary and urban system projects, former subsec. (b) which contained provisions relating to Federal share of Interstate System projects financed with funds authorized to be appropriated prior to June 29, 1956, and former subsec. (c) which contained provisions relating to Federal share of Interstate System projects financed with funds made available under section 108(b) of the Federal-Aid Highway Act of 1956.

Subsec. (d). Pub. L. 102-240, §1022(a), which directed the substitution of “180 days” for “90 days” in subsec. (d) as redesignated, could not be executed because the phrase “90 days” does not appear in subsec. (d) as redesignated.

Pub. L. 102-240, §1021(b)(3), which directed the substitution of “and (b)” for “and (c)” in subsec. (d) as redesignated, could not be executed because the phrase “and (c)” does not appear in subsec. (d) as redesignated.

Pub. L. 102-240, §1021(a), (b)(2), redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to Federal share for projects for railway-highway crossing elimination, traffic control signalization, pavement marking, carpooling and vanpooling, and installation of traffic signs, highway lights, guardrails, and impact attenuators.

Subsec. (e). Pub. L. 102-240, §1021(b)(2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsecs. (f) to (h). Pub. L. 102-240, §1021(b)(2), redesignated subsecs. (g) to (i) as (f) to (h), respectively. Former subsec. (f) redesignated (e).

Subsec. (i). Pub. L. 102-240, §1021(b)(2), redesignated subsec. (n) as (i). Former subsec. (i) redesignated (h).

Subsecs. (j) to (m). Pub. L. 102-240, §1021(b)(1), struck out subsec. (j) which related to Federal share of project financed under section 307(c) of this title, subsec. (k) which related to Federal share of projects under sections 143 and 155 of this title and projects for priority primary routes under section 147 of this title, subsec. (l) which related to Federal share of projects to reconstruct, resurface, restore and rehabilitate highways which incurred substantial use as result of transportation activities to meet national energy requirements, and subsec. (m) which related to Federal share of Great River Road projects under section 148 of this title.

Subsec. (n). Pub. L. 102-240, §1021(b)(2), redesignated subsec. (n) as (i).

1987—Subsec. (d). Pub. L. 100-17, §117(a), inserted “or for installation of traffic signs, highway lights, guardrails, or impact attenuators” after “vanpooling”.

Subsec. (f). Pub. L. 100-17, §117(c)(1), inserted heading and amended first sentence generally. Prior to amendment, first sentence read as follows: “The Federal share payable on account of any repair or reconstruction provided for by funds made available under section 125 of this title shall not exceed 100 per centum of the cost thereof: *Provided*, That the Federal share payable on account of any repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads may amount to 100 per centum of the cost thereof.”

Subsecs. (i), (j). Pub. L. 100-17, §117(b), redesignated subsec. (i) relating to Federal share payable on account of any project financed under section 307(c) of this title, as subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 100-17, §117(b), (d)(1), redesignated former subsec. (j) as (k) and substituted “(j)” for “(i)”, “and 155” for “, 148, and 155,” and “100-3” for “97-61”. Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 100-17, §117(b), redesignated former subsec. (k) as (l).

Subsec. (m). Pub. L. 100-17, §117(d)(2), added subsec. (m).

Subsec. (n). Pub. L. 100-17, §117(e), added subsec. (n).

1983—Subsec. (j). Pub. L. 98-78 inserted “, and for funds allocated under the provisions of section 155 of this title and obligated subsequent to January 6, 1983,” after “Representatives”.

1983—Subsec. (c). Pub. L. 97-424, §117(a), inserted provision at end that, notwithstanding subsection (a) of this section, the Federal share payable on account of any project financed with primary funds on the Interstate System for resurfacing, restoring, rehabilitating, and reconstructing shall be the percentage provided in this subsection.

Subsec. (d). Pub. L. 97-424, §117(b), inserted “or for pavement marking” after “signalization”, and provision that the Federal share payable on account of any project for traffic control signalization under section 103(e)(4) of this title may amount to 100 per centum of the cost of construction of such project.

Pub. L. 97-424, §123(a), inserted “or for commuter carpooling and vanpooling” before “, may amount to 100 per centum”.

Subsec. (f). Pub. L. 97-424, §153(f), substituted “100 per centum” for “75 per centum” after “shall not exceed”, struck out provision that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments exceeding 5 per centum of the total area of all lands therein, the Federal share would be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State is

of its total area, struck out “, whether or not such highways, roads, or trails are on any Federal-aid highway system” after “may amount to 100 per centum of the cost thereof”, substituted provision that the total cost of a project may not exceed the cost of repair or reconstruction of a comparable facility for provision that the Secretary might increase the Federal share payable on account of any repair or reconstruction under this section up to 100 per centum of the replacement cost of a comparable facility if he determined it to be in the public interest, and struck out provision that any project agreement for which the final voucher had not been approved by the Secretary on or before the date of this Act might be modified to provide for the Federal share authorized herein.

Subsec. (i). Pub. L. 97-424, §156(c), added subsec. (i) relating to Federal share payable for any project financed under section 307(c) of this title.

Subsec. (j). Pub. L. 97-424, §117(c), added subsec. (j).

Subsec. (k). Pub. L. 97-424, §109(b), added subsec. (k).  
1978—Subsec. (a). Pub. L. 95-599, §129(a), substituted “75 per centum” for “70 per centum” wherever appearing.

Subsec. (d). Pub. L. 95-599 §§117, 129(b), inserted “and for any project for traffic control signalization,” after “section 130 of this title,” and substituted “75 per centum” for “70 per centum.”

Subsec. (f). Pub. L. 95-599, §129(c), substituted “75 per centum” for “70 per centum” wherever appearing.

Subsec. (i). Pub. L. 95-599, §129(i), added subsec. (i) relating to Federal share payable for any project in the Virgin Islands, etc.

1970—Subsec. (a). Pub. L. 91-605, §§106(f), 108(a), inserted reference to the Federal-aid urban system, and substituted “70 per centum” for “50 per centum” in two places.

Subsec. (d). Pub. L. 91-605, §108(a), substituted “70 per centum” for “50 per centum”.

Subsec. (f). Pub. L. 91-605, §§108(a), 109(b), inserted definition of “a comparable facility” and substituted “70 per centum” for “50 per centum”.

Subsec. (h). Pub. L. 91-605, §128, added subsec. (h).

1968—Subsec. (a). Pub. L. 90-495, §34, made provision for an election by the States as to the formula it desired to have its Federal share computed under by adding an optional formula permitting an increase in the Federal share by a percentage of the remaining cost equal to the percentage that the area of specified lands is of the State’s total, but not so as to increase the share beyond 95 percent of the total cost of the project, with States exercising the option required to enter into an agreement to use the difference solely for highway construction purposes.

Subsec. (f). Pub. L. 90-495, §27(b), authorized the Secretary to increase the Federal share payable on account of any repair or reconstruction under this section up to 100 per centum of the replacement cost of a comparable facility if he determines that it is in the public interest.

1966—Subsec. (f). Pub. L. 89-574 added parkways, public land highways, public lands development roads, and trails to the list of road projects on the repair or reconstruction of which the Federal share payable may amount to 100 per centum of the cost.

1964—Subsec. (f). Pub. L. 88-658 provided that in case of any State containing nontaxable Indian lands, and public domain lands exclusive of national forests and national parks and monuments exceeding 5 per centum of the total area of all lands therein, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area.

1960—Subsec. (a). Pub. L. 86-657 substituted “nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments” for “unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal”.

1959—Subsec. (a). Pub. L. 86-70, §21(e)(4), substituted “subsection (d) of this section” for “subsections (d) and (h) of this section”.

Subsec. (f). Pub. L. 86-342 provided that the Federal share payable on account of any repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, and Indian reservation roads may amount to 100 per centum of the cost thereof, whether or not such highways, roads or trails are on any Federal-aid highway system.

Subsec. (h). Pub. L. 86-70, §21(d)(4), repealed subsec. (h) which related to contributions by the Territory of Alaska and to the expenditure of Federal funds apportioned to the Territory of Alaska and funds contributed by the Territory.

#### 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 this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 1021 of Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

Section 1022(c) of Pub. L. 102-240 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 125 of this title] shall only apply to natural disasters and catastrophic failures occurring after the date of the enactment of this Act [Dec. 18, 1991].”

#### EFFECTIVE DATE OF 1987 AMENDMENT

Section 117(c)(2) of Pub. L. 100-17 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to all natural disasters and catastrophic failures which occur after the date of the enactment of this Act [Apr. 2, 1987].”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 129(h) of Pub. L. 95-599 provided that: “The amendments made by subsections (a) through (g) of this section [amending this section and sections 148, 155, 215, and 406 of this title] shall take effect with respect to obligations incurred after the date of enactment of this section [Nov. 6, 1978].”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Section 108(b) of Pub. L. 91-605, as amended by Pub. L. 93-87, title I, §153, Aug. 13, 1973, 87 Stat. 276, provided that: “The amendments made by subsection (a) of this section [amending this section] shall take effect with respect to all obligations incurred after June 30, 1973.”

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 27(b) of Pub. L. 90-495 applicable to repair or construction with respect to which project agreements have been entered into on or before Jan. 1, 1968, see section 27(c) of Pub. L. 90-495, set out as a note under section 125 of this title.

Amendment by section 34 of Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by section 21(d)(4) of Pub. L. 86-70 effective July 1, 1959, see section 21(d) of Pub. L. 86-70, set out as a note under section 103 of this title.

Amendment by section 21(e)(4) of Pub. L. 86-70 effective July 1, 1959, see section 12(e) of Pub. L. 86-70, set out as a note under section 101 of this title.

#### CREDIT FOR NON-FEDERAL SHARE

Section 1044 of Pub. L. 102-240 provided that:

“(a) ELIGIBILITY.—A State may use as a credit toward the non-Federal matching share requirement for all programs under this Act [see Short Title of 1991 Amendment note set out under section 101 of Title 49, Transportation] and title 23, United States Code, toll revenues that are generated and used by public, quasi-public and private agencies to build, improve, or maintain highways, bridges, or tunnels that serve the public purpose of interstate commerce. Such public, quasi-public or private agencies shall have built, improved, or maintained such facilities without Federal funds.

“(b) MAINTENANCE OF EFFORT.—The credit for any non-Federal share shall not reduce nor replace State monies required to match Federal funds for any program pursuant to this Act or title 23, United States Code. In receiving a credit for non-Federal capital expenditures under this section, a State shall enter into such agreements as the Secretary may require to ensure that such State will maintain its non-Federal transportation capital expenditures at or above the average level of such expenditures for the preceding three fiscal years.

“(c) TREATMENT.—Use of such credit for a non-Federal share shall not expose such agencies from which the credit is received to additional liability, additional regulation or additional administrative oversight. When credit is applied from chartered multi-State agencies, such credit shall be applied equally to all charter States. The public, quasi-public, and private agencies from which the credit for which the non-Federal share is calculated shall not be subject to any additional Federal design standards, laws or regulations as a result of providing non-Federal match other than those to which such agency is already subject.”

#### TEMPORARY MATCHING FUND WAIVER

Section 1054 of title I of Pub. L. 102-240 provided that:

“(a) WAIVER OF MATCHING SHARE.—Notwithstanding any other provision of law, the Federal share of any qualifying project approved by the Secretary under title 23, United States Code, and of any qualifying project for which the United States becomes obligated to pay under title 23, United States Code, during the period beginning on October 1, 1991, and ending September 30, 1993, shall be the percentage of the construction cost as the State requests, up to and including 100 percent.

“(b) REPAYMENT.—The total amount of increases in the Federal share made pursuant to subsection (a) for any State shall be repaid to the United States by the State on or before March 30, 1994. Payments shall be deposited in the Highway Trust Fund and repaid amounts shall be credited to the appropriate apportionment accounts of the State.

“(c) DEDUCTION FROM APPORTIONMENTS.—If a State has not made the repayment as required by subsection (b), the Secretary shall deduct from funds apportioned to the State under title 23, United States Code, in each of the fiscal years 1995 and 1996, a pro rata share of each category of apportioned funds. The amount which shall be deducted in each fiscal year shall be equal to 50 percent of the amount needed for repayment. Any amount deducted under this subsection shall be reapportioned for fiscal years 1995 and 1996 in accordance with title 23, United States Code, to those States which have not received a higher Federal share under this section and to those States which have made the repayment required by subsection (b).

“(d) QUALIFYING PROJECT DEFINED.—For purposes of this section, the term ‘qualifying project’ means a project approved by the Secretary after the effective date of this title [Dec. 18, 1991], or a project for which the United States becomes obligated to pay after such effective date, and for which the Governor of the State submitting the project has certified, in accordance with regulations established by the Secretary, that sufficient funds are not available to pay the cost of the non-Federal share of the project.”

#### INCENTIVE PROGRAM FOR USE OF COAL ASH

Section 117(f) of Pub. L. 100-17 provided that: “Notwithstanding sections 119, 120, and 144 of title 23, United States Code, in each of fiscal years 1987, 1988, 1989, 1990, and 1991, the percentage specified in such sections as the Federal share of the cost payable on account of any highway or bridge construction project in which materials produced from coal ash are used in significant amounts shall be increased by adding 5 percent to such percentage; except that in no case shall the Federal share payable on account of any project exceed 95 percent of the cost of such project as a result of increasing such Federal share under this subsection.”

#### OBLIGATIONS FOR PROJECTS RESULTING FROM NATURAL DISASTERS OR CATASTROPHIC FAILURES; EMERGENCY RELIEF; FEDERAL SHARE

Section 153(g) of Pub. L. 97-424 provided that: “All obligations for projects resulting from a natural disaster or catastrophic failure which the Secretary finds to be eligible for emergency relief subsequent to the date of enactment of this subsection [Jan. 6, 1983] shall provide for the Federal share required by subsection (f) of section 120 of title 23, United States Code, as amended by this section.”

#### FEDERAL SHARE OF PROJECTS APPROVED DURING PERIOD BEGINNING FEBRUARY 12, 1975, AND ENDING SEPTEMBER 30, 1975

Pub. L. 94-30, §§1, 2, June 4, 1975, 89 Stat. 171, as amended by Pub. L. 94-280, title I, §145, May 5, 1976, 90 Stat. 446, provided for Federal share of projects approved under section 106(a) of this title, and projects for which United States becomes obligated under section 117 of this title during the period beginning Feb. 12, 1975, and ending Sept. 30, 1975, and repayment schedule for States from Jan. 1, 1977, through Jan. 1, 1979.

#### REVIEW AND ANALYSIS OF EXCISE TAXES DEDICATED TO HIGHWAY TRUST FUND

Section 507 of Pub. L. 95-599 provided that:

“(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Secretary of Transportation and the staff of the Joint Committee on Taxation, shall—

“(1) review and analyze each excise tax now dedicated to the Highway Trust Fund with respect to such factors as ease or difficulty of administration of such tax and the compliance burdens imposed on taxpayers by such tax, and

“(2) on or before April 15, 1982, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate as to the matters set forth in paragraph (1) and other findings, as well as recommendations on—

“(A) improvements in excise taxation which would enhance tax administration, equity, and compliance, or

“(B) a new system of raising revenues to fund the Highway Trust Fund which would meet the objectives set forth in subparagraph (A).

The recommendations described in paragraph (2) shall be formulated in conjunction with the recommendations of the cost allocation study under section 506 set out as note under section 307 of this title of the equitable distribution of the highway excise taxes.

“(b) INTERIM REPORTS.—The Secretary of the Treasury, in consultation with the Secretary of Transportation and the staff of the Joint Committee on Taxation, shall file an interim report with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on or before April 15, 1980, and a second interim report on or before April 15, 1981.”

#### HIGHWAY TRUST FUND

Section 209 of act June 29, 1956, ch. 462, title II, 70 Stat. 397, as amended by Pub. L. 86-342, title II, §202, Sept. 21, 1959, 73 Stat. 615; Pub. L. 86-346, title I, §104(5),

Sept. 22, 1959, 73 Stat. 622; Pub. L. 86-440, §1(c), Apr. 22, 1960, 74 Stat. 81; Pub. L. 87-61, title II, §207, June 29, 1961, 75 Stat. 128; Pub. L. 88-578, title II, §202, Sept. 3, 1964, 78 Stat. 904; Pub. L. 89-44, title II, §210, title VIII, §809(e), June 21, 1965, 79 Stat. 144, 168; Pub. L. 91-258, title II, §§207(e), 208(g), May 21, 1970, 84 Stat. 249, 252; Pub. L. 91-605, title III, §301, Dec. 31, 1970, 84 Stat. 1743; Pub. L. 94-273, §18, Apr. 21, 1976, 90 Stat. 379; Pub. L. 94-280, title III, §301, May 5, 1976, 90 Stat. 456; Pub. L. 95-599, title V, §§503(a), 504(a), Nov. 6, 1978, 92 Stat. 2757; Pub. L. 95-618, title II, §233(b)(2)(E), Nov. 9, 1978, 92 Stat. 3191; Pub. L. 96-451, title II, §203(a), Oct. 14, 1980, 94 Stat. 1988; Pub. L. 97-424, title V, §531(b), Jan. 6, 1983, 96 Stat. 2191; Pub. L. 97-449, §2(a), Jan. 12, 1983, 96 Stat. 2439, provided that:

“(a) [Repealed. Pub. L. 97-424, title V, §531(b), Jan. 6, 1983, 96 Stat. 2191. Subsec. (a) provided for the creation of a Highway Trust Fund.]

“(b) DECLARATION OF POLICY.—It is hereby declared to be the policy of the Congress that if it hereafter appears—

“(1) that the total receipts of the Trust Fund (exclusive of advances under subsection (d) will be less than the total expenditures from such Fund (exclusive of repayments of such advances); or

“(2) that the distribution of the tax burden among the various classes of persons using the Federal-aid highways, or otherwise deriving benefits from such highways, is not equitable, the Congress shall enact legislation in order to bring about a balance of total receipts and total expenditures, or such equitable distribution, as the case may be.

“(c) to (g) [Repealed. Pub. L. 97-424, title V, §531(b), Jan. 6, 1983, 96 Stat. 2191. Subsecs. (c) to (g) provided generally for the transfer of the equivalent of the receipts of certain taxes to the Fund, for additional appropriations to the Fund, for its management, methods and purposes of expenditures, and for adjustment of apportionments regarding the Fund.]”

Section 203(b) of Pub. L. 96-451 provided that: “The amendment made by subsection (a) [amending former subsec. (f)(5) of section 209 of Act June 29, 1956] shall apply to taxes received on or after October 1, 1980.”

Section 504(b) of Pub. L. 95-599 provided that: “The amendment made by subsection (a) [amending former subsec. (g) of section 209 of Act June 29, 1956] shall apply to fiscal years beginning after September 30, 1978.”

Pub. L. 91-258, title II, §208(g), May 21, 1970, 84 Stat. 252, which added subsec. (c)(5) of section 209 of the Act of June 29, 1956, ch. 462, title II, 70 Stat. 397, was repealed by Pub. L. 97-248, title II, §281(b), Sept. 3, 1982, 96 Stat. 566.

#### PERCENTAGE OF FUNDS CONTRIBUTED BY ALASKA

Section 21(d)(4) of Pub. L. 86-70, which repealed subsec. (h) of this section, provided in part that the provisions of subsec. (h) relating to the percentage of funds to be contributed by Alaska shall continue to apply to funds apportioned to Alaska for fiscal year 1960 and prior fiscal years.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 107, 122, 125, 130, 133, 142, 147, 148, 206, 217 of this title; title 42 section 3338.

### § 121. Payment to States for construction

(a) IN GENERAL.—The Secretary, from time to time as the work progresses, may make payments to a State for costs of construction incurred by the State on a project. Such payments may also be made for the value of the materials—

(1) that have been stockpiled in the vicinity of the construction in conformity to plans and specifications for the projects; and

(2) that are not in the vicinity of the construction if the Secretary determines that be-

cause of required fabrication at an off-site location the material cannot be stockpiled in such vicinity.

(b) PROJECT AGREEMENT.—No payment shall be made under this chapter except for a project covered by a project agreement. After completion of the project in accordance with the project agreement, a State shall be entitled to payment out of the appropriate sums apportioned or allocated to the State of the unpaid balance of the Federal share payable for such project.

(c) Such payments shall be made to such official or officials or depository as may be designated by the State transportation department and authorized under the laws of the State to receive public funds of the State.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 899; Pub. L. 88-157, §7(b), Oct. 24, 1963, 77 Stat. 278; Pub. L. 93-87, title I, §117, Aug. 13, 1973, 87 Stat. 259; Pub. L. 94-280, title I, §118(a), May 5, 1976, 90 Stat. 437; Pub. L. 100-17, title I, §133(b)(6), Apr. 2, 1987, 101 Stat. 171; Pub. L. 102-240, title I, §1018(b), Dec. 18, 1991, 105 Stat. 1948; Pub. L. 105-178, title I, §§1212(a)(2)(A)(i), 1302, June 9, 1998, 112 Stat. 193, 226.)

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178, §1302(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “The Secretary may, in his discretion, from time to time as the work progresses, make payments to a State for costs of construction incurred by it on a project. These payments shall at no time exceed the Federal share of the costs of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project. Such payments may also be made in the case of any such materials not in the vicinity of such construction if the Secretary determines that because of required fabrication at an off-site location the materials cannot be stockpiled in such vicinity.”

Subsec. (b). Pub. L. 105-178, §1302(1), added subsec. (b) and struck out former subsec. (b) which read as follows: “After completion of a project in accordance with the plans and specifications, and approval of the final voucher by the Secretary, a State shall be entitled to payment out of the appropriate sums apportioned to it of the unpaid balance of the Federal share payable on account of such project.”

Subsec. (c). Pub. L. 105-178, §1302(2), (3), redesignated subsec. (e) as (c) and struck out former subsec. (c) which read as follows: “No payment shall be made under this chapter, except for a project located on a Federal-aid system and covered by a project agreement. No final payment shall be made to a State for its costs of construction of a project until the completion of the construction has been approved by the Secretary following inspections pursuant to section 114(a) of this title.”

Subsec. (d). Pub. L. 105-178, §1302(2), struck out subsec. (d) which read as follows: “In making payments pursuant to this section, the Secretary shall be bound by the limitations with respect to the permissible amounts of such payments continued in sections 106(c), 120, and 130 of this title.”

Subsec. (e). Pub. L. 105-178, §1302(3), redesignated subsec. (e) as (c).

Pub. L. 105-178, §1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department”.

1991—Subsec. (d). Pub. L. 102-240 substituted “106(c), 120,” for “120” and struck out at end “Payments for

construction engineering on any project financed with Federal-aid highway funds shall not exceed 15 percent of the Federal share of the cost of construction of such project after excluding from the cost of construction the costs of rights-of-way, preliminary engineering, and construction engineering."

1987—Subsec. (d). Pub. L. 100-17 substituted "15 percent" for "10 per centum" and struck out at end "However, this limitation shall be 15 per centum in any State with respect to which the Secretary finds such higher limitation to be necessary."

1976—Subsec. (d). Pub. L. 94-280 substituted "Federal-aid highway funds" for "Federal-aid primary, secondary, or urban funds" and struck out 10 per centum limitation provision for any project financed with interstate funds.

1973—Subsec. (a). Pub. L. 93-87 authorized payments to be made for materials not in the construction vicinity where the Secretary determines that because of required fabrication at an off-site location the materials cannot be stockpiled in such vicinity.

1963—Subsec. (d). Pub. L. 88-157 substituted "any project financed with Federal-aid primary, secondary, or urban funds" for "any one project" and provided for limitation, on payments for construction engineering on projects financed with Federal-aid primary, secondary, or urban funds, of 15 percent of Federal share of cost of construction of the project where found by the Secretary to be necessary and for 10-percent limitation on projects financed with interstate funds.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### SUBMISSION OF RECOMMENDATIONS TO CONGRESS FOR REIMBURSEMENT OF STATES FOR CERTAIN HIGHWAYS

Pub. L. 85-845, Aug. 28, 1958, 72 Stat. 1083, required Secretary of Commerce, within ten days after first day of first session of Eighty-sixth Congress, to submit to Congress recommendations for legislation for purpose of assisting Congress to determine whether or not to reimburse each State of any portion of a toll or free highway (1) which was on National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways], (2) which met standards required by Federal-Aid Highway Act of 1956 for such System of Interstate and Defense Highways, and (3) construction of which had been completed since Aug. 2, 1947, or which had been in actual use or under construction by contract, for completion, awarded not later than June 30, 1957.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 122 of this title.

### § 122. Payments to States for bond and other debt instrument financing

(a) DEFINITION OF ELIGIBLE DEBT FINANCING INSTRUMENT.—In this section, the term "eligible debt financing instrument" means a bond or other debt financing instrument, including a note, certificate, mortgage, or lease agreement, issued by a State or political subdivision of a State or a public authority, the proceeds of which are used for an eligible project under this title.

(b) FEDERAL REIMBURSEMENT.—Subject to subsections (c) and (d), the Secretary may reimburse a State for expenses and costs incurred by the State or a political subdivision of the State and reimburse a public authority for expenses and costs incurred by the public authority for—

(1) interest payments under an eligible debt financing instrument;

(2) the retirement of principal of an eligible debt financing instrument;

(3) the cost of the issuance of an eligible debt financing instrument;

(4) the cost of insurance for an eligible debt financing instrument; and

(5) any other cost incidental to the sale of an eligible debt financing instrument (as determined by the Secretary).

(c) CONDITIONS ON PAYMENT.—The Secretary may reimburse a State or public authority under subsection (b) with respect to a project funded by an eligible debt financing instrument after the State or public authority has complied with this title with respect to the project to the extent and in the manner that would be required if payment were to be made under section 121.

(d) FEDERAL SHARE.—The Federal share of the cost of a project payable under this section shall not exceed the Federal share of the cost of the project as determined under section 120.

(e) STATUTORY CONSTRUCTION.—Notwithstanding any other provision of law, the eligibility of an eligible debt financing instrument for reimbursement under subsection (b) shall not—

(1) constitute a commitment, guarantee, or obligation on the part of the United States to provide for payment of principal or interest on the eligible debt financing instrument; or

(2) create any right of a third party against the United States for payment under the eligible debt financing instrument.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 900; Pub. L. 95-599, title I, §115(b), Nov. 6, 1978, 92 Stat. 2698; Pub. L. 97-424, title I, §107(f), Jan. 6, 1983, 96 Stat. 2103; Pub. L. 100-17, title I, §133(b)(7), Apr. 2, 1987, 101 Stat. 171; Pub. L. 104-59, title III, §311(a), Nov. 28, 1995, 109 Stat. 583.)

#### AMENDMENTS

1995—Pub. L. 104-59 amended section generally, substituting present provisions for provisions which authorized States to use portion of Federal highway payments to retire principal of bonds proceeds of which were used for certain Federal highway projects.

1987—Pub. L. 100-17 inserted "or for substitute highway projects approved under section 103(e)(4) of this title" before "and the retirement" in first sentence.

1983—Pub. L. 97-424 inserted "or for substitute highway projects approved under section 103(e)(4) of this title," after "highway systems in urban areas," and "or on highway projects approved under section 103(e)(4) of this title" after "expenditure on such system".

1978—Pub. L. 95-599 inserted provisions relating to the retirement of bonds the proceeds of which were used for program projects, provisions that section was not to be construed as a commitment on the part of the United States to pay the principal of any such bonds, and provisions prohibiting inclusion of interest and incidental costs of bonds in estimated cost of completion.

#### PAYMENT OF INTEREST ON BONDS ISSUED PRIOR TO AND AFTER NOVEMBER 6, 1978

Section 115(c) of Pub. L. 95-599 provided that: "No interest shall be paid under authority of section 122 of title 23, United States Code, on any bonds issued prior to the date of enactment of this Act [Nov. 6, 1978], unless such bonds were issued for projects which were under construction on January 1, 1978. Interest on bonds issued in any fiscal year by a State after the date of enactment of this Act may be paid under authority

of section 122 of title 23, United States Code, only if (1) such State was eligible to obligate funds of another State under subsection (a) of this section during such fiscal year and (2) the Secretary of Transportation certifies that such eligible State utilized, or will utilize, to the fullest extent possible during such fiscal year its authority to obligate funds under such subsection (a) of this section [amending section 118(b) of this title]. No interest shall be paid under section 122 of title 23, United States Code, on that part of the proceeds of bonds issued after the date of enactment of this Act used to retire or otherwise refinance bonds issued prior to such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 101 of this title.

**§ 123. Relocation of utility facilities**

(a) When a State shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on any Federal-aid system, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project. Federal funds shall not be used to reimburse the State under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. Such reimbursement shall be made only after evidence satisfactory to the Secretary shall have been presented to him substantiating the fact that the State has paid such cost from its own funds with respect to Federal-aid highway projects for which Federal funds are obligated subsequent to April 16, 1958, for work, including relocation of utility facilities.

(b) The term "utility", for the purposes of this section, shall include publicly, privately, and cooperatively owned utilities.

(c) The term "cost of relocation", for the purposes of this section, shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 900; Pub. L. 100-17, title I, §133(b)(8), Apr. 2, 1987, 101 Stat. 171.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-17 substituted "any Federal-aid system," for "the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas;".

STUDY OF PROCUREMENT PRACTICES AND PROJECT DELIVERY

Pub. L. 105-178, title I, §1213(e), June 9, 1998, 112 Stat. 201, provided that:

"(1) STUDY.—The Comptroller General shall conduct a study to assess the impact that a utility company's failure to relocate its facilities in a timely manner has on the delivery and cost of Federal-aid highway and bridge projects. The study shall also assess the following:

"(A) Methods States use to mitigate such delays, including the use of the courts to compel cooperation.

"(B) The prevalence and use of incentives to utility companies for early completion of utility relocations on Federal-aid transportation project sites and, conversely, penalties assessed on utility companies for utility relocation delays on such projects.

"(C) The extent to which States have used available technologies, such as subsurface utility engineering, early in the design of Federal-aid highway and bridge projects so as to eliminate or reduce the need for or delays due to utility relocations.

"(D) Whether individual States compensate transportation contractors for business costs incurred by the contractors when Federal-aid highway and bridge projects under contract to them are delayed by utility-company-caused delays in utility relocations and any methods used by States in making any such compensation.

"(2) REPORT.—Not later than 1 year after the date of enactment of this Act [June 9, 1998], the Comptroller General shall transmit to Congress a report on the results of the study with any recommendations the Comptroller General determines appropriate as a result of the study."

**§ 124. Advances to States**

If the Secretary shall determine that it is necessary for the expeditious completion of projects on any of the Federal-aid systems, including the Interstate System, he may advance to any State out of any existing appropriations the Federal share of the cost of construction thereof to enable the State transportation department to make prompt payments for acquisition of rights-of-way, and for the construction as it progresses. The sums so advanced shall be deposited in a special revolving trust fund, by the State official authorized under the laws of the State to receive Federal-aid highway funds, to be disbursed solely upon vouchers approved by the State transportation department for rights-of-way which have been or are being acquired, and for construction which has been actually performed and approved by the Secretary pursuant to this chapter. Upon determination by the Secretary that any part of the funds advanced to any State under the provisions of this section are no longer required, the amount of the advance, which is determined to be in excess of current requirements of the State, shall be repaid upon his demand, and such repayments shall be returned to the credit of the appropriation from which the funds were advanced. Any sum advanced and not repaid on demand shall be deducted from sums due the State for the Federal pro rata share of the cost of construction of Federal-aid projects.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 901; Pub. L. 95-599, title I, §118, Nov. 6, 1978, 92 Stat. 2699; Pub. L. 105-178, title I, §§1212(a)(2)(A)(i), 1226(c), June 9, 1998, 112 Stat. 193; Pub. L. 105-206, title IX, §9003(a), July 22, 1998, 112 Stat. 837.)

AMENDMENTS

1998—Pub. L. 105-178, §1226(c), as added by Pub. L. 105-206, §9003(a), struck out subsec. (a) designation before "If the Secretary" and struck out subsec. (b), which had: authorized advance of 100 per centum of cost of construction where Secretary determined that toll bridge, toll tunnel, or approach thereto meeting section 129 requirements was necessary to complete essential gap in Interstate System; provided repayment schedule; and directed that advance be made from funds apportioned to State for Interstate System and that section 103(e)(4) provisions would not apply.

Pub. L. 105-178, §1212(a)(2)(A)(i), substituted "State transportation department" for "State highway department" in two places.

1978—Pub. L. 95-599 designated existing provisions as subsec. (a) and added subsec. (b).

## 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 this title.

## ACCELERATION OF PROJECTS

Pub. L. 94-280, title I, §141, May 5, 1976, 90 Stat. 444, as amended by Pub. L. 95-599, title I, §136, Nov. 6, 1978, 92 Stat. 2709, provided that: "Not later than six months after the completion of such project, the Secretary of Transportation shall submit a report to Congress which includes, but is not limited to, a description of the methods used to reduce the time necessary for the completion of such project, recommendations for applying such methods to other highway projects, and any changes which may be necessary to existing law to permit further reductions in the time necessary to complete highway projects."

**§ 125. Emergency relief**

(a) GENERAL ELIGIBILITY.—Subject to this section and section 120, an emergency fund is authorized for expenditure by the Secretary for the repair or reconstruction of highways, roads, and trails, in any part of the United States, including Indian reservations, that the Secretary finds have suffered serious damage as a result of—

- (1) natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, or landslide; or
- (2) catastrophic failure from any external cause.

(b) RESTRICTION ON ELIGIBILITY.—In no event shall funds be used pursuant to this section for the repair or reconstruction of bridges that have been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to a structural deficiency or physical deterioration.

(c) FUNDING.—Subject to the following limitations, there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to establish the fund authorized by this section and to replenish it on an annual basis:

- (1) Not more than \$100,000,000 is authorized to be obligated in any 1 fiscal year commencing after September 30, 1980, to carry out the provisions of this section; except that, if in any fiscal year the total of all obligations under this section is less than the amount authorized to be obligated in such fiscal year, the unobligated balance of such amount shall remain available until expended and shall be in addition to amounts otherwise available to carry out this section each year.

(2) Pending such appropriation or replenishment, the Secretary may obligate from any funds heretofore or hereafter appropriated for obligation in accordance with this title, including existing Federal-aid appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized. Funds obligated under this paragraph shall be reimbursed from such appropriation or replenishment.

(d) The Secretary may expend funds from the emergency fund herein authorized for the repair or reconstruction of highways on Federal-aid highways in accordance with the provisions of this chapter: *Provided*, That (1) obligations for projects under this section, including those on highways, roads, and trails mentioned in subsection (e) of this section, resulting from a single natural disaster or a single catastrophic failure in a State shall not exceed \$100,000,000, and (2) the total obligations for projects under this section in any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not exceed \$20,000,000. Notwithstanding any provision of this chapter actual and necessary costs of maintenance and operation of ferryboats providing temporary substitute highway traffic service, less the amount of fares charged, may be expended from the emergency fund herein authorized on Federal-aid highways. Except as to highways, roads, and trails mentioned in subsection (e) of this section, no funds shall be so expended unless the Secretary has received an application therefor from the State transportation department, and unless an emergency has been declared by the Governor of the State and concurred in by the Secretary, except that if the President has declared such emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) concurrence of the Secretary is not required.

(e) The Secretary may expend funds from the emergency fund herein authorized, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are Federal-aid highways.

(f) TREATMENT OF TERRITORIES.—For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be considered to be States and parts of the United States, and the chief executive officer of each such territory shall be considered to be a Governor of a State.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 901; Pub. L. 86-342, title I, §107(a), Sept. 21, 1959, 73 Stat. 612; Pub. L. 89-574, §9(b), (c), Sept. 13, 1966, 80 Stat. 769; Pub. L. 90-495, §27(a), Aug. 23, 1968, 82 Stat. 829; Pub. L. 91-605, title I, §109(a), Dec. 31, 1970, 84 Stat. 1718; Pub. L. 92-361, Aug. 3, 1972, 86 Stat. 503; Pub. L. 94-280, title I, §119, May 5, 1976, 90 Stat. 437; Pub. L. 95-599, title I, §119, Nov. 6, 1978, 92 Stat. 2700; Pub. L. 96-106, §19, Nov. 9, 1979, 93 Stat. 799; Pub. L. 97-424, title I, §153(a), (c), (d), (h), Jan. 6, 1983, 96 Stat. 2132, 2133; Pub. L. 99-190, §101(e) [title III, §334], Dec. 19, 1985, 99 Stat. 1267, 1290; Pub. L. 99-272, title IV, §4103, Apr. 7, 1986, 100 Stat. 114; Pub. L. 100-17, title I, §§118(a)(1), (b)(1), (2), 133(b)(9), Apr. 2, 1987, 101 Stat. 156, 171; Pub. L. 100-707, §109(k), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 102-240, title I, §1022(b), Dec. 18, 1991, 105 Stat. 1951; Pub. L. 102-302, §101, June 22, 1992, 106 Stat. 252; Pub. L. 105-178, title I,

§§ 1113(b), 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 151, 193.)

## REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (d), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 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 5121 of Title 42 and Tables.

## AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178, §1113(b)(2), added subsec. (a) and struck out former subsec. (a) which authorized expenditures by Secretary from emergency fund for repair or reconstruction of highways, roads, or trails which have suffered serious damage from natural disasters or catastrophic failures from external sources, including provisions relating to restrictions on eligibility and funding.

Subsecs. (b), (c). Pub. L. 105-178, §1113(b)(1), (2), added subsecs. (b) and (c) and redesignated former subsecs. (b) and (c) as (d) and (e), respectively.

Subsec. (d). Pub. L. 105-178, §1212(a)(2)(A)(i), substituted "State transportation department" for "State highway department".

Pub. L. 105-178, §1113(b)(3), substituted "reconstruction of highways on Federal-aid highways in accordance" for "reconstruction of highways on the Federal-aid highway systems, including the Interstate System, in accordance" in first sentence, "subsection (e) of this section" for "subsection (c) of this section" in two places, "authorized on Federal-aid highways" for "authorized on the Federal-aid highway systems, including the Interstate System" before period at end of second sentence, and "Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)" for "Disaster Relief and Emergency Assistance Act (Public Law 93-288)" in third sentence.

Pub. L. 105-178, §1113(b)(1), redesignated subsec. (b) as (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 105-178, §1113(b)(4), substituted "Federal-aid highways" for "on any of the Federal-aid highway systems" before period at end.

Pub. L. 105-178, §1113(b)(1), redesignated subsec. (c) as (e).

Subsec. (f). Pub. L. 105-178, §1113(b)(1), redesignated subsec. (d) as (f).

1992—Subsec. (b). Pub. L. 102-302, which directed the substitution of "on Federal-aid highways" for "on the Federal-aid highway systems including the Interstate System" in two places, could not be executed because phrase "on the Federal-aid highway systems including the Interstate System" did not appear in text.

1991—Subsec. (b)(2). Pub. L. 102-240 substituted "\$20,000,000" for "\$5,000,000".

1988—Subsec. (b). Pub. L. 100-707 substituted "and Emergency Assistance Act" for "Act of 1974".

1987—Subsec. (b). Pub. L. 100-17, §133(b)(9)(A), substituted "the Federal-aid highway systems, including the Interstate System" for "the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors" in two places.

Pub. L. 100-17, §118(a)(1), substituted "in a State shall not exceed \$100,000,000." for "shall not exceed \$30,000,000 (\$55,000,000 for projects in connection with disasters or failures occurring in calendar year 1985) in any State."

Pub. L. 100-17, §118(b)(2), designated existing provisions related to limitations placed upon obligations for projects under this section as cl. (1) and added cl. (2).

Subsec. (c). Pub. L. 100-17, §133(b)(9)(B), substituted "on any of the Federal-aid highway systems" for "routes functionally classified as arterials or major collectors".

Subsec. (d). Pub. L. 100-17, §118(b)(1), added subsec. (d).

1986—Subsec. (b). Pub. L. 99-272 inserted parenthetical provision allowing obligations not exceeding

\$55,000,000 for projects in connection with disasters or failures occurring in calendar year 1985.

1985—Pub. L. 99-190 amended section in manner substantially identical to amendment by Pub. L. 99-272.

1983—Subsec. (a). Pub. L. 97-424, §153(a)(1), inserted "(1)" before "the repair or reconstruction of highways", and substituted "Secretary" for "he" before "shall find have suffered"; (A) and (B) for (1) and (2), respectively; "In no event shall funds be used pursuant to this section for the" for "and (2)"; and "or responsible local official" for "after December 31, 1967, and prior to December 31, 1970,".

Pub. L. 97-424, §153(a)(2), inserted "from the Highway Trust Fund" after "appropriated".

Pub. L. 97-424, §153(c), inserted "and not more than \$100,000,000 is authorized to be expended in any one fiscal year commencing after September 30, 1980," after "after September 30, 1976,".

Subsec. (b). Pub. L. 97-424, §153(d), inserted proviso establishing a \$30,000,000 limit for obligations relating to a single natural disaster in any one State.

Pub. L. 97-424, §153(h)(1), substituted "the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors," for "the Federal-aid highway systems, including the Interstate System", wherever appearing.

Subsec. (c). Pub. L. 97-424, §153(h)(2), substituted "routes functionally classified as arterials or major collectors" for "on any of the Federal-aid highway systems".

1979—Subsec. (b). Pub. L. 96-106 inserted provision that notwithstanding any provision of this chapter actual and necessary costs of maintenance and operation of ferryboats providing temporary substitute highway traffic service, less the amount of fares charged, may be expended from the emergency fund herein authorized on the Federal-aid highway systems, including the Interstate System.

1978—Subsec. (a). Pub. L. 95-599 inserted "prior to the fiscal year ending September 30, 1978" after "such years, and (2)", and inserted provision authorizing appropriations of 100 percent of expenditures out of the Highway Trust Fund.

1976—Subsec. (a). Pub. L. 94-280, §119(a)(1)-(3), inserted "and ending before June 1, 1976," after "June 30, 1972,"; authorized expenditure of not more than \$25,000,000 for the three-month period beginning July 1, 1976, and ending September 30, 1976, and not more than \$100,000,000 in any one fiscal year commencing after September 30, 1976, and inserted provision that for the purposes of this section the period beginning July 1, 1976, and ending September 30, 1976, shall be deemed to be a part of the fiscal year ending September 30, 1977.

Subsec. (b). Pub. L. 94-280, §119(b), excepted from the requirement of a concurrence by the Secretary an emergency declared by the President to be a major disaster for purposes of the Disaster Relief Act of 1974.

1972—Subsec. (a). Pub. L. 92-361 substituted provisions setting forth maximum expendable amounts for fiscal years ending July 1, 1972 and for fiscal years commencing after June 30, 1972 and an additional amount for fiscal year ending June 30, 1973 for provisions setting forth maximum expendable amount for any fiscal year.

1970—Subsec. (a). Pub. L. 91-605 provided emergency relief for the repair or reconstruction of bridges which have been permanently closed to all vehicular traffic by the State after December 31, 1967, and prior to December 31, 1970, because of imminent danger of collapse due to structural deficiencies or physical deterioration.

1968—Subsec. (a). Pub. L. 90-495 permitted the use of the emergency fund for repair or construction caused by other than natural catastrophes.

1966—Subsec. (a). Pub. L. 89-574, §9(c), raised from \$30,000,000 to \$50,000,000 the upper limit on allowable annual appropriations to establish and replenish the fund, provided that, if, in any fiscal year the total of all expenditures under this section is less than \$50,000,000, the unexpended balance of such amount shall remain available for expenditure during the next two succeed-



ing fiscal years in addition to amount otherwise available, and provided that 60 per centum of the expenditures under this section are authorized to be appropriated from the Highway Trust Fund and the remaining 40 per centum of such expenditures are authorized to be appropriated only from any monies in the Treasury not otherwise appropriated.

Subsec. (c). Pub. L. 89-574, §9(b), added parkways, public lands highways, public lands development roads, and trails to the list of types of roads the repair or reconstruction of which may be paid for out of the emergency fund.

1959—Pub. L. 86-342, among other changes, made expenditures from the emergency fund subject to the provisions of section 120 of this title, and permitted the Secretary to expend funds from the emergency fund, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are on any of the Federal-aid highway systems.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 applicable only to natural disasters and catastrophic failures occurring after Dec. 18, 1991, see section 1022(c) of Pub. L. 102-240, set out as a note under section 120 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Section 118(a)(2) of Pub. L. 100-17 provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to natural disasters and catastrophic failures occurring after December 31, 1985."

Section 118(b)(3) of Pub. L. 100-17 provided that: "The amendments made by paragraphs (1) and (2) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 2, 1987]."

#### EFFECTIVE DATE OF 1983 AMENDMENT

Section 153(e) of Pub. L. 97-424 provided that: "The amendments made by subsection (d) of this section [amending this section] shall apply to natural disasters or catastrophic failures which the Secretary finds eligible for emergency relief subsequent to the date of enactment of this section [Jan. 6, 1983]."

#### EFFECTIVE DATE OF 1968 AMENDMENT

Section 27(c) of Pub. L. 90-495 provided that: "The amendments made by this section [amending this section and section 120 of this title] shall be applicable to repair or reconstruction with respect to which project agreements have been entered into on or after January 1, 1968."

#### EFFECTIVE DATE OF 1966 AMENDMENT

Section 9(d) of Pub. L. 89-574 provided that: "The amendments made by this section [amending this section] shall take effect July 1, 1966."

#### EXPENDITURES MADE PRIOR TO FISCAL YEAR ENDING SEPTEMBER 30, 1978; APPROPRIATION FROM HIGHWAY TRUST FUND

Section 153(b) of Pub. L. 97-424 provided that: "Notwithstanding any other provision of law, all expenditures made under section 125 of title 23, United States Code, prior to the fiscal year ending September 30, 1978, are authorized to have been appropriated from the Highway Trust Fund."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 120 of this title.

### § 126. Uniform transferability of Federal-aid highway funds

(a) GENERAL RULE.—Notwithstanding any other provision of law but subject to subsections

(b) and (c), if at least 50 percent of a State's apportionment under section 104 or 144 for a fiscal year or at least 50 percent of the funds set-aside under section 133(d) from the State's apportionment<sup>1</sup> section 104(b)(3) may not be transferred to any other apportionment of the State under section 104 or 144 for such fiscal year, then the State may transfer not to exceed 50 percent of such apportionment or set aside to any other apportionment of such State under section 104 or 144 for such fiscal year.

(b) APPLICATION TO CERTAIN SET-ASIDES.—No funds may be transferred under this section that are subject to the last sentence of section 133(d)(1) or to section 104(f) or to section 133(d)(3). The maximum amount that a State may transfer under this section of the State's set-aside under section 133(d)(1) or 133(d)(2) for a fiscal year may not exceed 25 percent of (1) the amount of such set-aside, less (2) the amount of the State's set-aside under such section for fiscal year 1997.

(c) APPLICATION TO CERTAIN CMAQ FUNDS.—The maximum amount that a State may transfer under this section of the State's apportionment under section 104(b)(2) for a fiscal year may not exceed 50 percent of (1) the amount of such apportionment, less (2) the amount that the State's apportionment under section 104(b)(2) for such fiscal year would have been had the program been funded at \$1,350,000,000. Any such funds apportioned under section 104(b)(2) and transferred under this section may only be obligated in geographic areas eligible for the obligation of funds apportioned under section 104(b)(2).

(Added Pub. L. 105-178, title I, §1310(a), June 9, 1998, 112 Stat. 234, §110; renumbered §126, Pub. L. 106-159, title I, §102(a)(1), Dec. 9, 1999, 113 Stat. 1752.)

#### PRIOR PROVISIONS

A prior section 126, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 901; Pub. L. 93-87, title I, §152(3), Aug. 13, 1973, 87 Stat. 276, related to providing Federal aid for highway construction only to States that used at least amounts provided by law on June 18, 1934, for such purposes, prior to repeal by Pub. L. 105-178, title I, §1226(d), as added by Pub. L. 105-206, title IX, §9003(a), July 22, 1998, 112 Stat. 837.

#### AMENDMENTS

1999—Pub. L. 106-159 renumbered section 110 of this title as this section.

### § 127. Vehicle weight limitations—Interstate System

(a) IN GENERAL.—No funds shall be apportioned in any fiscal year under section 104(b)(1) of this title to any State which does not permit the use of The Dwight D. Eisenhower System of Interstate and Defense Highways within its boundaries by vehicles with a weight of twenty thousand pounds carried on any one axle, including enforcement tolerances, or with a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances, or a gross weight of at least eighty thousand pounds for vehicle combinations of five axles or more. How-

<sup>1</sup> So in original. Probably should be followed by "under".

ever, the maximum gross weight to be allowed by any State for vehicles using The Dwight D. Eisenhower System of Interstate and Defense Highways shall be twenty thousand pounds carried on one axle, including enforcement tolerances, and a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances and with an overall maximum gross weight, including enforcement tolerances, on a group of two or more consecutive axles produced by application of the following formula:

$$W=500 \left( \frac{LN}{N-1} +12N+36 \right)$$

where W equals overall gross weight on any group of two or more consecutive axles to the nearest five hundred pounds, L equals distance in feet between the extreme of any group of two or more consecutive axles, and N equals number of axles in group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles (1) is thirty-six feet or more, or (2) in the case of a motor vehicle hauling any tank trailer, dump trailer, or ocean transport container before September 1, 1989, is 30 feet or more: *Provided*, That such overall gross weight may not exceed eighty thousand pounds, including all enforcement tolerances, except for vehicles using Interstate Route 29 between Sioux City, Iowa, and the border between Iowa and South Dakota or vehicles using Interstate Route 129 between Sioux City, Iowa, and the border between Iowa and Nebraska, and except for those vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable State laws, or the corresponding maximum weights permitted for vehicles using the public highways of such State under laws or regulations established by appropriate State authority in effect on July 1, 1956, except in the case of the overall gross weight of any group of two or more consecutive axles on any vehicle (other than a vehicle comprised of a motor vehicle hauling any tank trailer, dump trailer, or ocean transport container on or after September 1, 1989), on the date of enactment of the Federal-Aid Highway Amendments of 1974, whichever is the greater. Any amount which is withheld from apportionment to any State pursuant to the foregoing provisions shall lapse if not released and obligated within the availability period specified in section 118(b)(1)<sup>1</sup> of this title. This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof, other than vehicles or combinations subject to subsection (d) of this section, which the State determines could be lawfully operated within such State on July 1, 1956, except in the case of the overall gross weight of any group of two or more consecutive axles, on the date of enactment of the Federal-Aid Highway Amendments of 1974. With respect to the State of Hawaii, laws or regulations in effect on

February 1, 1960, shall be applicable for the purposes of this section in lieu of those in effect on July 1, 1956. With respect to the State of Colorado, vehicles designed to carry 2 or more pre-cast concrete panels shall be considered a non-divisible load. With respect to the State of Michigan, laws or regulations in effect on May 1, 1982, shall be applicable for the purposes of this subsection. With respect to the State of Maryland, laws and regulations in effect on June 1, 1993, shall be applicable for the purposes of this subsection. The State of Louisiana may allow, by special permit, the operation of vehicles with a gross vehicle weight of up to 100,000 pounds for the hauling of sugarcane during the harvest season, not to exceed 100 days annually. With respect to Interstate Route 95 in the State of New Hampshire, State laws (including regulations) concerning vehicle weight limitations that were in effect on January 1, 1987, and are applicable to State highways other than the Interstate System, shall be applicable in lieu of the requirements of this subsection. With respect to that portion of the Maine Turnpike designated Interstate Route 95 and 495, and that portion of Interstate Route 95 from the southern terminus of the Maine Turnpike to the New Hampshire State line, laws (including regulations) of the State of Maine concerning vehicle weight limitations that were in effect on October 1, 1995, and are applicable to State highways other than the Interstate System, shall be applicable in lieu of the requirements of this subsection.

(b) REASONABLE ACCESS.—No State may enact or enforce any law denying reasonable access to motor vehicles subject to this title to and from the Interstate Highway System to terminals and facilities for food, fuel, repairs, and rest.

(c) OCEAN TRANSPORT CONTAINER DEFINED.—For purposes of this section, the term “ocean transport container” has the meaning given the term “freight container” by the International Standards Organization in Series 1, Freight Containers, 3rd Edition (reference number IS0668-1979(E)) as in effect on the date of the enactment of this subsection.

(d) LONGER COMBINATION VEHICLES.—

(1) PROHIBITION.—

(A) GENERAL CONTINUATION RULE.—A longer combination vehicle may continue to operate only if the longer combination vehicle configuration type was authorized by State officials pursuant to State statute or regulation conforming to this section and in actual lawful operation on a regular or periodic basis (including seasonal operations) on or before June 1, 1991, or pursuant to section 335 of the Department of Transportation and Related Agencies Appropriations Act, 1991 (104 Stat. 2186).

(B) APPLICABILITY OF STATE LAWS AND REGULATIONS.—All such operations shall continue to be subject to, at the minimum, all State statutes, regulations, limitations and conditions, including, but not limited to, routing-specific and configuration-specific designations and all other restrictions, in force on June 1, 1991; except that subject to such regulations as may be issued by the Secretary pursuant to paragraph (5) of this subsection, the State may make minor ad-

<sup>1</sup> See References in Text note below.

justments of a temporary and emergency nature to route designations and vehicle operating restrictions in effect on June 1, 1991, for specific safety purposes and road construction.

(C) WYOMING.—In addition to those vehicles allowed under subparagraph (A), the State of Wyoming may allow the operation of additional vehicle configurations not in actual operation on June 1, 1991, but authorized by State law not later than November 3, 1992, if such vehicle configurations comply with the single axle, tandem axle, and bridge formula limits set forth in subsection (a) and do not exceed 117,000 pounds gross vehicle weight.

(D) OHIO.—In addition to vehicles which the State of Ohio may continue to allow to be operated under subparagraph (A), such State may allow longer combination vehicles with 3 cargo carrying units of 28½ feet each (not including the truck tractor) not in actual operation on June 1, 1991, to be operated within its boundaries on the 1-mile segment of Ohio State Route 7 which begins at and is south of exit 16 of the Ohio Turnpike.

(E) ALASKA.—In addition to vehicles which the State of Alaska may continue to allow to be operated under subparagraph (A), such State may allow the operation of longer combination vehicles which were not in actual operation on June 1, 1991, but which were in actual operation prior to July 5, 1991.

(F) IOWA.—In addition to vehicles that the State of Iowa may continue to allow to be operated under subparagraph (A), the State may allow longer combination vehicles that were not in actual operation on June 1, 1991, to be operated on Interstate Route 29 between Sioux City, Iowa, and the border between Iowa and South Dakota or Interstate Route 129 between Sioux City, Iowa, and the border between Iowa and Nebraska.

(2) ADDITIONAL STATE RESTRICTIONS.—

(A) IN GENERAL.—Nothing in this subsection shall prevent any State from further restricting in any manner or prohibiting the operation of longer combination vehicles otherwise authorized under this subsection; except that such restrictions or prohibitions shall be consistent with the requirements of sections 31111–31114 of title 49.

(B) MINOR ADJUSTMENTS.—Any State further restricting or prohibiting the operations of longer combination vehicles or making minor adjustments of a temporary and emergency nature as may be allowed pursuant to regulations issued by the Secretary pursuant to paragraph (5) of this subsection, shall, within 30 days, advise the Secretary of such action, and the Secretary shall publish a notice of such action in the Federal Register.

(3) PUBLICATION OF LIST.—

(A) SUBMISSION TO SECRETARY.—Within 60 days of the date of the enactment of this subsection, each State (i) shall submit to the Secretary for publication in the Federal Register a complete list of (I) all operations

of longer combination vehicles being conducted as of June 1, 1991, pursuant to State statutes and regulations; (II) all limitations and conditions, including, but not limited to, routing-specific and configuration-specific designations and all other restrictions, governing the operation of longer combination vehicles otherwise prohibited under this subsection; and (III) such statutes, regulations, limitations, and conditions; and (ii) shall submit to the Secretary copies of such statutes, regulations, limitations, and conditions.

(B) INTERIM LIST.—Not later than 90 days after the date of the enactment of this subsection, the Secretary shall publish an interim list in the Federal Register, consisting of all information submitted pursuant to subparagraph (A). The Secretary shall review for accuracy all information submitted by the States pursuant to subparagraph (A) and shall solicit and consider public comment on the accuracy of all such information.

(C) LIMITATION.—No statute or regulation shall be included on the list submitted by a State or published by the Secretary merely on the grounds that it authorized, or could have authorized, by permit or otherwise, the operation of longer combination vehicles, not in actual operation on a regular or periodic basis on or before June 1, 1991.

(D) FINAL LIST.—Except as modified pursuant to paragraph (1)(C) of this subsection, the list shall be published as final in the Federal Register not later than 180 days after the date of the enactment of this subsection. In publishing the final list, the Secretary shall make any revisions necessary to correct inaccuracies identified under subparagraph (B). After publication of the final list, longer combination vehicles may not operate on the Interstate System except as provided in the list.

(E) REVIEW AND CORRECTION PROCEDURE.—The Secretary, on his or her own motion or upon a request by any person (including a State), shall review the list issued by the Secretary pursuant to subparagraph (D). If the Secretary determines there is cause to believe that a mistake was made in the accuracy of the final list, the Secretary shall commence a proceeding to determine whether the list published pursuant to subparagraph (D) should be corrected. If the Secretary determines that there is a mistake in the accuracy of the list the Secretary shall correct the publication under subparagraph (D) to reflect the determination of the Secretary.

(4) LONGER COMBINATION VEHICLE DEFINED.—For purposes of this section, the term “longer combination vehicle” means any combination of a truck tractor and 2 or more trailers or semitrailers which operates on the Interstate System at a gross vehicle weight greater than 80,000 pounds.

(5) REGULATIONS REGARDING MINOR ADJUSTMENTS.—Not later than 180 days after the date of the enactment of this subsection, the Secretary shall issue regulations establishing cri-

teria for the States to follow in making minor adjustments under paragraph (1)(B).

(e) OPERATION OF CERTAIN SPECIALIZED HAULING VEHICLES ON INTERSTATE ROUTE 68.—The single axle, tandem axle, and bridge formula limits set forth in subsection (a) shall not apply to the operation on Interstate Route 68 in Garrett and Allegany Counties, Maryland, of any specialized vehicle equipped with a steering axle and a tridem axle and used for hauling coal, logs, and pulpwood if such vehicle is of a type of vehicle as was operating in such counties on United States Route 40 or 48 for such purpose on August 1, 1991.

(f) OPERATION OF CERTAIN SPECIALIZED HAULING VEHICLES ON CERTAIN WISCONSIN HIGHWAYS.—If the 104-mile portion of Wisconsin State Route 78 and United States Route 51 between Interstate Route 94 near Portage, Wisconsin, and Wisconsin State Route 29 south of Wausau, Wisconsin, is designated as part of the Interstate System under section 103(c)(4)(A), the single axle weight, tandem axle weight, gross vehicle weight, and bridge formula limits set forth in subsection (a) shall not apply to the 104-mile portion with respect to the operation of any vehicle that could legally operate on the 104-mile portion before the date of the enactment of this subsection.

(g) OPERATION OF CERTAIN SPECIALIZED HAULING VEHICLES ON CERTAIN PENNSYLVANIA HIGHWAYS.—If the segment of United States Route 220 between Bedford and Bald Eagle, Pennsylvania, is designated as part of the Interstate System, the single axle weight, tandem axle weight, gross vehicle weight, and bridge formula limits set forth in subsection (a) shall not apply to that segment with respect to the operation of any vehicle which could have legally operated on that segment before the date of the enactment of this subsection.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 902; Pub. L. 86-624, §17(e), July 12, 1960, 74 Stat. 416; Pub. L. 93-643, §106, Jan. 4, 1975, 88 Stat. 2283; Pub. L. 94-280, title I, §120, May 5, 1976, 90 Stat. 438; Pub. L. 97-424, title I, §133, formerly §133(a), Jan. 6, 1983, 96 Stat. 2123, renumbered §133, Pub. L. 100-17, title I, §133(a)(3), Apr. 2, 1987, 101 Stat. 170; Pub. L. 100-17, title I, §119, Apr. 2, 1987, 101 Stat. 157; Pub. L. 100-202, §101(f) [title III, §347(c)], Dec. 22, 1987, 101 Stat. 1329-358, 1329-388; Pub. L. 101-427, Oct. 15, 1990, 104 Stat. 927; Pub. L. 102-240, title I, §1023(a), (b), (d), Dec. 18, 1991, 105 Stat. 1951, 1952, 1954; Pub. L. 103-331, title III, §332, Sept. 30, 1994, 108 Stat. 2493; Pub. L. 103-429, §3(3), Oct. 31, 1994, 108 Stat. 4377; Pub. L. 104-59, title III, §312(a)(1), (2), (b), Nov. 28, 1995, 109 Stat. 584; Pub. L. 104-88, title IV, §§404, 405(a)(1), Dec. 29, 1995, 109 Stat. 956; Pub. L. 105-178, title I, §§1106(c)(2)(B), 1212(d)(1), June 9, 1998, 112 Stat. 136, 194.)

#### REFERENCES IN TEXT

The date of enactment of Federal-Aid Highway Amendments of 1974, referred to in subsec. (a), means Jan. 4, 1975, the date on which Pub. L. 93-643 was approved.

Section 118(b) of this title, referred to in subsec. (a), was struck out and a new subsec. (b) was added by Pub. L. 102-240, title I, §1020(a), Dec. 18, 1991, 105 Stat. 1948. Provisions formerly contained in subsec. (b)(1) of section 118 appear in subsec. (b)(2).

The date of the enactment of this subsection, referred to in subsec. (c), is the date of enactment of Pub. L. 100-17, which was approved Apr. 2, 1987.

Section 335 of the Department of Transportation and Related Agencies Appropriations Act, 1991, referred to in subsec. (d)(1)(A), is section 335 of Pub. L. 101-516, which is not classified to the Code.

The date of the enactment of this subsection, referred to in subsec. (d)(3)(A), (B), (D), (5), is the date of the enactment of Pub. L. 102-240, which was approved Dec. 18, 1991.

The date of the enactment of this subsection, referred to in subsec. (f), is the date of enactment of Pub. L. 104-59, which was approved Nov. 28, 1995.

The date of the enactment of this subsection, referred to in subsec. (g), is the date of enactment of Pub. L. 104-88, which was approved Dec. 29, 1995.

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178, §1212(d)(1), inserted before penultimate sentence “With respect to the State of Colorado, vehicles designed to carry 2 or more precast concrete panels shall be considered a nondivisible load.” and inserted at end “The State of Louisiana may allow, by special permit, the operation of vehicles with a gross vehicle weight of up to 100,000 pounds for the hauling of sugarcane during the harvest season, not to exceed 100 days annually. With respect to Interstate Route 95 in the State of New Hampshire, State laws (including regulations) concerning vehicle weight limitations that were in effect on January 1, 1987, and are applicable to State highways other than the Interstate System, shall be applicable in lieu of the requirements of this subsection. With respect to that portion of the Maine Turnpike designated Interstate Route 95 and 495, and that portion of Interstate Route 95 from the southern terminus of the Maine Turnpike to the New Hampshire State line, laws (including regulations) of the State of Maine concerning vehicle weight limitations that were in effect on October 1, 1995, and are applicable to State highways other than the Interstate System, shall be applicable in lieu of the requirements of this subsection.”

Subsec. (f). Pub. L. 105-178, §1106(c)(2)(B), substituted “section 103(c)(4)(A)” for “section 139(a)”.

1995—Subsec. (a). Pub. L. 104-59, §312(a)(1), in proviso of second sentence substituted “except for vehicles using Interstate Route 29 between Sioux City, Iowa, and the border between Iowa and South Dakota or vehicles using Interstate Route 129 between Sioux City, Iowa, and the border between Iowa and Nebraska, and except for those” for “except for those”.

Subsec. (d)(1)(F). Pub. L. 104-59, §312(a)(2), added subpar. (F).

Subsec. (f). Pub. L. 104-59, §312(b), as amended by Pub. L. 104-88, §405(a)(1), added subsec. (f).

Subsec. (g). Pub. L. 104-88, §404, added subsec. (g).

1994—Subsec. (a). Pub. L. 103-331 inserted at end “With respect to the State of Maryland, laws and regulations in effect on June 1, 1993, shall be applicable for the purposes of this subsection.”

Subsec. (d)(2)(A). Pub. L. 103-429 substituted “sections 31111-31114 of title 49” for “sections 411, 412, and 416 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. App. 2311, 2312, and 2316)”.

1991—Subsec. (a). Pub. L. 102-240, §1023(a), substituted “funds shall be apportioned in any fiscal year under section 104(b)(1) of this title” for “funds authorized to be appropriated for any fiscal year under provisions of the Federal-Aid Highway Act of 1956 shall be apportioned” in first sentence and inserted “, other than vehicles or combinations subject to subsection (d) of this section,” after “thereof” in fourth sentence.

Subsecs. (d), (e). Pub. L. 102-240, §1023(b), (d), added subsecs. (d) and (e).

1990—Subsec. (a). Pub. L. 101-427 substituted “The Dwight D. Eisenhower System of Interstate and Defense Highways” for “the National System of Interstate and Defense Highways” in two places.

1987—Subsec. (a). Pub. L. 100-202 substituted “September 1, 1989” for “September 1, 1988” in two places.

Pub. L. 100-17, §119(d)(1), inserted heading.

Pub. L. 100-17, §119(a)(1), (2), which directed that second sentence be amended by inserting “(1)” before “is 36 feet or more” and by inserting cl. (2) after such phrase, was executed by making the insertions before and after “is thirty-six feet or more” to reflect the probable intent of Congress.

Pub. L. 100-17, §119(a)(3), (b), inserted “on any vehicle (other than a vehicle comprised of a motor vehicle hauling any tank trailer, dump trailer, or ocean transport container on or after September 1, 1988)” after last reference to “consecutive axles” in second sentence and substituted “lapse if not released and obligated within the availability period specified in section 118(b)(1) of this title.” for “lapse.”

Subsec. (b). Pub. L. 100-17, §119(d)(2), inserted heading.

Subsec. (c). Pub. L. 100-17, §119(c), added subsec. (c). 1983—Pub. L. 97-424 struck out “and width” after “weight” in section catchline.

Subsec. (a). Pub. L. 97-424 designated existing provisions as subsec. (a) and substituted provisions relating to authority to appropriate funds for any fiscal year under the Federal-Aid Highway Act of 1956 with respect to apportionment to any State not permitting the use of the National System of Interstate and Defense Highways within its boundaries by vehicles with specified weights, provisions setting forth formula of maximum gross weight to be allowed by any State for vehicles using such Highways, and provisions setting forth further limitations for apportionment, for provisions relating to authority to appropriate funds for any fiscal year under section 108(b) of the Federal-Aid Highway Act of 1956 with respect to apportionment to any State not permitting the use of the Interstate System within its boundaries by vehicles with specified weights, provisions setting forth formula for determination of overall gross weight, provisions relating to maximum widths permitted for vehicles, and provisions setting forth further limitations for apportionment.

Subsec. (b). Pub. L. 97-424 added subsec. (b).

1976—Pub. L. 94-280 authorized a State to permit any bus with a width of 102 inches or less to operate on any lane of twelve feet or more in width on the Interstate System.

1975—Pub. L. 93-643 substituted weight limitations of 20,000 lbs. carried on any one axle, including all enforcement tolerances, for 18,000 lbs. carried on any one axle, of 34,000 lbs. for tandem axle weight, including all enforcement tolerances, for 32,000 lbs. for tandem axle weight, overall gross weight limitation of 80,000, including enforcement tolerances, for overall gross weight of 73,280 lbs. prescribed a formula for determination of overall gross weight on a group of two or more consecutive axles, authorized a gross load of 34,000 lbs. each for two consecutive sets of tandem axles having an overall distance of 36 or more feet between such axles, excepted from the new weight limitations cases of overall gross weight of any group of two or more consecutive axles, on Jan. 4, 1975, and inserted “, except in the case of the overall gross weight of any group of two or more consecutive axles, on the date of enactment of the Federal-Aid Highway Amendments of 1974” in third sentence.

1960—Pub. L. 86-624 made the laws or regulation in effect on Feb. 1, 1960, applicable, with respect to the State of Hawaii, for the purposes of this section, in lieu of those in effect on July 1, 1956.

#### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by section 404 of Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

Section 405(a) of Pub. L. 104-88 provided that the amendment made by that section is effective Nov. 28, 1995.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated

or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### SPECIALIZED HAULING VEHICLES

Pub. L. 105-178, title I, §1213(f), June 9, 1998, 112 Stat. 201, provided that:

“(1) STUDY.—The Secretary shall conduct a study to examine the impact of the truck weight standards on specialized hauling vehicles. The study shall include, at a minimum, an analysis of the economic, safety, and infrastructure impacts of the standards.

“(2) REPORT.—Not later than 2 years after the date of enactment of this Act [June 9, 1998], the Secretary shall transmit to Congress a report on the results of the study with any recommendations the Secretary determines appropriate as a result of the study.”

#### VEHICLE WEIGHT ENFORCEMENT

Pub. L. 105-178, title I, §1213(h), June 9, 1998, 112 Stat. 202, provided that:

“(1) STUDY.—The Secretary shall conduct a study of State laws (including regulations) relating to penalties for violation of State commercial motor vehicle weight laws.

“(2) PURPOSE.—The purpose of the study shall be to determine the effectiveness of State penalties as a deterrent to illegally overweight trucking operations. The study shall evaluate fine structures, innovative roadside enforcement techniques, and a State’s ability to penalize shippers and carriers as well as drivers and shall examine the effectiveness of administrative and judicial procedures utilized to enforce vehicle weight laws.

“(3) REPORT.—Not later than 2 years after the date of enactment of this Act [June 9, 1998], the Secretary shall transmit to Congress a report on the results of the study with any legislative recommendations of the Secretary.”

#### COMMERCIAL MOTOR VEHICLE STUDY

Pub. L. 105-178, title I, §1213(i), June 9, 1998, 112 Stat. 202, provided that:

“(1) IN GENERAL.—The Secretary shall request the Transportation Research Board of the National Academy of Sciences to conduct a study regarding the regulation of weights, lengths, and widths of commercial motor vehicles operating on Federal-aid highways to which Federal regulations apply on the date of enactment of this Act [June 9, 1998]. In conducting the study, the Board shall review law, regulations, studies (including Transportation Research Board Special Report 225), and practices and develop recommendations regarding any revisions to law and regulations that the Board determines appropriate.

“(2) FACTORS TO CONSIDER AND EVALUATE.—In developing recommendations under paragraph (1), the Board shall consider and evaluate the impact of the recommendations described in paragraph (1) on the economy, the environment, safety, and service to communities.

“(3) CONSULTATION.—In carrying out the study, the Board shall consult with the Department of Transportation, States, the motor carrier industry, freight shippers, highway safety groups, air quality and natural resource management groups, commercial motor vehicle driver representatives, and other appropriate entities.

“(4) REPORT.—Not later than 2 years after the date of enactment of this Act [June 9, 1998], the Board shall transmit to Congress and the Secretary a report on the results of the study conducted under this subsection.

“(5) RECOMMENDATIONS.—Not later than 180 days after the date of receipt of the report under paragraph (4), the Secretary may transmit to Congress a report containing comments or recommendations of the Secretary regarding the Board’s report.

“(6) FUNDING.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass

Transit Account) \$250,000 for each of fiscal years 1999 and 2000 to carry out this subsection.

“(7) APPLICABILITY OF TITLE 23.—Funds made available to carry out this subsection shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that the Federal share of the cost of the study under this subsection shall be 100 percent and such funds shall remain available until expended.”

#### PUBLIC TRANSIT VEHICLES

Pub. L. 102-240, title I, §1023(h), as added by Pub. L. 102-388, title III, §341, Oct. 6, 1992, 106 Stat. 1552; amended by Pub. L. 104-59, title III, §326, Nov. 28, 1995, 109 Stat. 592; Pub. L. 105-178, title I, §1212(c), June 9, 1998, 112 Stat. 194, provided that:

“(1) TEMPORARY EXEMPTION.—The second sentence of section 127 of title 23, United States Code, relating to axle weight limitations for vehicles using the Dwight D. Eisenhower System of Interstate and Defense Highways, shall not apply, for the period beginning on October 6, 1992, and ending on October 1, 2003, to any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus.

“(2) STUDY.—The Secretary shall conduct a study on the maximum axle weight limitations on the Dwight D. Eisenhower System of Interstate and Defense Highways established under section 127 of title 23, United States Code, or under State laws, as they apply to public transit vehicles. The study shall determine whether or not public transit vehicles should be exempted from the requirements of section 127 or State laws or if such laws should be modified with regard to public transit vehicles. In making such determination, the Secretary shall consider current transit vehicle design standards, the implications of the Americans with Disabilities Act [of 1990, 42 U.S.C. 12101 et seq.] and Clean Air Act [42 U.S.C. 7401 et seq.] requirements on such design standards, and the potential impact of revised design standards on transit ridership capacity, operating and replacement costs, air quality concerns, and highway wear and tear.

“(3) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to the Congress a report on the result of the study conducted under paragraph (2), together with recommendations.”

#### TEMPORARY EXEMPTION FOR FIREFIGHTING VEHICLES

Section 1023(e) of Pub. L. 102-240 provided that:

“(1) TEMPORARY EXEMPTION.—The second sentence of section 127 of title 23, United States Code, relating to axle weight limitations and the bridge formula for vehicles using the National System of Interstate and Defense Highways, shall not apply, in the 2-year period beginning on the date of the enactment of this Act [Dec. 18, 1991], to any existing vehicle which is used for the purpose of protecting persons and property from fires and other disasters that threaten public safety and which is in actual operation before such date of enactment and to any new vehicle to be used for such purpose while such vehicle is being delivered to a firefighting agency. The Secretary may extend such 2-year period for an additional year.

“(2) STUDY.—The Secretary shall conduct a study—

“(A) of State laws regulating the use on the National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways] of vehicles which are used for the purpose of protecting persons and property from fires and other disasters that threaten public safety and which are being delivered to or operated by a firefighting agency; and

“(B) of the issuance of permits by States which exempt such vehicles from the requirements of the second sentence of section 127 of title 23, United States Code.

“(3) PURPOSES.—The purposes of the study under this subsection are to determine whether or not such State

laws and such section 127 need to be modified with regard to such vehicles and whether or not a permanent exemption should be made for such vehicles from the requirements of such laws and section 127 or whether or not the bridge formula set forth in such section should be modified as it applies to such vehicles.

“(4) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall submit to the Congress a report on the results of the study conducted under paragraph (2), together with recommendations.”

#### STUDY PERTAINING TO TRANSPORTERS OF WATER WELL DRILLING RIGS

Section 1023(g) of Pub. L. 102-240 directed Secretary to conduct a study of State and Federal regulations pertaining to transporters of water well drilling rigs on public highways for the purpose of identifying requirements which place a burden on such transporters without enhancing safety or preservation of public highways, and, not later than 2 years after Dec. 18, 1991, report to Congress on the results of the study, together with any legislative and administrative recommendations.

#### MOTOR VEHICLE STUDY BY TRANSPORTATION RESEARCH BOARD; REPORT

Section 158 of Pub. L. 100-17 directed Secretary, within 6 months after Apr. 2, 1987, to enter into appropriate arrangements with the Transportation Research Board of the National Academy of Sciences to conduct a study of the following motor vehicle issues, including an analysis of the impacts of the various positions that have been put forth with respect to each issue and best estimates of effects on pavement, bridges, highway revenue and cost responsibility, and highway safety, and changes in transportation costs and other measures of productivity for various segments of the trucking industry resulting from adoption of each of the positions: (1) elimination of existing, grandfather provisions of 23 U.S.C. 127 which allow higher axle loads and gross vehicle weights than the 20,000-pound single axle load limit, 34,000-pound tandem axle load limit, and 80,000-pound gross vehicle weight limit maximums authorized by Pub. L. 93-643, (2) analysis of alternative methods of determining gross vehicle weight limit and axle loadings for all types of motor carrier vehicles, (3) analysis of the bridge formula contained in 23 U.S.C. 127 in view of current vehicle configurations, pavement and bridge stresses in accord with 1986 design and construction practices, and existing bridges on and off the Interstate System, (4) establishment of nationwide policy regarding the provisions of ‘reasonable access’ to the National Network for combination vehicles established pursuant to Pub. L. 97-424, and (5) recommendation of appropriate treatment for specialized hauling vehicles which do not comply with the existing Federal bridge formula and submit a final report to Secretary and Congress, not later than 30 months after appropriate arrangements were entered into.

#### STATE-IMPOSED VEHICLE WIDTH LIMITATIONS

Pub. L. 97-369, title III, §321, Dec. 18, 1982, 96 Stat. 1784, related to State-imposed vehicle width limitations, prior to repeal by Pub. L. 98-17, §2, Apr. 5, 1983, 97 Stat. 60. See section 31113 of Title 49, Transportation.

#### STEERING AXLE STUDY; REPORT TO CONGRESS

Section 210 of Pub. L. 94-280 directed Secretary of Transportation to conduct an investigation into relationship between gross load on front steering axles of truck tractors and safety of operation of vehicle combinations of which such truck tractors are a part, such investigation to be conducted in cooperation with representatives of (A) manufacturers of truck tractors and related equipment, (B) labor, and (C) users of such equipment, and the results of such study to be reported to Congress not later than July 1, 1977.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 141 of this title; title 49 sections 5112, 31112.

**§ 128. Public hearings**

(a) Any State transportation department which submits plans for a Federal-aid highway project involving the by passing of or, going through any city, town, or village, either incorporated or unincorporated, shall certify to the Secretary that it has had public hearings, or has afforded the opportunity for such hearings, and has considered the economic and social effects of such a location, its impact on the environment, and its consistency with the goals and objectives of such urban planning as has been promulgated by the community. Any State transportation department which submits plans for an Interstate System project shall certify to the Secretary that it has had public hearings at a convenient location, or has afforded the opportunity for such hearings for the purpose of enabling persons in rural areas through or contiguous to whose property the highway will pass to express any objections they may have to the proposed locations of such highway. Such certification shall be accompanied by a report which indicates the consideration given to the economic, social, environmental and other effects of the plan or highway location or design and various alternatives which were raised during the hearing or which were otherwise considered.

(b) When hearings have been held under subsection (a), the State transportation department shall submit a copy of the transcript of said hearings to the Secretary, together with the certification and report.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 902; Pub. L. 90-495, § 24, Aug. 23, 1968, 82 Stat. 828; Pub. L. 91-605, title I, § 135, Dec. 31, 1970, 84 Stat. 1734; Pub. L. 105-178, title I, § 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193.)

## AMENDMENTS

1998—Pub. L. 105-178 substituted “State transportation department” for “State highway department” wherever appearing.

1970—Subsec. (a). Pub. L. 91-605, § 135(a), provided for submission of a report by the State highway department involved indicating consideration given to economic, social, environmental, and other effects of the plan or highway location or design plus the various alternatives which were considered.

Subsec. (b). Pub. L. 91-605, § 135(b), inserted reference to report to be submitted by the State highway department together with the certification of public hearings.

1968—Subsec. (a). Pub. L. 90-495 inserted social effect of projects, the impact on environment, and their consistency with the goals and objectives of such urban planning as has been promulgated by the community to the list of factors to be considered by State highway departments in looking over projects involving the by-passing or passing through of municipalities.

## EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

**§ 129. Toll roads, bridges, tunnels, and ferries**

(a) BASIC PROGRAM.—

(1) AUTHORIZATION FOR FEDERAL PARTICIPATION.—Notwithstanding section 301 of this title and subject to the provisions of this section, the Secretary shall permit Federal participation in—

(A) initial construction of a toll highway, bridge, or tunnel (other than a highway, bridge, or tunnel on the Interstate System) or approach thereto;

(B) reconstructing, resurfacing, restoring, and rehabilitating a toll highway, bridge, or tunnel (including a toll highway, bridge, or tunnel subject to an agreement entered into under this section or section 119(e) as in effect on the day before the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991) or approach thereto;

(C) reconstruction or replacement of a toll-free bridge or tunnel and conversion of the bridge or tunnel to a toll facility;

(D) reconstruction of a toll-free Federal-aid highway (other than a highway on the Interstate System) and conversion of the highway to a toll facility; and

(E) preliminary studies to determine the feasibility of a toll facility for which Federal participation is authorized under subparagraph (A), (B), (C), or (D);

on the same basis and in the same manner as in the construction of free highways under this chapter.

(2) OWNERSHIP.—Each highway, bridge, tunnel, or approach thereto constructed under this subsection must—

(A) be publicly owned, or

(B) be privately owned if the public authority having jurisdiction over the highway, bridge, tunnel, or approach has entered into a contract with a private person or persons to design, finance, construct, and operate the facility and the public authority will be responsible for complying with all applicable requirements of this title with respect to the facility.

(3) LIMITATIONS ON USE OF REVENUES.—Before the Secretary may permit Federal participation under this subsection in construction of a highway, bridge, or tunnel located in a State, the public authority (including the State transportation department) having jurisdiction over the highway, bridge, or tunnel must enter into an agreement with the Secretary which provides that all toll revenues received from operation of the toll facility will be used first for debt service, for reasonable return on investment of any private person financing the project, and for the costs necessary for the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation. If the State certifies annually that the tolled facility is being adequately maintained, the State may use any toll revenues in excess of amounts required under the preceding sentence for any purpose for which Federal funds may be obligated by a State under this title.

(4) SPECIAL RULE FOR FUNDING.—In the case of a toll highway, bridge, or tunnel under the jurisdiction of a public authority of a State

(other than the State transportation department), upon request of the State transportation department and subject to such terms and conditions as such department and public authority may agree, the Secretary shall reimburse such public authority for the Federal share of the costs of construction of the project carried out on the toll facility under this subsection in the same manner and to the same extent as such department would be reimbursed if such project was being carried out by such department. The reimbursement of funds under this paragraph shall be from sums apportioned to the State under this chapter and available for obligations on projects on the Federal-aid system in such State on which the project is being carried out.

(5) LIMITATION ON FEDERAL SHARE.—The Federal share payable for a project described in paragraph (1) shall be a percentage determined by the State but not to exceed 80 percent.

(6) MODIFICATIONS.—If a public authority (including a State transportation department) having jurisdiction over a toll highway, bridge, or tunnel subject to an agreement under this section or section 119(e), as in effect on the day before the effective date of title I of the Intermodal Surface Transportation Efficiency Act of 1991, requests modification of such agreement, the Secretary shall modify such agreement to allow the continuation of tolls in accordance with paragraph (3) without repayment of Federal funds.

(7) LOANS.—

(A) IN GENERAL.—A State may loan to a public or private entity constructing or proposing to construct under this section a toll facility or non-toll facility with a dedicated revenue source an amount equal to all or part of the Federal share of the cost of the project if the project has a revenue source specifically dedicated to it. Dedicated revenue sources for non-toll facilities include excise taxes, sales taxes, motor vehicle use fees, tax on real property, tax increment financing, and such other dedicated revenue sources as the Secretary determines appropriate.

(B) COMPLIANCE WITH FEDERAL LAWS.—As a condition of receiving a loan under this paragraph, the public or private entity that receives the loan shall ensure that the project will be carried out in accordance with this title and any other applicable Federal law, including any applicable provision of a Federal environmental law.

(C) SUBORDINATION OF DEBT.—The amount of any loan received for a project under this paragraph may be subordinated to any other debt financing for the project.

(D) OBLIGATION OF FUNDS LOANED.—Funds loaned under this paragraph may only be obligated for projects under this paragraph.

(E) REPAYMENT.—The repayment of a loan made under this paragraph shall commence not later than 5 years after date on which the facility that is the subject of the loan is open to traffic.

(F) TERM OF LOAN.—The term of a loan made under this paragraph shall not exceed 30 years from the date on which the loan funds are obligated.

(G) INTEREST.—A loan made under this paragraph shall bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible.

(H) REUSE OF FUNDS.—Amounts repaid to a State from a loan made under this paragraph may be obligated—

(i) for any purpose for which the loan funds were available under this title; and

(ii) for the purchase of insurance or for use as a capital reserve for other forms of credit enhancement for project debt in order to improve credit market access or to lower interest rates for projects eligible for assistance under this title.

(I) GUIDELINES.—The Secretary shall establish procedures and guidelines for making loans under this paragraph.

(8) INITIAL CONSTRUCTION DEFINED.—For purposes of this subsection, the term “initial construction” means the construction of a highway, bridge, or tunnel at any time before it is open to traffic and does not include any improvement to a highway, bridge, or tunnel after it is open to traffic.

(b) Notwithstanding the provisions of section 301 of this title, the Secretary may permit Federal participation under this title in the construction of a project constituting an approach to a ferry, whether toll or free, the route of which is a public road and has not been designated as a route on the Interstate System. Such ferry may be either publicly or privately owned and operated, but the operating authority and the amount of fares charged for passage shall be under the control of a State agency or official, and all revenues derived from publicly owned or operated ferries shall be applied to payment of the cost of construction or acquisition thereof, including debt service, and to actual and necessary costs of operation, maintenance, repair, and replacement.

(c) Notwithstanding section 301 of this title, the Secretary may permit Federal participation under this title in the construction of ferry boats and ferry terminal facilities, whether toll or free, subject to the following conditions:

(1) It is not feasible to build a bridge, tunnel, combination thereof, or other normal highway structure in lieu of the use of such ferry.

(2) The operation of the ferry shall be on a route classified as a public road within the State and which has not been designated as a route on the Interstate System. Projects under this subsection may be eligible for both ferry boats carrying cars and passengers and ferry boats carrying passengers only.

(3) Such ferry boat or ferry terminal facility shall be publicly owned or operated or majority publicly owned if the Secretary determines with respect to a majority publicly owned ferry or ferry terminal facility that such ferry boat or ferry terminal facility provides substantial public benefits.

(4) The operating authority and the amount of fares charged for passage on such ferry shall be under the control of the State or other public entity, and all revenues derived therefrom shall be applied to actual and necessary costs



of operation, maintenance, and<sup>1</sup> repair, debt service, negotiated management fees, and, in the case of a privately operated toll ferry, for a reasonable rate of return.

(5) Such ferry may be operated only within the State (including the islands which comprise the State of Hawaii and the islands which comprise the Commonwealth of Puerto Rico) or between adjoining States or between a point in a State and a point in the Dominion of Canada. Except with respect to operations between the islands which comprise the State of Hawaii, operations between the islands which comprise the Commonwealth of Puerto Rico, operations between a point in a State and a point in the Dominion of Canada, and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada, no part of such ferry operation shall be in any foreign or international waters.

(6) No such ferry shall be sold, leased, or otherwise disposed of without the approval of the Secretary. The Federal share of any proceeds from such a disposition shall be credited to the unprogramed balance of Federal-aid highway funds of the same class last apportioned to such State. Any amount so credited shall be in addition to all other funds then apportioned to such State and available for expenditure in accordance with the provisions of this title.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 902; Pub. L. 86-657, §§ 5, 8(a), July 14, 1960, 74 Stat. 523, 524; Pub. L. 90-495, § 28, Aug. 23, 1968, 82 Stat. 829; Pub. L. 91-605, title I, §§ 133, 139, Dec. 31, 1970, 84 Stat. 1732, 1736; Pub. L. 92-434, § 7, Sept. 26, 1972, 86 Stat. 732; Pub. L. 93-87, title I, §§ 118, 132, 139, Aug. 13, 1973, 87 Stat. 259, 267, 270; Pub. L. 93-643, § 108, Jan. 4, 1975, 88 Stat. 2284; Pub. L. 94-280, title I, § 121, May 5, 1976, 90 Stat. 438; Pub. L. 95-599, title I, § 120, Nov. 6, 1978, 92 Stat. 2700; Pub. L. 100-17, title I, § 120(a), (b), Apr. 2, 1987, 101 Stat. 157, 158; Pub. L. 100-202, § 101(l) [title III, § 347(d)], Dec. 22, 1987, 101 Stat. 1329-358, 1329-388; Pub. L. 100-457, title III, §§ 326, 335, Sept. 30, 1988, 102 Stat. 2150, 2153; Pub. L. 102-240, title I, § 1012(a), (c), Dec. 18, 1991, 105 Stat. 1936, 1938; Pub. L. 102-388, title IV, § 410, Oct. 6, 1992, 106 Stat. 1565; Pub. L. 104-59, title III, § 313(a)-(c), Nov. 28, 1995, 109 Stat. 585, 586; Pub. L. 105-178, title I, §§ 1106(c)(1)(C), 1207(a), 1211(f), formerly 1211(g), June 9, 1998, 112 Stat. 136, 185, 189; Pub. L. 105-206, title IX, § 9003(d)(5), July 22, 1998, 112 Stat. 840.)

#### REFERENCES IN TEXT

The date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (a)(1)(B), is the date of enactment of Pub. L. 102-240, which was approved Dec. 18, 1991.

For the effective date of title I of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (a)(6), see section 1100 of Pub. L. 102-240, set out as an Effective Date of 1991 Amendment note under section 104 of this title.

#### AMENDMENTS

1998—Subsec. (b). Pub. L. 105-178, § 1106(c)(1)(C), substituted “which is a public road and has not” for

“which has been classified as a public road and has not” in first sentence.

Subsec. (c)(3). Pub. L. 105-178, § 1207(a), substituted “owned or operated or majority publicly owned if the Secretary determines with respect to a majority publicly owned ferry or ferry terminal facility that such ferry boat or ferry terminal facility provides substantial public benefits.” for “owned.”

Subsec. (d). Pub. L. 105-178, § 1211(f), formerly § 1211(g), as renumbered by Pub. L. 105-206, § 9003(d)(5), struck out subsec. (d) which related to pilot toll collection program.

1995—Subsec. (a)(5). Pub. L. 104-59, § 313(a), amended par. (5) generally. Prior to amendment, par. (5) read as follows:

“(5) LIMITATION ON FEDERAL SHARE.—Except as otherwise provided in this paragraph, the Federal share payable for construction of a highway, bridge, tunnel, or approach thereto or conversion of a highway, bridge, or tunnel to a toll facility under this subsection shall be such percentage as the State determines but not to exceed 50 percent. The Federal share payable for construction of a new bridge, tunnel, or approach thereto or for reconstruction or replacement of a bridge, tunnel, or approach thereto shall be such percentage as the Secretary determines but not to exceed 80 percent. In the case of a toll facility subject to an agreement under section 119 or 129, the Federal share payable on any project for resurfacing, restoring, rehabilitating, or reconstructing such facility shall be 80 percent until the scheduled expiration of such agreement (as in effect on the day before the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991).”

Subsec. (a)(7). Pub. L. 104-59, § 313(b), amended par. (7) generally. Prior to amendment, par. (7) read as follows:

“(7) LOANS.—A State may loan all or part of the Federal share of a toll project under this section to a public or private agency constructing a toll facility. Such loan may be made only after all Federal environmental requirements have been complied with and permits obtained. The amount loaned shall be subordinated to other debt financing for the facility except for loans made by the State or any other public agency to the agency constructing the facility. Funds loaned pursuant to this section may be obligated for projects eligible under this section. The repayment of any such loan shall commence not more than 5 years after the facility has opened to traffic. Any such loan shall bear interest at the average rate the State’s pooled investment fund earned in the 52 weeks preceding the start of repayment. The term of any such loan shall not exceed 30 years from the time the loan was obligated. Amounts repaid to a State from any loan made under this section may be obligated for any purpose for which the loaned funds were available. The Secretary shall establish procedures and guidelines for making such loans.”

Subsec. (c)(5). Pub. L. 104-59, § 313(c), inserted before period at end of first sentence “or between a point in a State and a point in the Dominion of Canada” and in second sentence substituted “Hawaii,” for “Hawaii and” and inserted “, operations between a point in a State and a point in the Dominion of Canada,” after “Puerto Rico”.

1992—Subsec. (b). Pub. L. 102-388, § 410(1), which directed the substitution of “classified as a public road” for “approved under section 103(b) or (b) of this title as a part of one of the Federal-aid systems”, was executed by making the substitution for “approved under section 103(b) or (c) of this title as a part of one of the Federal-aid systems” to reflect the probable intent of Congress.

Subsec. (c)(2). Pub. L. 102-388, § 410(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The operation of the ferry shall be on a route which has been approved under section 103(b) or (c) of this title as a part of one of the Federal-aid systems within the State and has not been designated as a route on the Interstate System.”

1991—Subsec. (a). Pub. L. 102-240, § 1012(a), amended subsec. (a) generally, substituting present provisions

<sup>1</sup> So in original. The word “and” probably should not appear.

for provisions authorizing Federal participation in construction or acquisition of toll bridges, tunnels and approaches, provided that facility was publicly owned and operated by State or public authority, and State or authority agreed that all tolls, less those used to offset cost of operation and maintenance, were to be applied to repayment of State or authority for cost of construction or acquisition, that no tolls were to be charged after such repayment, and that facility was to be free of charge thereafter, except in case of bridge connecting United States with foreign country.

Subsec. (b). Pub. L. 102-240, §1012(c)(1), (2), redesignated subsec. (f) as (b) and struck out former subsec. (b) which authorized Secretary to approve toll roads, bridges and tunnels as part of Interstate System, authorized expenditure of Federal-aid highway funds on toll roads after they became toll-free, and required agreements between Secretary and State highway departments on construction of Interstate projects to forbid construction of toll roads, but not toll bridges and tunnels, on interstate highway route without official concurrence of Secretary, after June 30, 1968.

Subsec. (c). Pub. L. 102-240, §1012(c), redesignated subsec. (g) as (c), inserted "and ferry terminal facilities" after "boats" in introductory provisions, added par. (3) and struck out former par. (3) which read as follows: "Such ferry shall be publicly owned and operated.", in par. (4), inserted "or other public entity" after "State" and ", debt service, negotiated management fees, and, in the case of a privately operated toll ferry, for a reasonable rate of return" before period at end, and struck out former subsec. (c) which made available funds authorized for expenditure on Federal-aid highway systems for projects approaching toll roads, bridges or tunnels up to point where project had use irrespective of use for toll road, bridge or tunnel.

Subsec. (d). Pub. L. 102-240, §1012(c)(1), (2), redesignated subsec. (j) as (d) and struck out former subsec. (d) which made available funds authorized for expenditure on Interstate System for Interstate System projects approaching toll road and having no other use, if agreement was reached that section of toll road would become free to public upon collection of tolls sufficient to liquidate cost of road and outstanding bonds and cost of maintenance, operation and debt service during period of toll collection, and that there was a reasonably satisfactory alternative free route available to bypass toll section.

Subsec. (e). Pub. L. 102-240, §1012(c)(1), struck out subsec. (e) which authorized Secretary to permit Federal participation in reconstruction and improvement of two-lane toll road designated as part of the Interstate System before June 30, 1973, as necessary to bring such road to standards of Interstate System, provided that toll road authority agreed that no new indebtedness to be liquidated by tolls was to be incurred, that all tolls be used for operation and maintenance and to repay outstanding bonds, and that, upon liquidation of such bonds, the road was to become free to public.

Subsecs. (f), (g). Pub. L. 102-240, §1012(c)(2), redesignated subsecs. (f) and (g) as (b) and (c), respectively.

Subsec. (h). Pub. L. 102-240, §1012(c)(1), struck out subsec. (h) which provided that, in case of interstate toll bridge on Federal-aid primary system, except Interstate System, owned by State or political subdivision, that became toll-free by Jan. 1, 1975, because of purchase or construction by State before Jan. 1, 1975, funds would be made available under section 104(b)(1) and (3) of this title to pay Federal share of lesser of value of bridge (after deducting portion of value already attributable to Federal funds) or amount by which principal amount of outstanding unpaid bonds issued for construction or acquisition of bridge exceeded amount accumulated for their amortization, on date bridge became free to public.

Subsec. (i). Pub. L. 102-240, §1012(c)(1), struck out subsec. (i) which authorized Secretary to permit Federal participation, through funds for Federal-aid highway system, other than Interstate System, in engineering and fiscal assessments, traffic analyses, network stud-

ies, etc., to determine whether privately owned toll bridges should be acquired by a State or subdivision.

Subsec. (j). Pub. L. 102-240, §1012(c)(2), redesignated subsec. (j) as (d).

Subsec. (k). Pub. L. 102-240, §1012(c)(1), struck out subsec. (k) which required operators of toll roads, tunnels, ferries and bridges on Federal-aid highway system to biennially certify to Governor of State that facilities were adequately maintained and that operator had ability to fund such facilities that were not adequately maintained without using Federal-aid highway funds, and which required Governor of each State to report biennially to Secretary on facilities required to so certify.

1988—Subsec. (j)(1), (3). Pub. L. 100-457, §335, amended Pub. L. 100-202, §101(7) [title III, §347(d)(1), (2)(A), (C)], see 1987 Amendment note below.

Subsec. (j)(6). Pub. L. 100-457, §326(1), inserted "(and, in the case of the State of Texas, the Texas Turnpike Authority)" after "State highway department".

Subsec. (j)(10). Pub. L. 100-457, §326(2), added par. (10). 1987—Subsec. (j). Pub. L. 100-17, §120(a), added subsec. (j).

Subsec. (j)(1). Pub. L. 100-202, §101(7) [title III, §347(d)(1)], as amended by Pub. L. 100-457, §335, which directed the amendment of par. (1) by substituting "(9)" for "(9)" was executed by substituting "9" for "7" as the probable intent of Congress.

Subsec. (j)(3). Pub. L. 100-202, §101(7) [title III, §347(d)(2)(A)], as amended by Pub. L. 100-457, §335, which directed the amendment of par. (3) by substituting "(9)" for "(7)" was executed by substituting "9" for "7" as the probable intent of Congress.

Pub. L. 100-202, §101(7) [title III, §347(d)(2)(B)-(D)], as amended by Pub. L. 100-457, §335, substituted "States of Pennsylvania and West Virginia" for "State of Pennsylvania" in two places and inserted "States of Georgia and West Virginia," and "The toll facility in Orange County, California, may be located in more than 1 highway corridor to relieve congestion on existing interstate routes in such County."

Subsec. (k). Pub. L. 100-17, §120(b), added subsec. (k). 1978—Subsec. (i). Pub. L. 95-599 added subsec. (i).

1976—Subsec. (g)(5). Pub. L. 94-280 authorized ferry operations within the islands which comprise the Commonwealth of Puerto Rico and excepted ferry operations between the islands which comprise the Commonwealth of Puerto Rico from the prohibition of ferry operations in foreign or international waters.

1975—Subsec. (g)(5). Pub. L. 93-643 substituted "operations between the islands which comprise the State of Hawaii and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada" for "operations between the islands which comprise the State of Hawaii and operations between the States of Alaska and Washington, or between any two points within the State of Alaska".

1973—Subsec. (b). Pub. L. 93-87, §118(a), inserted third sentence providing that when any toll road which the Secretary has approved as a part of the Interstate System is made a toll-free facility, Federal-aid highway funds apportioned under section 104(b)(5) of this title may be expended for the construction, reconstruction, or improvement of that road to meet the standards adopted for the improvement of projects located on the Interstate System.

Subsec. (e). Pub. L. 93-87, §118(b), struck from first sentence "on the date of enactment of this subsection" before "as he may find necessary" and substituted in third sentence "1973" for "1968".

Subsecs. (f), (g). Pub. L. 93-87, §139, redesignated the second subsec. (f) as (g) and in par. (5) substituted "may be operated" for "shall be operated", inserted "(including the islands which comprise the State of Hawaii)" after "within the State", and excepted operations between the islands which comprise the State of Hawaii and operations between the States of Alaska and Washington, or between any two points within the State of Alaska from the prohibition against ferry operations in foreign or international waters.

Subsec. (h). Pub. L. 93-87, § 132, added subsec. (h).  
1972—Subsec. (a)(3). Pub. L. 92-434 substituted “or” for “and” making text read “maintained or operated”, and required domestic and foreign tolls for international bridges, and that the tolls be limited to amount necessary for maintenance, repair, and operation thereof.

1970—Subsec. (e). Pub. L. 91-605, § 133, added subsec. (e). Former subsec. (e), pertaining to ferry approaches, redesignated (f).

Subsec. (f). Pub. L. 91-605, §§ 133, 139, redesignated subsec. (e), relating to ferry approaches, as (f) and added a second subsec. (f) relating to ferry boats.

1968—Subsec. (b). Pub. L. 90-495 required that, after June 30, 1968, as a condition for the addition of toll highway facilities on the Interstate System, the approval of the Secretary is required, with an affirmative finding that the construction of the road as a toll facility rather than a toll-free facility is in the public interest, but with such limitation on the construction of toll facilities not to extend to toll bridges and tunnels.

1960—Pub. L. 86-657, § 5(b), included ferries in section catchline.

Subsec. (c). Pub. L. 86-657, § 8(a), struck out “under prior Acts” after “Funds authorized”.

Subsec. (e). Pub. L. 86-657, § 5(a), added subsec. (e).

#### 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 this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

#### FERRY TRANSPORTATION STUDY

Pub. L. 105-178, title I, § 1207(c), June 9, 1998, 112 Stat. 185, provided that:

“(1) IN GENERAL.—The Secretary shall conduct a study of ferry transportation in the United States and its possessions—

“(A) to identify existing ferry operations, including—

“(i) the locations and routes served; and

“(ii) the source and amount, if any, of funds derived from Federal, State, or local government sources supporting ferry construction or operations;

“(B) to identify potential domestic ferry routes in the United States and its possessions and to develop information on those routes; and

“(C) to identify the potential for use of high-speed ferry services and alternative-fueled ferry services.

“(2) REPORT.—The Secretary shall submit a report on the results of the study to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.”

#### INTERSTATE SYSTEM RECONSTRUCTION AND REHABILITATION PILOT PROGRAM

Pub. L. 105-178, title I, § 1216(b), June 9, 1998, 112 Stat. 212, provided that:

“(1) ESTABLISHMENT.—The Secretary shall establish and implement an Interstate System reconstruction and rehabilitation pilot program under which the Secretary, notwithstanding sections 129 and 301 of title 23, United States Code, may permit a State to collect tolls on a highway, bridge, or tunnel on the Interstate System for the purpose of reconstructing and rehabilitating Interstate highway corridors that could not otherwise be adequately maintained or functionally improved without the collection of tolls.

“(2) LIMITATION ON NUMBER OF FACILITIES.—The Secretary may permit the collection of tolls under this subsection on 3 facilities on the Interstate System. Each of such facilities shall be located in a different State.

“(3) ELIGIBILITY.—To be eligible to participate in the pilot program, a State shall submit to the Secretary an application that contains, at a minimum, the following:

“(A) An identification of the facility on the Interstate System proposed to be a toll facility, including the age, condition, and intensity of use of the facility.

“(B) In the case of a facility that affects a metropolitan area, an assurance that the metropolitan planning organization established under section 134 of title 23, United States Code, for the area has been consulted concerning the placement and amount of tolls on the facility.

“(C) An analysis demonstrating that the facility could not be maintained or improved to meet current or future needs from the State’s apportionments and allocations made available by this Act [see Tables for classification] (including amendments made by this Act) and from revenues for highways from any other source without toll revenues.

“(D) A facility management plan that includes—

“(i) a plan for implementing the imposition of tolls on the facility;

“(ii) a schedule and finance plan for the reconstruction or rehabilitation of the facility using toll revenues;

“(iii) a description of the public transportation agency that will be responsible for implementation and administration of the pilot program;

“(iv) a description of whether consideration will be given to privatizing the maintenance and operational aspects of the facility, while retaining legal and administrative control of the portion of the Interstate route; and

“(v) such other information as the Secretary may require.

“(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under paragraph (3) only if the Secretary determines that—

“(A) the State is unable to reconstruct or rehabilitate the proposed toll facility using existing apportionments;

“(B) the facility has a sufficient intensity of use, age, or condition to warrant the collection of tolls;

“(C) the State plan for implementing tolls on the facility takes into account the interests of local, regional, and interstate travelers;

“(D) the State plan for reconstruction or rehabilitation of the facility using toll revenues is reasonable; and

“(E) the State has given preference to the use of a public toll agency with demonstrated capability to build, operate, and maintain a toll expressway system meeting criteria for the Interstate System.

“(5) LIMITATIONS ON USE OF REVENUES; AUDITS.—Before the Secretary may permit a State to participate in the pilot program, the State must enter into an agreement with the Secretary that provides that—

“(A) all toll revenues received from operation of the toll facility will be used only for—

“(i) debt service;

“(ii) reasonable return on investment of any private person financing the project; and

“(iii) any costs necessary for the improvement of and the proper operation and maintenance of the

toll facility, including reconstruction, resurfacing, restoration, and rehabilitation of the toll facility; and

“(B) regular audits will be conducted to ensure compliance with subparagraph (A) and the results of such audits will be transmitted to the Secretary.

“(6) LIMITATION ON USE OF INTERSTATE MAINTENANCE FUNDS.—During the term of the pilot program, funds apportioned for Interstate maintenance under section 104(b)(4) of title 23, United States Code, may not be used on a facility for which tolls are being collected under the program.

“(7) PROGRAM TERM.—The Secretary shall conduct the pilot program under this subsection for a term to be determined by the Secretary, but not less than 10 years.

“(8) INTERSTATE SYSTEM DEFINED.—In this subsection, the term ‘Interstate System’ has the meaning such term has under section 101 of title 23, United States Code.”

#### CONTINUATION OF EXISTING AGREEMENTS

Section 1012(d) of title I of Pub. L. 102-240 provided that: “Unless modified under section 129(a)(6) of such title [this title], as amended by subsection (a) of this section, agreements entered into under section 119(e) or 129 of such title before the effective date of this title [Dec. 18, 1991] and in effect on the day before such effective date shall continue in effect on and after such effective date in accordance with the provisions of such agreement and such section 119(e) or 129.”

#### CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES

Pub. L. 102-240, title I, §1064, Dec. 18, 1991, 105 Stat. 2005, as amended by Pub. L. 102-388, title III, §332, Oct. 6, 1992, 106 Stat. 1550; Pub. L. 105-178, title I, §1207(b), June 9, 1998, 112 Stat. 185, provided that:

“(a) IN GENERAL.—The Secretary shall carry out a program for construction of ferry boats and ferry terminal facilities in accordance with section 129(c) of title 23, United States Code.

“(b) FEDERAL SHARE.—The Federal share payable for construction of ferry boats and ferry terminal facilities under this section shall be 80 percent of the cost thereof.

“(c) FUNDING.—There shall be available, out of the Highway Trust Fund (other than the Mass Transit Account), to the Secretary for obligation at the discretion of the Secretary \$14,000,000 for fiscal year 1992, \$17,000,000 per fiscal year for each of fiscal years 1993, 1994, 1995, and 1996, and \$18,000,000 for fiscal year 1997 in carrying out this section. Sums made available to carry out this section shall remain available until expended.

“(d) SET-ASIDE FOR PROJECTS ON NHS.—

“(1) IN GENERAL.—\$20,000,000 of the amount made available to carry out this section for each of fiscal years 1999 through 2003 shall be obligated for the construction or refurbishment of ferry boats and ferry terminal facilities and approaches to such facilities within marine highway systems that are part of the National Highway System.

“(2) ALASKA.—\$10,000,000 of the \$20,000,000 for a fiscal year made available under paragraph (1) shall be made available to the State of Alaska.

“(3) NEW JERSEY.—\$5,000,000 of the \$20,000,000 for a fiscal year made available under paragraph (1) shall be made available to the State of New Jersey.

“(4) WASHINGTON.—\$5,000,000 of the \$20,000,000 for a fiscal year made available under paragraph (1) shall be made available to the State of Washington.

“(e) APPLICABILITY OF TITLE 23.—All provisions of chapter 1 of title 23, United States Code, that are applicable to the National Highway System, other than provisions relating to apportionment formula and Federal share, shall apply to funds made available to carry out this section, except as determined by the Secretary to be inconsistent with this section.

“(f) TREATMENT OF CERTAIN ROADS.—For purposes of this section, North Carolina State Routes 12, 45, 306,

615, and 168 and United States Route 421 in the State of North Carolina shall be treated as principal arterials. For further purposes of this section, the access road from Interstate Business Route 75 to the Sugar Island Ferry Service in Chippewa County, Michigan, and the access road from United States Route 31 to the Beaver Island Ferry Service in Charlevoix County, Michigan, shall be treated as principal arterials.”

#### STUDY TO DETERMINE EXTENT OF BONDED INDEBTEDNESS OF STATES FOR CONSTRUCTION OF TOLL ROADS INCORPORATED INTO INTERSTATE SYSTEM

Section 164 of Pub. L. 95-599, as amended by Pub. L. 96-106, §16, Nov. 19, 1979, 93 Stat. 798, directed Secretary of Transportation to report not later than July 1, 1980, respecting extent of outstanding bonded indebtedness for each State as of Jan. 1, 1979, incurred by each State or public authority prior to June 29, 1956, for road construction or portions incorporated within Interstate System, and methods of allocating bonded indebtedness and removal of toll provisions.

#### RICHMOND-PETERSBURG TURNPIKE

Section 131 of Pub. L. 91-605 provided that: “The Secretary of Transportation is authorized to amend any agreement heretofore entered into under the provisions of section 129(d) of title 23, United States Code, in order to permit the continuation of tolls on the existing Richmond-Petersburg Turnpike to finance the construction within the existing termini of such turnpike of two lanes thereon in addition to the lanes in existence on the date of enactment of this section [Dec. 31, 1970] necessary to meet traffic and highway safety requirements. Any amended agreement entered into for such purposes shall provide assurances that the existing turnpike (including the additional lanes) shall become free to the public upon the collection of tolls sufficient to liquidate all construction costs, and the costs of maintenance, operation, and debt service during the period of toll collections to liquidate such construction costs, but in no event shall tolls be collected after date of maturity of those bonds outstanding on the date of enactment of this section [Dec. 31, 1970] issued for construction of such turnpike having the latest maturity date.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 119, 148, 301 of this title; title 33 section 535f.

### § 130. Railway-highway crossings

(a) Subject to section 120 and subsection (b) of this section, the entire cost of construction of projects for the elimination of hazards of railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings, may be paid from sums apportioned in accordance with section 104 of this title. In any case when the elimination of the hazards of a railway-highway crossing can be effected by the relocation of a portion of a railway at a cost estimated by the Secretary to be less than the cost of such elimination by one of the methods mentioned in the first sentence of this section, then the entire cost of such relocation project, subject to section 120 and subsection (b) of this section, may be paid from sums apportioned in accordance with section 104 of this title.

(b) The Secretary may classify the various types of projects involved in the elimination of hazards of railway-highway crossings, and may set for each such classification a percentage of

the costs of construction which shall be deemed to represent the net benefit to the railroad or railroads for the purpose of determining the railroad's share of the cost of construction. The percentage so determined shall in no case exceed 10 per centum. The Secretary shall determine the appropriate classification of each project.

(c) Any railroad involved in a project for the elimination of hazards of railway-highway crossings paid for in whole or in part from sums made available for expenditure under this title, or prior Acts, shall be liable to the United States for the net benefit to the railroad determined under the classification of such project made pursuant to subsection (b) of this section. Such liability to the United States may be discharged by direct payment to the State transportation department of the State in which the project is located, in which case such payment shall be credited to the cost of the project. Such payment may consist in whole or in part of materials and labor furnished by the railroad in connection with the construction of such project. If any such railroad fails to discharge such liability within a six-month period after completion of the project, it shall be liable to the United States for its share of the cost, and the Secretary shall request the Attorney General to institute proceedings against such railroad for the recovery of the amount for which it is liable under this subsection. The Attorney General is authorized to bring such proceedings on behalf of the United States, in the appropriate district court of the United States, and the United States shall be entitled in such proceedings to recover such sums as it is considered and adjudged by the court that such railroad is liable for in the premises. Any amounts recovered by the United States under this subsection shall be credited to miscellaneous receipts.

(d) SURVEY AND SCHEDULE OF PROJECTS.—Each State shall conduct and systematically maintain a survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices, and establish and implement a schedule of projects for this purpose. At a minimum, such a schedule shall provide signs for all railway-highway crossings.

(e) FUNDS FOR PROTECTIVE DEVICES.—At least  $\frac{1}{2}$  of the funds authorized for and expended under this section shall be available for the installation of protective devices at railway-highway crossings. Sums authorized to be appropriated to carry out this section shall be available for obligation in the same manner as funds apportioned under section 104(b)(1) of this title.

(f) APPORTIONMENT.—Twenty-five percent of the funds authorized to be appropriated to carry out this section shall be apportioned to the States in the same manner as sums are apportioned under section 104(b)(2) of this title, 25 percent of such funds shall be apportioned to the States in the same manner as sums are apportioned under section 104(b)(6)<sup>1</sup> of this title, and 50 percent of such funds shall be apportioned to the States in the ratio that total railway-highway crossings in each State bears to the total of such crossings in all States. The Federal share

payable on account of any project financed with funds authorized to be appropriated to carry out this section shall be 90 percent of the cost thereof.

(g) ANNUAL REPORT.—Each State shall report to the Secretary not later than December 30 of each year on the progress being made to implement the railway-highway crossings program authorized by this section and the effectiveness of such improvements. Each State report shall contain an assessment of the costs of the various treatments employed and subsequent accident experience at improved locations. The Secretary shall submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives not later than April 1 of each year, on the progress being made by the State in implementing projects to improve railway-highway crossings. The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, nature of treatment, and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (d) and include recommendations for future implementation of the railroad highway<sup>2</sup> crossings program.

(h) USE OF FUNDS FOR MATCHING.—Funds authorized to be appropriated to carry out this section may be used to provide a local government with funds to be used on a matching basis when State funds are available which may only be spent when the local government produces matching funds for the improvement of railway-highway crossings.

(i) INCENTIVE PAYMENTS FOR AT-GRADE CROSSING CLOSURES.—

(1) IN GENERAL.—Notwithstanding any other provision of this section and subject to paragraphs (2) and (3), a State may, from sums available to the State under this section, make incentive payments to local governments in the State upon the permanent closure by such governments of public at-grade railway-highway crossings under the jurisdiction of such governments.

(2) INCENTIVE PAYMENTS BY RAILROADS.—A State may not make an incentive payment under paragraph (1) to a local government with respect to the closure of a crossing unless the railroad owning the tracks on which the crossing is located makes an incentive payment to the government with respect to the closure.

(3) AMOUNT OF STATE PAYMENT.—The amount of the incentive payment payable to a local government by a State under paragraph (1) with respect to a crossing may not exceed the lesser of—

(A) the amount of the incentive payment paid to the government with respect to the crossing by the railroad concerned under paragraph (2); or

(B) \$7,500.

(4) USE OF STATE PAYMENTS.—A local government receiving an incentive payment from a

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Probably should be "railroad-highway".

State under paragraph (1) shall use the amount of the incentive payment for transportation safety improvements.

(j) BICYCLE SAFETY.—In carrying out projects under this section, a State shall take into account bicycle safety.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 903; Pub. L. 100-17, title I, §121(a), Apr. 2, 1987, 101 Stat. 159; Pub. L. 104-59, title III, §325(a), Nov. 28, 1995, 109 Stat. 591; Pub. L. 104-205, title III, §353(b), Sept. 30, 1996, 110 Stat. 2980; Pub. L. 105-178, title I, §§1111(d), 1202(d), 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 146, 170, 193.)

#### REFERENCES IN TEXT

Section 104(b) of this title, referred to in subsec. (f), was amended generally by Pub. L. 105-178, title I, §1103(b), June 9, 1998, 112 Stat. 119, and, as so amended, no longer contains a par. (6).

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178, §1111(d), substituted “Subject to section 120” for “Except as provided in subsection (d) of section 120 of this title” in first sentence and “subject to section 120” for “except as provided in subsection (d) of section 120 of this title” in second sentence.

Subsec. (c). Pub. L. 105-178, §1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department”.

Subsec. (j). Pub. L. 105-178, §1202(d), added subsec. (j). 1996—Subsec. (i). Pub. L. 104-205 added subsec. (i).

1995—Subsec. (g). Pub. L. 104-59 substituted “Committee on Transportation and Infrastructure” for “Committee on Public Works and Transportation” in third sentence.

1987—Subsecs. (d) to (h). Pub. L. 100-17 added subsecs. (d) to (h).

#### FEDERAL-STATE COOPERATION

Section 351(b), (c) of Pub. L. 104-59 provided that:

“(b) SAFETY ENFORCEMENT.—

“(1) COOPERATION BETWEEN FEDERAL AND STATE AGENCIES.—The National Highway Traffic Safety Administration and the Office of Motor Carriers within the Federal Highway Administration shall cooperate and work, on a continuing basis, with the National Association of Governors’ Highway Safety Representatives, the Commercial Vehicle Safety Alliance, and Operation Lifesaver, Inc., to improve compliance with and enforcement of laws and regulations pertaining to railroad-highway grade crossings.

“(2) REPORT.—Not later than June 1, 1998, the Secretary shall submit to Congress a report indicating—

“(A) how the Department of Transportation worked with the entities referred to in paragraph (1) to improve the awareness of the highway and commercial vehicle safety and law enforcement communities of regulations and safety challenges at railroad-highway grade crossings; and

“(B) how resources are being allocated to better address these challenges and enforce such regulations.

“(c) FEDERAL-STATE PARTNERSHIP.—

“(1) STATEMENT OF POLICY.—

“(A) HAZARDS TO SAFETY.—Certain railroad-highway grade crossings present inherent hazards to the safety of railroad operations and to the safety of persons using those crossings. It is in the public interest—

“(i) to promote grade crossing safety and reduce risk at high risk railroad-highway grade crossings; and

“(ii) to reduce the number of grade crossings while maintaining the reasonable mobility of the American people and their property, including emergency access.

“(B) EFFECTIVE PROGRAMS.—Effective programs to reduce the number of unneeded and unsafe railroad-highway grade crossings require the partnership of Federal, State, and local officials and agencies, and affected railroads.

“(C) HIGHWAY PLANNING.—Promotion of a balanced national transportation system requires that highway planning specifically take into consideration grade crossing safety.

“(2) PARTNERSHIP AND OVERSIGHT.—The Secretary shall encourage each State to make progress toward achievement of the purposes of this subsection.”

#### VEHICLE PROXIMITY ALERT SYSTEM

Pub. L. 102-240, title I, §1072, Dec. 18, 1991, 105 Stat. 2012, provided that: “The Secretary shall coordinate the field testing of the vehicle proximity alert system and comparable systems to determine their feasibility for use by priority vehicles as an effective railroad-highway grade crossing safety device. In the event the vehicle proximity alert or a comparable system proves to be technologically and economically feasible, the Secretary shall develop and implement appropriate programs under section 130 of title 23, United States Code, to provide for installation of such devices where appropriate.”

#### RAILWAY-HIGHWAY CROSSING HAZARDS; NATIONAL HIGHWAY INFORMATION PROGRAM FUNDING

Pub. L. 100-457, title III, §324, Sept. 30, 1988, 102 Stat. 2150, provided that: “Notwithstanding any other provision of law, the Secretary shall make available \$250,000 per year for a national public information program to educate the public of the inherent hazard at railway-highway crossings. Such funds shall be made available out of funds authorized to be appropriated out of the Highway Trust Fund, pursuant to section 130 of title 23, United States Code.”

Similar provisions were contained in the following prior appropriation act:

Pub. L. 100-202, §101(l) [title III, §339], Dec. 22, 1987, 101 Stat. 1329-358, 1329-386.

#### RAILROAD-HIGHWAY CROSSINGS STUDY AND REPORT

Section 159 of Pub. L. 100-17 directed Secretary of Transportation to conduct a study of national highway-railroad crossing improvement and maintenance needs, with Secretary to consult with State highway administrations, the Association of American Railroads, highway safety groups, and any other appropriate entities in carrying out this study, and directed Secretary, not later than 24 months after Apr. 2, 1987, to submit a final report to Congress on results of the study along with recommendations of how crossing needs can be addressed in a cost effective manner.

#### STUDY AND INVESTIGATION OF ALLEVIATION OF ENVIRONMENTAL, SOCIAL, ETC., IMPACTS OF INCREASED UNIT TRAIN TRAFFIC

Pub. L. 95-599, title I, §162, Nov. 6, 1978, 92 Stat. 2720, authorized Secretary of Transportation, in cooperation with State highway departments and appropriate officials of local government, to undertake a comprehensive investigation and study of techniques for alleviating the environmental, social, economic, and developmental impacts of increased unit train traffic to meet national energy requirements in communities located along rail corridors experiencing such increased traffic and directed Secretary to report to Congress on results of such investigation and study not later than Mar. 31, 1979.

#### DEMONSTRATION PROJECT, RAILROAD-HIGHWAY CROSSINGS; REPORTS TO PRESIDENT AND CONGRESS; APPROPRIATIONS AUTHORIZATION; HIGHWAY SAFETY STUDY, REPORT TO CONGRESS

Pub. L. 93-87, title I, §163, Aug. 13, 1973, 87 Stat. 280, as amended by Pub. L. 93-643, §104, Jan. 4, 1975, 88 Stat. 2282; Pub. L. 94-280, title I, §140(a)-(e), May 5, 1976, 90

Stat. 444; Pub. L. 95-599, title I, §134(a)-(c), Nov. 6, 1978, 92 Stat. 2709; Pub. L. 96-470, title II, §209(b), Oct. 19, 1980, 94 Stat. 2245; Pub. L. 97-424, title I, §151, Jan. 6, 1983, 96 Stat. 2132; Pub. L. 100-17, title I, §§133(c)(3), 148, Apr. 2, 1987, 101 Stat. 172, 181; Pub. L. 100-202, §101(7) [title III, §346], Dec. 22, 1987, 101 Stat. 1329-358, 1329-388; Pub. L. 102-240, title I, §1037, Dec. 18, 1991, 105 Stat. 1987; Pub. L. 104-66, title I, §1121(e), Dec. 21, 1995, 109 Stat. 724, provided that:

“(a)(1) The Secretary of Transportation shall enter into such arrangements as may be necessary to carry out demonstration projects in Lincoln, Nebraska, Wheeling, West Virginia, and Elko, Nevada, for the relocation of railroad lines from the central area of the cities in conformance with the methodology developed under proposals submitted to the Secretary by the respective cities. The cities shall (1) have a local agency with legal authority to relocate railroad facilities, levy taxes for such purpose, and a record of prior accomplishment; and (2) have a current relocation plan for such lines which has a favorable benefit-cost ratio involving and having the unanimous approval of three or more class 1 railroads in Lincoln, Nebraska, and the two class 1 railroads in Wheeling, West Virginia, and Elko, Nevada, and multicivic, local, and State agencies, and which provides for the elimination of a substantial number of the existing railway-road conflict points within the city.

“(2) The Secretary of Transportation shall enter into such arrangements as may be necessary to carry out a demonstration project in Lafayette, Indiana, for relocation of railroad lines from the central area of the city. There are authorized to be appropriated to carry out this paragraph \$360,000 for the fiscal year ending June 30, 1975.

“(b) The Secretary of Transportation shall carry out a demonstration project for the elimination or protection of certain public ground-level rail-highway crossings in, or in the vicinity of, Springfield, Illinois.

“(c) The Secretary of Transportation shall enter into such arrangements as may be necessary to carry out demonstration projects in Brownsville, Texas, and Matamoros, Mexico, for the relocation of railroad lines from the central area of the cities in conformance with the methodology developed under proposals submitted to the Secretary by the Brownsville Navigation District, providing for the construction of an international bridge and for the elimination of a substantial number of existing railway-road conflict points within the cities.

“(d) The Secretary of Transportation shall enter into such arrangements as may be necessary to carry out a demonstration project in East Saint Louis, Illinois, for the relocation of rail lines between Thirteenth and Forty-third Streets, in accordance with methodology approved by the Secretary. The Secretary of Transportation shall carry out a demonstration project for the relocation of rail lines in the vicinity of Carbondale, Illinois.

“(e) The Secretary of Transportation shall enter into such arrangements as may be necessary to carry out a demonstration project in New Albany, Indiana, for the elimination of the existing rail loop and relocation of rail lines to a location between Vincennes Street and East Eighth Street, in accordance with methodology approved by the Secretary.

“(f) The Secretary of Transportation shall carry out demonstration projects for the construction of an overpass at the rail-highway grade crossing on Cottage Grove Avenue between One Hundred Forty-second Street and One Hundred Thirty-eighth Street in the village of Dolton, Illinois, and the construction of an overpass at the rail-highway grade crossing at Vermont Street and the Rock Island Railroad tracks in the city of Blue Island, Illinois.

“(g) The Secretary of Transportation shall carry out a demonstration project for the elimination of the ground level railroad highway crossing on United States Route 69 in Greenville, Texas.

“(h) The Secretary of Transportation shall carry out a demonstration project in Anoka, Minnesota, for the

construction of an underpass at the Seventh Avenue and County Road 7 railroad-highway grade crossing.

“(i) The Secretary of Transportation shall carry out a demonstration project in Metairie, Jefferson Parish, Louisiana, for the relocation or grade separation of rail lines whichever he deems most feasible in order to eliminate certain grade level railroad highway crossings.

“(j) The Secretary of Transportation shall enter into such arrangements as may be necessary to carry out a demonstration project in Augusta, Georgia, for the relocation of railroad lines and for the purpose of eliminating highway railroad grade crossings.

“(k) The Secretary of Transportation shall enter into such arrangements as may be necessary to carry out a demonstration project in Pine Bluff, Arkansas, for the relocation of railroad lines for the purpose of eliminating highway railroad grade crossings.

“(l) The Secretary of Transportation shall carry out a demonstration project in Sherman, Texas, for the relocation of rail lines in order to eliminate the ground level railroad crossing at the crossing of the Southern Pacific and Frisco Railroads with Grand Avenue-Roberts Road.

“(m) The Secretary of Transportation shall enter into such arrangements as may be necessary to carry out a demonstration project in Hammond, Indiana, for the relocation of railroad lines for the purposes of eliminating highway railroad grade crossings.

“(n) The Federal share payable on account of such projects shall be the Federal share provided in section 120(a) of title 23, United States Code. [sic] except those railroad-highway crossings segments which are already engaged in or have completed the preparation of the plans, specifications and estimates (PS&E) for the construction of the segment involved shall retain the Federal share as specified in subsection [sic] 163(n) [this subsection] as amended by section 134 of the Surface Transportation Assistance Act of 1978 [section 134 of Pub. L. 95-599].

“[(o) Repealed. Pub. L. 104-66, title I, §1121(e), Dec. 21, 1995, 109 Stat. 724.]

“(p) There is authorized to be appropriated to carry out this section (other than subsection (l)), not to exceed \$15,000,000 for the fiscal year ending June 30, 1974, \$25,000,000 for the fiscal year ending June 30, 1975, and \$50,000,000 for the fiscal year ending June 30, 1976, \$6,250,000, for the period beginning July 1, 1976, and ending September 30, 1976, \$26,400,000 for the fiscal year ending September 30, 1977, and \$51,400,000 for the fiscal year ending September 30, 1978, \$70,000,000 for the fiscal year ending September 30, 1979, and \$90,000,000 for the fiscal year ending September 30, 1980, \$100,000,000 for the fiscal year ending September 30, 1981, and \$100,000,000 for the fiscal year ending September 30, 1982, and \$50,000,000 for the fiscal year ending September 30, 1983, and \$50,000,000 for the fiscal year ending September 30, 1984, and \$50,000,000 for the fiscal year ending September 30, 1985, and \$50,000,000 for the fiscal year ending September 30, 1986, and \$15,000,000 per fiscal year for each of fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, except that not more than two-thirds of all funds authorized and expended under authority of this section in any fiscal year shall be appropriated out of the Highway Trust fund. Notwithstanding any other provision of this section, any project which is not under construction, according to the Secretary of Transportation, by September 30, 1985, shall not be eligible for additional funds under this authorization.

“(q) The Secretary, in cooperation with State highway departments and local officials, shall conduct a full and complete investigation and study of the problem of providing increased highway safety by the relocation of railroad lines from the central area of cities on a nationwide basis, and report to the Congress his recommendations resulting from such investigation and study not later than July 1, 1975, including an estimate of the cost of such a program. Funds authorized to carry out section 307 of title 23, United States Code,

are authorized to be used to carry out the investigation and study required by this subsection.”

DEMONSTRATION PROJECT, RAILROAD-HIGHWAY CROSSINGS; INCLUSION OF PROJECTS AT TERRE HAUTE, INDIANA

Pub. L. 94-387, title I, §101, Aug. 14, 1976, 90 Stat. 1176, provided in part: “That section 163 of Public Law 93-87 [set out as a note above] is hereby amended to include projects at Terre Haute, Indiana.”

RAILROAD-HIGHWAY CROSSINGS

Pub. L. 93-87, title II, §203, Aug. 13, 1973, 87 Stat. 283, as amended by Pub. L. 94-280, title II, §203, May 5, 1976, 90 Stat. 452; Pub. L. 95-599, title II, §203, Nov. 6, 1978, 92 Stat. 2728; Pub. L. 96-470, title II, §209(d), Oct. 19, 1980, 94 Stat. 2245; Pub. L. 97-327, §5(b), Oct. 15, 1982, 96 Stat. 1612; Pub. L. 97-424, title II, §205, Jan. 6, 1983, 96 Stat. 2139, which directed each State to conduct a survey of all highways to identify those railway crossings requiring separation, relocation, or protective devices and to establish and implement a schedule of projects for such purpose, which at a minimum was to provide for signs at all crossings, authorized appropriations for elimination of hazards of railway-highway crossings, provided for State apportionments and for the Federal share of the costs of projects, required each State to annually report to the Secretary of Transportation and the Secretary of Transportation to annually report to Congress on progress in implementing railroad-highway crossings program, and authorized use of matching funds with local governments for improvement of railroad crossings, was repealed by Pub. L. 100-17, title I, §121(b), Apr. 2, 1987, 101 Stat. 160.

Highway authorizations provisions of section 104(a) (1) and (2) of Pub. L. 93-87, referred to in section 203(d) of Pub. L. 93-87 provided that:

“(a) For the purpose of carrying out the provisions of title 23, United States Code, the following sums are hereby authorized to be appropriated:

“(1) For the Federal-aid primary system in rural areas, out of the Highway Trust Fund, \$680,000,000 for the fiscal year ending June 30, 1974, \$700,000,000 for the fiscal year ending June 30, 1975, and \$700,000,000 for the fiscal year ending June 30, 1976. For the Federal-aid secondary system in rural areas, out of Highway Trust Fund, \$390,000,000 for the fiscal year ending June 30, 1974, \$400,000,000 for the fiscal year ending June 30, 1975, and \$400,000,000 for the fiscal year ending June 30, 1976.

“(2) For the Federal-aid urban system, out of the Highway Trust Fund, \$780,000,000 for the fiscal year ending June 30, 1974, \$800,000,000 for the fiscal year ending June 30, 1975, and \$800,000,000 for the fiscal year ending June 30, 1976. For the extensions of the Federal-aid primary and secondary systems in urban areas, out of the Highway Trust Fund \$290,000,000 for the fiscal year ending June 30, 1974, \$300,000,000 for the fiscal year ending June 30, 1975, and \$300,000,000 for the fiscal year ending June 30, 1976.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 133, 409 of this title.

**§ 131. Control of outdoor advertising**

(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance

along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, and Federal-aid highway funds apportioned on or after January 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than six hundred and sixty feet off the nearest edge of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be re-apportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that such signs, displays, or devices after January 1, 1968, if located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, (3) signs, displays, and devices, including those which may be changed at reasonable intervals by electronic process or by remote control, advertising activities conducted on the property on which they are located, (4) signs lawfully in existence on October 22, 1965, determined by the State subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, or historic or artistic significance the preservation of which would be consistent with the purposes of this section, and (5) signs, displays, and devices advertising the distribution by nonprofit organizations of free coffee to individuals traveling on the Interstate System or the primary system.



For the purposes of this subsection, the term "free coffee" shall include coffee for which a donation may be made, but is not required.

(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. The Secretary may also, in consultation with the States, provide within the rights-of-way of the primary system for areas in which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

(g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law and not permitted under subsection (c) of this section, whether or not removed pursuant to or because of this section. The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

(i) In order to provide information in the specific interest of the traveling public, the State transportation departments are authorized to maintain maps and to permit information directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas and other travel information systems within the rights-of-way for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable. The Federal share of the cost of establishing such an information center or travel information system shall be that which is provided in section 120 for a highway project on that Federal-aid system to be served by such center or system.

(j) Any State transportation department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State transportation department shall be entitled to such payments unless the State maintains the control required under such agreement: *Provided*, That permission by a State to erect and maintain information displays which may be changed at reasonable intervals by electronic process or remote control and which provide public service information or advertise activities conducted on the property on which they are located shall not be considered a breach of such agreement or the control required thereunder. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

(k) Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

(l) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period

shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the State may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has been entered on such appeal. Summons may be served at any place in the United States. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed \$20,000,000 for the fiscal year ending June 30, 1966, not to exceed \$20,000,000 for the fiscal year ending June 30, 1967, not to exceed \$2,000,000 for the fiscal year ending June 30, 1970, not to exceed \$27,000,000 for the fiscal year ending June 30, 1971, not to exceed \$20,500,000 for the fiscal year ending June 30, 1972, and not to exceed \$50,000,000 for the fiscal year ending June 30, 1973. The provisions of this chapter relating to the obligation, period of availability and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967. Subject to approval by the Secretary in accordance with the program of projects approval process of section 105,<sup>1</sup> a State may use any funds apportioned to it under section 104 of this title for removal of any sign, display, or device lawfully erected which does not conform to this section.

(n) No sign, display, or device shall be required to be removed under this section if the Federal share of the just compensation to be paid upon removal of such sign, display, or device is not available to make such payment. Funds apportioned to a State under section 104 of this title shall not be treated for purposes of the preceding sentence as being available to the State for making such a payment except to the extent that the State, in its discretion, expends such funds for such a payment.

(o) The Secretary may approve the request of a State to permit retention in specific areas de-

finied by such State of directional signs, displays, and devices lawfully erected under State law in force at the time of their erection which do not conform to the requirements of subsection (c), where such signs, displays, and devices are in existence on the date of enactment of this subsection and where the State demonstrates that such signs, displays, and devices (1) provide directional information about goods and services in the interest of the traveling public, and (2) are such that removal would work a substantial economic hardship in such defined area.

(p) In the case of any sign, display, or device required to be removed under this section prior to the date of enactment of the Federal-Aid Highway Act of 1974, which sign, display, or device was after its removal lawfully relocated and which as a result of the amendments made to this section by such Act is required to be removed, the United States shall pay 100 per centum of the just compensation for such removal (including all relocation costs).

(q)(1) During the implementation of State laws enacted to comply with this section, the Secretary shall encourage and assist the States to develop sign controls and programs which will assure that necessary directional information about facilities providing goods and services in the interest of the traveling public will continue to be available to motorists. To this end the Secretary shall restudy and revise as appropriate existing standards for directional signs authorized under subsections 131(c)(1) and 131(f) to develop signs which are functional and esthetically compatible with their surroundings. He shall employ the resources of other Federal departments and agencies, including the National Endowment for the Arts, and employ maximum participation of private industry in the development of standards and systems of signs developed for those purposes.

(2) Among other things the Secretary shall encourage States to adopt programs to assure that removal of signs providing necessary directional information, which also were providing directional information on June 1, 1972, about facilities in the interest of the traveling public, be deferred until all other nonconforming signs are removed.

(r) REMOVAL OF ILLEGAL SIGNS.—

(1) BY OWNERS.—Any sign, display, or device along the Interstate System or the Federal-aid primary system which was not lawfully erected, shall be removed by the owner of such sign, display, or device not later than the 90th day following the effective date of this subsection.

(2) BY STATES.—If any owner does not remove a sign, display, or device in accordance with paragraph (1), the State within the borders of which the sign, display, or device is located shall remove the sign, display, or device. The owner of the removed sign, display, or device shall be liable to the State for the costs of such removal. Effective control under this section includes compliance with the first sentence of this paragraph.

(s) SCENIC BYWAY PROHIBITION.—If a State has a scenic byway program, the State may not allow the erection along any highway on the Interstate System or Federal-aid primary sys-

<sup>1</sup> See References in Text note below.

tem which before, on, or after the effective date of this subsection, is designated as a scenic byway under such program of any sign, display, or device which is not in conformance with subsection (c) of this section. Control of any sign, display, or device on such a highway shall be in accordance with this section. In designating a scenic byway for purposes of this section and section 1047 of the Intermodal Surface Transportation Efficiency Act of 1991, a State may exclude from such designation any segment of a highway that is inconsistent with the State's criteria for designating State scenic byways. Nothing in the preceding sentence shall preclude a State from signing any such excluded segment, including such segment on a map, or carrying out similar activities, solely for purposes of system continuity.

(t) PRIMARY SYSTEM DEFINED.—For purposes of this section, the terms “primary system” and “Federal-aid primary system” mean the Federal-aid primary system in existence on June 1, 1991, and any highway which is not on such system but which is on the National Highway System.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 904; Pub. L. 86-342, title I, §106, Sept. 21, 1959, 73 Stat. 612; Pub. L. 87-61, title I, §106, June 29, 1961, 75 Stat. 123; Pub. L. 88-157, §5, Oct. 24, 1963, 77 Stat. 277; Pub. L. 89-285, title I, §101, Oct. 22, 1965, 79 Stat. 1028; Pub. L. 89-574, §8(a), Sept. 13, 1966, 80 Stat. 768; Pub. L. 90-495, §6(a)-(d), Aug. 23, 1968, 82 Stat. 817; Pub. L. 91-605, title I, §122(a), Dec. 31, 1970, 84 Stat. 1726; Pub. L. 93-643, §109, Jan. 4, 1975, 88 Stat. 2284; Pub. L. 94-280, title I, §122, May 5, 1976, 90 Stat. 438; Pub. L. 95-599, title I, §§121, 122, Nov. 6, 1978, 92 Stat. 2700, 2701; Pub. L. 96-106, §6, Nov. 9, 1979, 93 Stat. 797; Pub. L. 102-240, title I, §1046(a)-(c), Dec. 18, 1991, 105 Stat. 1995, 1996; Pub. L. 102-302, §104, June 22, 1992, 106 Stat. 253; Pub. L. 104-59, title III, §314, Nov. 28, 1995, 109 Stat. 586; Pub. L. 105-178, title I, §1212(a)(2)(A), June 9, 1998, 112 Stat. 193.)

#### REFERENCES IN TEXT

This Act, referred to in subsec. (d), probably means Pub. L. 89-285, Oct. 22, 1965, 79 Stat. 1028, as amended, known as the Highway Beautification Act of 1965, which enacted section 136 of this title and provisions set out as notes under sections 131 and 135 of this title and amended sections 131 and 319 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 136 of this title and Tables.

Section 105, referred to in subsec. (m), was amended generally by Pub. L. 105-178, title I, §1104(a), June 9, 1998, 112 Stat. 127, and, as so amended, no longer refers to program of highway project approval process by Secretary.

The date of enactment of this subsection, referred to in subsec. (o), means May 5, 1976, the date of approval of Pub. L. 94-280.

The date of enactment of the Federal-Aid Highway Act of 1974, referred to in subsec. (p), means Jan. 3, 1975, the date of approval of Pub. L. 93-643.

For the effective date of this subsection, referred to in subsecs. (r)(1) and (s), see the Effective Date of 1991 Amendment note set out below.

Section 1047 of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (s), is section 1047 of Pub. L. 102-240, which is set out as a note under section 101 of this title.

#### AMENDMENTS

1998—Subsec. (i). Pub. L. 105-178, §1212(a)(2)(A)(ii), substituted “State transportation departments” for “State highway departments”.

Subsec. (j). Pub. L. 105-178, §1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department” in two places.

1995—Subsec. (s). Pub. L. 104-59 inserted at end “In designating a scenic byway for purposes of this section and section 1047 of the Intermodal Surface Transportation Efficiency Act of 1991, a State may exclude from such designation any segment of a highway that is inconsistent with the State's criteria for designating State scenic byways. Nothing in the preceding sentence shall preclude a State from signing any such excluded segment, including such segment on a map, or carrying out similar activities, solely for purposes of system continuity.”

1992—Subsec. (n). Pub. L. 102-302 inserted at end “Funds apportioned to a State under section 104 of this title shall not be treated for purposes of the preceding sentence as being available to the State for making such a payment except to the extent that the State, in its discretion, expends such funds for such a payment.”

1991—Subsec. (m). Pub. L. 102-240, §1046(a), inserted at end “Subject to approval by the Secretary in accordance with the program of projects approval process of section 105, a State may use any funds apportioned to it under section 104 of this title for removal of any sign, display, or device lawfully erected which does not conform to this section.”

Subsecs. (r) to (t). Pub. L. 102-240, §1046(b), (c), added subsecs. (r) to (t).

1979—Subsec. (c)(5). Pub. L. 96-106 substituted “distribution by nonprofit” for “distribution of nonprofit”.

1978—Subsec. (c). Pub. L. 95-599 §§121, 122(c), inserted “including those which may be changed at reasonable intervals by electronic process or by remote control,” after “devices” in cl. (3) and added cl. (5).

Subsec. (g). Pub. L. 95-599, §122(a), inserted provision relating to just compensation for the removal of signs lawfully erected under State law but not permitted under subsec. (c).

Subsec. (j). Pub. L. 95-599, §122(d), inserted provision relating to permission by the State to erect and maintain information displays.

Subsec. (k). Pub. L. 95-599, §122(b), substituted “Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing” for “Nothing”.

1976—Subsec. (f). Pub. L. 94-280, §122(a), authorized the Secretary, in consultation with the States, to provide within the rights-of-way of the primary system for areas in which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained.

Subsec. (i). Pub. L. 94-280, §122(c), authorized a State to establish travel information systems within the rights-of-way and prescribed as the Federal share of the cost of establishing an information center or travel information system the Federal share which is provided in section 120 of this title for a highway project on that Federal-aid system to be served by such center or system.

Subsecs. (o) to (q). Pub. L. 94-280, §122(b), added subsecs. (o) to (q).

1975—Subsec. (b). Pub. L. 93-643, §109(a), required reduction of Federal-aid highway funds apportioned on or after Jan. 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than 660 feet off the nearest edge of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way.

Subsec. (c). Pub. L. 93-643, §109(b), substituted "Effective control means that such signs, displays, or devices after January 1, 1968, if located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way," for "Effective control means that after January 1, 1968, such signs, displays, and devices", deleted in cl. (1) "other" before "official signs", and added cl. (4).

Subsec. (g). Pub. L. 93-643, §109(c), substituted first sentence reading "Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law." for prior first sentence which provided for payment of just compensation for removal of outdoor advertising signs, displays, and devices (1) lawfully in existence on Oct. 22, 1965, (2) lawfully on any highway made a part of the interstate or primary system on or after Oct. 22, 1965, and before Jan. 1, 1968, and (3) lawfully erected on or after Jan. 1, 1968.

1970—Subsec. (m). Pub. L. 91-605 authorized to be appropriated not to exceed \$27,000,000, \$20,500,000 and \$50,000,000, for the fiscal years ending June 30, 1971, 1972, and 1973, respectively.

1968—Subsec. (d). Pub. L. 90-495, §6(a), provided that whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority.

Subsec. (j). Pub. L. 90-495, §6(b), struck out provision for the imposition of controls on outdoor advertising by the Federal government that are stricter than those imposed by the State highway department.

Subsec. (m). Pub. L. 90-495, §6(c), inserted provision authorizing an appropriation of not to exceed \$2,000,000 for the fiscal year ending June 30, 1970.

Subsec. (n). Pub. L. 90-495, §6(d), added subsec. (n).

1966—Subsec. (m). Pub. L. 89-574 substituted provisions making applicable to the funds authorized to be appropriated to carry out this section after June 30, 1967 the provisions of chapter 1 of this title relating to the obligation, period of availability and expenditure of Federal-aid primary highway funds for provisions prohibiting the use of any part of the Highway Trust Fund in carrying out this section.

1965—Subsec. (a). Pub. L. 89-285 struck out specific reference to the area which lies within six-hundred and sixty feet of the edge of the right-of-way and which is visible from the right-of-way and instead made only general reference to the areas adjacent to the Interstate System and struck out reference to types of permissible signs.

Subsec. (b). Pub. L. 89-285 substituted provisions reducing by 10 per centum the apportioned share, on or after January 1, 1968, of any State not making provision for effective control of erection and maintenance of outdoor advertising signs, displays and devices within six-hundred and sixty feet of the nearest edge of the right of way and visible from the traveled portion, re-appportioning withheld funds to other States, and allowing for suspension of such provisions in the discretion of the Secretary, for provisions which authorized the Secretary to enter into agreements with the States to carry out national policy on control of areas adjacent to the Interstate System.

Subsec. (c). Pub. L. 89-285 substituted provisions setting out permissible types of signs as directional and other official signs and notices, signs advertising sale or lease of property on which the sign is located, and signs, displays, and devices advertising activities conducted on the property on which the sign is located, for provisions allowing for an increase in the Federal share payable under the Federal-Aid Highway Act of 1956, as

amended, in the case of States entering into an agreement with the Secretary prior to July 1, 1965.

Subsec. (d). Pub. L. 89-285 substituted provisions allowing for agreements between the Secretary and the several States covering commercial or industrial property, for provisions covering control of the adjacent area when the Interstate System is located on or near public lands or reservations of the United States.

Subsec. (e). Pub. L. 89-285 substituted provisions setting out the timetable for removal of signs, displays, and devices lawfully along Interstate System or Federal-aid primary system highways, for provisions allowing the inclusion of the cost of purchase or condemnation of the right to advertise or control advertising in the area adjacent to Interstate System right-of-way as part of the cost of construction.

Subsecs. (f) to (m). Pub. L. 89-285 added subsecs. (f) to (m).

1963—Subsec. (c). Pub. L. 88-157 substituted "July 1, 1965" for "July 1, 1963".

1961—Subsec. (c). Pub. L. 87-61 substituted "July 1, 1963" for "July 1, 1961".

1959—Subsec. (b). Pub. L. 86-342 substituted "Agreements entered into between the Secretary of Commerce and State highway departments under this section shall not apply to those segments of the Interstate System which traverse commercial or industrial zones within the presently existing boundaries of incorporated municipalities wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use, as of the date of approval of this Act, is clearly established by State law as industrial or commercial" for "Upon application of the State, any such agreement may, within the discretion of the Secretary of Commerce consistent with the national policy, provide for excluding from application of the national standards segments of the Interstate System which traverse incorporated municipalities wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use is clearly established by State law as industrial or commercial."

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

#### STUDY OF STATE PRACTICES ON SPECIFIC SERVICE SIGNING

Pub. L. 105-178, title I, §1213(g), June 9, 1998, 112 Stat. 202, provided that:

"(1) STUDY.—The Secretary shall conduct a study to determine the practices in the States for specific service food signs described in sections 2G-5.7 and 2G-5.8 of the Manual on Uniform Traffic Control Devices for Streets and Highways. The study shall examine, at a minimum—

"(A) the practices of all States for determining businesses eligible for inclusion on such signs;

"(B) whether States allow businesses to be removed from such signs and the circumstances for such removal;

"(C) the practices of all States for erecting and maintaining such signs, including the time required for erecting such signs; and

"(D) whether States contract out the erection and maintenance of such signs.

"(2) REPORT.—Not later than 1 year after the date of enactment of this Act [June 9, 1998], the Secretary

shall transmit to Congress a report on the results of the study, including any recommendations and, if appropriate, modifications to the Manual.”

EFFECT OF 1991 AMENDMENT ON STATE COMPLIANCE  
LAWS OR REGULATIONS

Section 1046(d) of Pub. L. 102-240 provided that: “The amendments made by this section [amending this section] shall not affect the status or validity of any existing compliance law or regulation adopted by a State pursuant to section 131 of title 23, United States Code.”

USE OF TOURIST ORIENTED DIRECTIONAL SIGNS

Section 1059 of Pub. L. 102-240 provided that:  
“(a) IN GENERAL.—The Secretary shall encourage the States to provide for equitable participation in the use of tourist oriented directional signs or ‘logo’ signs along the Interstate System and the Federal-aid primary system (as defined under section 131(t) of title 23, United States Code).

“(b) STUDY.—Not later than 1 year after the effective date of this title [Dec. 18, 1991], the Secretary shall conduct a study and report to Congress on the participation in the use of signs referred to in subsection (a) and the practices of the States with respect to the use of such signs.”

HIGHWAY BEAUTIFICATION COMMISSION

Section 123 of Pub. L. 91-605, as amended by Pub. L. 93-6, Feb. 16, 1973, 87 Stat. 6, established the Commission on Highway Beautification to (1) study existing statutes and regulations governing control of outdoor advertising and junkyards in areas adjacent to Federal-aid highway system, (2) review policies and practices of Federal and State agencies charged with administrative jurisdiction over such highways insofar as such policies and practices relate to governing control of outdoor advertising and junkyards, (3) compile data necessary to understand and determine the requirements for such control which may now exist or are likely to exist within foreseeable future, (4) study problems relating to control of on-premise outdoor advertising signs, promotional signs, directional signs, and signs providing information that is essential to motorist public, (5) study methods of financing and possible sources of Federal funds, including use of the Highway Trust Fund, to carry out highway beautification program, and (6) recommend such modifications or additions to existing laws, regulations, policies, practices, and demonstration programs as will, in judgment of the Commission, achieve a workable and effective highway beautification program and best serve the public interest and to submit, not later than Dec. 31, 1973, its final report. The Commission terminated six months after submission of said report.

COMPREHENSIVE STUDY ON HIGHWAY BEAUTIFICATION  
PROGRAMS

Section 302 of Pub. L. 89-285 provided that in order to provide the basis for evaluating the continuing programs authorized by Pub. L. 89-285, and to furnish the Congress with the information necessary for authorization of appropriations for fiscal years beginning after June 30, 1967, the Secretary, in cooperation with the State highway departments, shall make a detailed estimate of the cost of carrying out the provisions of Pub. L. 89-885, and a comprehensive study of the economic impact of such programs on affected individuals and commercial and industrial enterprises, the effectiveness of such programs and the public and private benefits realized thereby, and alternate or improved methods of accomplishing the objectives of Pub. L. 89-285. The Secretary was required to submit such detailed estimate and a report concerning such comprehensive study to the Congress not later than Jan. 10, 1967.

STANDARDS, CRITERIA, RULES AND REGULATIONS

Section 303 of Pub. L. 89-285 mandated the holding of public hearings by the Secretary of Commerce prior to

the promulgation of standards, criteria and rules and regulations necessary to carry out this section and section 136 of this title, such standards, criteria, etc., to be reported to Congress not later than Jan. 10, 1967.

ACQUISITION OF DWELLINGS

Section 305 of Pub. L. 89-285 provided that: “Nothing in this Act or the amendments made by this Act [amending this section and section 319 of this title and enacting section 136 of this title and provisions set out as notes under this section and sections 135 and 136 of this title] shall be construed to authorize the use of eminent domain to acquire any dwelling (including related buildings).”

TAKING OF PRIVATE PROPERTY WITHOUT JUST  
COMPENSATION

Section 401 of Pub. L. 89-285 provided that: “Nothing in this Act or the amendments made by this Act [amending this section and section 319 of this title and enacting section 136 of this title and provisions set out as notes under sections 131, 135, and 136 of this title] shall be construed to authorize private property to be taken or the reasonable and existing use restricted by such taking without just compensation as provided in this Act.”

AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR  
ADMINISTRATIVE EXPENSES

Section 402 of Pub. L. 89-285, as amended by Pub. L. 97-449, §2(a), Jan. 12, 1983, 96 Stat. 2439, provided that: “In addition to any other amounts authorized by this Act and the amendments made by this Act [amending this section and section 319 of this title and enacting section 136 of this title and provisions set out as notes under this section and sections 135 and 136 of this title], there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Secretary not to exceed \$5,000,000 for administrative expenses in carrying out this Act (including amendments made by this Act).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 148 of this title.

**§ 132. Payments on Federal-aid projects undertaken by a Federal agency**

Where a proposed Federal-aid project is to be undertaken by a Federal agency pursuant to an agreement between a State and such Federal agency and the State makes a deposit with or payment to such Federal agency as may be required in fulfillment of the State’s obligation under such agreement for the work undertaken or to be undertaken by such Federal agency, the Secretary, upon execution of a project agreement with such State for the proposed Federal-aid project, may reimburse the State out of the appropriate appropriations the estimated Federal share under the provisions of this title of the State’s obligation so deposited or paid by such State. Upon completion of such project and its acceptance by the Secretary, an adjustment shall be made in such Federal share payable on account of such project based on the final cost thereof. Any sums reimbursed to the State under this section which may be in excess of the Federal pro rata share under the provisions of this title of the State’s share of the cost as set forth in the approved final voucher submitted by the State shall be recovered and credited to the same class of funds from which the Federal payment under this section was made.

(Added Pub. L. 86-657, §4(a), July 14, 1960, 74 Stat. 522.)

### § 133. Surface transportation program

(a) ESTABLISHMENT.—The Secretary shall establish a surface transportation program in accordance with this section.

(b) ELIGIBLE PROJECTS.—A State may obligate funds apportioned to it under section 104(b)(3) for the surface transportation program only for the following:

(1) Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements for highways (including Interstate highways) and bridges (including bridges on public roads of all functional classifications), including any such construction or reconstruction necessary to accommodate other transportation modes, and including the seismic retrofit and painting of and application of calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions on bridges and approaches thereto and other elevated structures, mitigation of damage to wildlife, habitat, and ecosystems caused by a transportation project funded under this title.

(2) Capital costs for transit projects eligible for assistance under chapter 53 of title 49, including vehicles and facilities, whether publicly or privately owned, that are used to provide intercity passenger service by bus.

(3) Carpool projects, fringe and corridor parking facilities and programs, bicycle transportation and pedestrian walkways in accordance with section 217, and the modification of public sidewalks to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(4) Highway and transit safety infrastructure improvements and programs, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings.

(5) Highway and transit research and development and technology transfer programs.

(6) Capital and operating costs for traffic monitoring, management, and control facilities and programs.

(7) Surface transportation planning programs.

(8) Transportation enhancement activities.

(9) Transportation control measures listed in section 108(f)(1)(A) (other than clause (xvi)) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A)).

(10) Development and establishment of management systems under section 303.

(11) In accordance with all applicable Federal law and regulations, participation in natural habitat and wetlands mitigation efforts related to projects funded under this title, which may include participation in natural habitat and wetlands mitigation banks; contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands; and development of statewide and regional natural habitat and wetlands conservation and mitigation plans, including any such banks, efforts, and plans authorized pursuant to the Water Resources Development Act of 1990 (including crediting provisions). Contributions to such mitigation

efforts may take place concurrent with or in advance of project construction. Contributions toward these efforts may occur in advance of project construction only if such efforts are consistent with all applicable requirements of Federal law and regulations and State transportation planning processes. With respect to participation in a natural habitat or wetland mitigation effort related to a project funded under this title that has an impact that occurs within the service area of a mitigation bank, preference shall be given, to the maximum extent practicable, to the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605 (November 28, 1995)) or other applicable Federal law (including regulations).

(13)<sup>1</sup> Infrastructure-based intelligent transportation systems capital improvements.

(14) Environmental restoration and pollution abatement projects (including the retrofit or construction of storm water treatment systems) to address water pollution or environmental degradation caused or contributed to by transportation facilities, which projects shall be carried out when the transportation facilities are undergoing reconstruction, rehabilitation, resurfacing, or restoration; except that the expenditure of funds under this section for any such environmental restoration or pollution abatement project shall not exceed 20 percent of the total cost of the reconstruction, rehabilitation, resurfacing, or restoration project.

(c) LOCATION OF PROJECTS.—Except as provided in subsection (b)(1), surface transportation program projects (other than those described in subsections (b)(3) and (4)) may not be undertaken on roads functionally classified as local or rural minor collectors, unless such roads are on a Federal-aid highway system on January 1, 1991, and except as approved by the Secretary.

(d) ALLOCATIONS OF APPORTIONED FUNDS.—

(1) FOR SAFETY PROGRAMS.—10 percent of the funds apportioned to a State under section 104(b)(3) for the surface transportation program for a fiscal year shall only be available for carrying out sections 130 and 152 of this title. Of the funds set aside under the preceding sentence, the State shall reserve in such fiscal year an amount of such funds for carrying out each such section which is not less than the amount of funds apportioned to the State in fiscal year 1991 under such section.

(2) FOR TRANSPORTATION ENHANCEMENT ACTIVITIES.—10 percent of the funds apportioned to a State under section 104(b)(3) for a fiscal year shall only be available for transportation enhancement activities.

(3) DIVISION BETWEEN URBANIZED AREAS OF OVER 200,000 POPULATION AND OTHER AREAS.—

(A) GENERAL RULE.—Except as provided in subparagraphs (C) and (D), 62.5 percent of the remaining 80 percent of the funds apportioned to a State under section 104(b)(3) for

<sup>1</sup> So in original. No par. (12) has been enacted.

a fiscal year shall be obligated under this section—

(i) in urbanized areas of the State with an urbanized area population of over 200,000, and

(ii) in other areas of the State,

in proportion to their relative share of the State's population. The remaining 37.5 percent may be obligated in any area of the State. Funds attributed to an urbanized area under clause (i) may be obligated in the metropolitan area established under section 134 which encompasses the urbanized area.

(B) SPECIAL RULE FOR AREAS OF LESS THAN 5,000 POPULATION.—Of the amounts required to be<sup>2</sup> obligated under subparagraph (A)(ii), the State shall obligate in areas of the State (other than urban areas with a population greater than 5,000) an amount which is not less than 110 percent of the amount of funds apportioned to the State for the Federal-aid secondary system for fiscal year 1991.

(C) SPECIAL RULE FOR CERTAIN STATES.—In the case of a State in which—

(i) greater than 80 percent of the population of the State is located in 1 or more metropolitan statistical areas, and

(ii) greater than 80 percent of the land area of such State is owned by the United States,

the 62.5 percentage specified in the first sentence of subparagraph (A) shall be 35 percent and the percentage specified in the second sentence of subparagraph (A) shall be 65 percent.

(D) NONCONTIGUOUS STATES EXEMPTION.—Subparagraph (A) shall not apply to Hawaii and Alaska<sup>3</sup>

(E) DISTRIBUTION BETWEEN URBANIZED AREAS OF OVER 200,000 POPULATION.—The amount of funds which a State is required to obligate under subparagraph (A)(i) shall be obligated in urbanized areas described in subparagraph (A)(i) based on the relative population of such areas; except that the State may obligate such funds based on other factors if the State and the relevant metropolitan planning organizations jointly apply to the Secretary for the permission to do so and the Secretary grants the request.

(4) APPLICABILITY OF PLANNING REQUIREMENTS.—Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135 of this title.

(5) APPLICABILITY OF CERTAIN REQUIREMENTS TO THIRD PARTY SELLERS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of a transportation enhancement activity funded from the allocation required under paragraph (2), if real property or an interest in real property is to be acquired from a qualified organization exclusively for conservation purposes (as determined under section 170(h) of the Internal Revenue Code of 1986), the organization shall be considered to be

the owner of the property for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(B) FEDERAL APPROVAL PRIOR TO INVOLVEMENT OF QUALIFIED ORGANIZATION.—If Federal approval of the acquisition of the real property or interest predates the involvement of a qualified organization described in subparagraph (A) in the acquisition of the property, the organization shall be considered to be an acquiring agency or person as described in section 24.101(a)(2) of title 49, Code of Federal Regulations, for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(C) ACQUISITIONS ON BEHALF OF RECIPIENTS OF FEDERAL FUNDS.—If a qualified organization described in subparagraph (A) has contracted with a State transportation department or other recipient of Federal funds to acquire the real property or interest on behalf of the recipient, the organization shall be considered to be an agent of the recipient for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(e) ADMINISTRATION.—

(1) NONCOMPLIANCE.—If the Secretary determines that a State or local government has failed to comply substantially with any provision of this section, the Secretary shall notify the State that, if the State fails to take corrective action within 60 days from the date of receipt of the notification, the Secretary will withhold future apportionments under section 104(b)(3) until the Secretary is satisfied that appropriate corrective action has been taken.

(2) PROGRAM APPROVAL.—

(A) SUBMISSION OF PROJECT AGREEMENT.—For each fiscal year, each State shall submit a project agreement that—

(i) certifies that the State will meet all the requirements of this section; and

(ii) notifies the Secretary of the amount of obligations needed to carry out the program under this section.

(B) REQUEST FOR ADJUSTMENTS OF AMOUNTS.—Each State shall request from the Secretary such adjustments to the amount of obligations referred to in subparagraph (A)(ii) as the State determines to be necessary.

(C) EFFECT OF APPROVAL BY THE SECRETARY.—Approval by the Secretary of a project agreement under subparagraph (A) shall be deemed a contractual obligation of the United States to pay surface transportation program funds made available under this title.

(3) PAYMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall make payments to a State of costs incurred by the State for the surface transportation program in accordance with procedures to be established by the Secretary.

(B) ADVANCE PAYMENT OPTION FOR TRANSPORTATION ENHANCEMENT ACTIVITIES.—

<sup>2</sup> So in original. Probably should be "to be".

<sup>3</sup> So in original. Probably should be followed by a period.

(i) IN GENERAL.—The Secretary may advance funds to the State for transportation enhancement activities funded from the allocation required by subsection (d)(2) for a fiscal year.

(ii) LIMITATION ON AMOUNTS.—Amounts advanced under this subparagraph shall be limited to such amounts as are necessary to make prompt payments for project costs.

(iii) EFFECT ON OTHER REQUIREMENTS.—This subparagraph shall not exempt a State from other requirements of this title relating to the surface transportation program.

(4) POPULATION DETERMINATIONS.—The Secretary shall use estimates prepared by the Secretary of Commerce when determining population figures for purposes of this section.

(5) TRANSPORTATION ENHANCEMENT ACTIVITIES.—

(A) CATEGORICAL EXCLUSIONS.—To the extent appropriate, the Secretary shall develop categorical exclusions from the requirement that an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) be prepared for transportation enhancement activities funded from the allocation required by subsection (d)(2).

(B) NATIONWIDE PROGRAMMATIC AGREEMENT.—The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation established under title II of the National Historic Preservation Act (16 U.S.C. 470i et seq.), shall develop a nationwide programmatic agreement governing the review of transportation enhancement activities funded from the allocation required by subsection (d)(2), in accordance with—

(i) section 106 of such Act (16 U.S.C. 470f); and

(ii) the regulations of the Advisory Council on Historic Preservation.

(C) COST SHARING.—

(i) REQUIRED AGGREGATE NON-FEDERAL SHARE.—The average annual non-Federal share of the total cost of all projects to carry out transportation enhancement activities in a State for a fiscal year shall be not less than the non-Federal share authorized for the State under section 120(b).

(ii) INNOVATIVE FINANCING.—Subject to clause (i), notwithstanding section 120—

(I) funds from other Federal agencies and the value of other contributions (as determined by the Secretary) may be credited toward the non-Federal share of the costs of a project to carry out a transportation enhancement activity;

(II) the non-Federal share for such a project may be calculated on a project, multiple-project, or program basis; and

(III) the Federal share of the cost of an individual project to which subclause (I) or (II) applies may be up to 100 percent.

(f) OBLIGATION AUTHORITY.—

(1) IN GENERAL.—A State that is required to obligate in an urbanized area with an urbanized area population of over 200,000 individuals under subsection (d) funds apportioned to the State under section 104(b)(3) shall make available during the period of fiscal years 1998 through 2000 and the period of fiscal years 2001 through 2003 an amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction programs for use in the area that is equal to the amount obtained by multiplying—

(A) the aggregate amount of funds that the State is required to obligate in the area under subsection (d) during the period; and

(B) the ratio that—

(i) the aggregate amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction programs during the period; bears to

(ii) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to an obligation limitation) during the period.

(2) JOINT RESPONSIBILITY.—Each State, each affected metropolitan planning organization, and the Secretary shall jointly ensure compliance with paragraph (1).

(Added Pub. L. 102-240, title I, §1007(a)(1), Dec. 18, 1991, 105 Stat. 1927; amended Pub. L. 103-429, §3(4), Oct. 31, 1994, 108 Stat. 4377; Pub. L. 104-59, title III, §§315, 316, Nov. 28, 1995, 109 Stat. 586, 587; Pub. L. 105-178, title I, §§1108(a)-(e), 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 138-140, 193.)

#### REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in subsec. (b)(3), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 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 12101 of Title 42 and Tables.

The Water Resources Development Act of 1990, referred to in subsec. (b)(11), is Pub. L. 101-640, Nov. 28, 1990, 104 Stat. 4604. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 2201 of Title 33, Navigation and Navigable Waters, and Tables.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (d)(5), is Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified generally to chapter 61 (§4601 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 4601 of Title 42 and Tables.

Section 170(h) of the Internal Revenue Code of 1986, referred to in subsec. (d)(5)(A), is classified to section 170(h) of Title 26, Internal Revenue Code.

The National Historic Preservation Act, referred to in subsec. (e)(5)(B), is Pub. L. 89-665, Oct. 15, 1966, 80 Stat. 915, as amended. Title II of the Act is classified generally to part B (§470i et seq.) of subchapter II of chapter 1A of Title 16, Conservation. For complete classification of this Act to the Code, see section 470 of Title 16 and Tables.

#### PRIOR PROVISIONS

A prior section 133, Pub. L. 87-866, §5(a), Oct. 23, 1962, 76 Stat. 1146, provided for relocation assistance for per-



sons displaced by Federal-aid highway construction, prior to repeal by Pub. L. 90-495, §37, Aug. 23, 1968, 82 Stat. 836, effective July 1, 1970. See section 501 et seq. of this title.

#### AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105-178, §1108(a)(1), inserted “, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions” after “calcium magnesium acetate”.

Subsec. (b)(2). Pub. L. 105-178, §1108(a)(2), substituted “, including vehicles and facilities, whether publicly or privately owned, that are used to provide intercity passenger service by bus” for “and publicly owned intra-city or intercity bus terminals and facilities”.

Subsec. (b)(3). Pub. L. 105-178, §1108(a)(3), substituted “bicycle” for “and bicycle” and inserted before period at end “, and the modification of public sidewalks to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)”.

Subsec. (b)(4). Pub. L. 105-178, §1108(a)(4), substituted “Highway and transit safety infrastructure” for “Highway and transit safety”.

Subsec. (b)(9). Pub. L. 105-178, §1108(a)(5), substituted “section 108(f)(1)(A) (other than clause (xvi)) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A))” for “section 108(f)(1)(A) (other than clauses (xii) and (xvi)) of the Clean Air Act”.

Subsec. (b)(11). Pub. L. 105-178, §1108(a)(6), in first sentence, inserted “natural habitat and” after “participation in” in two places and also before “wetlands conservation and mitigation plans” and substituted “enhance, and create natural habitats and wetlands” for “enhance and create wetlands” and inserted at end “With respect to participation in a natural habitat or wetland mitigation effort related to a project funded under this title that has an impact that occurs within the service area of a mitigation bank, preference shall be given, to the maximum extent practicable, to the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605 (November 28, 1995)) or other applicable Federal law (including regulations).”

Subsec. (b)(13), (14). Pub. L. 105-178, §1108(a)(7), added pars. (13) and (14).

Subsec. (d)(3)(D). Pub. L. 105-178, §1108(b)(1), substituted “Hawaii and Alaska” for “any State which is noncontiguous with the continental United States.”

Subsec. (d)(5)(C). Pub. L. 105-178, §1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department”.

Subsec. (e)(2). Pub. L. 105-178, §1108(c), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “The Governor of each State shall certify before the beginning of each quarter of a fiscal year that the State will meet all the requirements of this section and shall notify the Secretary of the amount of obligations expected to be incurred for surface transportation program projects during such quarter. A State may request adjustment to the obligation amounts later in each of such quarters. Acceptance of the notification and certification shall be deemed a contractual obligation of the United States for the payment of the surface transportation program funds expected to be obligated by the State in such quarter for projects not subject to review by the Secretary under this chapter.”

Subsec. (e)(3)(A). Pub. L. 105-178, §1108(d), struck out at end “Payments shall not exceed the Federal share of costs incurred as of the date the State requests payments.”

Subsec. (e)(3)(B)(i). Pub. L. 105-178, §1108(b)(2)(A), struck out before period at end “if the Secretary certifies for the fiscal year that the State has authorized and uses a process for the selection of transportation enhancement projects that involves representatives of affected public entities, and private citizens, with ex-

pertise related to transportation enhancement activities”.

Subsec. (e)(5)(C). Pub. L. 105-178, §1108(b)(2)(B), added subpar. (C).

Subsec. (f). Pub. L. 105-178, §1108(e), which directed general amendment of section 133 to read as subsec. (f), was executed by amending heading and text of section 133(f) generally to reflect the probable intent of Congress. Prior to amendment, subsec. (f) read as follows:

“(f) ALLOCATION OF OBLIGATION AUTHORITY.—A State which is required to obligate in an urbanized area with an urbanized area population of over 200,000 under subsection (d) funds apportioned to it under section 104(b)(3) shall allocate during the 6-fiscal year period 1992 through 1997 an amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction for use in such area determined by multiplying—

“(1) the aggregate amount of funds which the State is required to obligate in such area under subsection (d) during such period; by

“(2) the ratio of the aggregate amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction during such period to the total sums apportioned to the State for Federal-aid highways and highway safety construction (excluding sums not subject to an obligation limitation) during such period.”

1995—Subsec. (d)(5). Pub. L. 104-59, §315, added par. (5).

Subsec. (e)(3). Pub. L. 104-59, §316(1), designated existing provisions as subpar. (A), inserted subpar. (A) heading, realigned margins, substituted “Except as provided in subparagraph (B), the” for “The”, and added subpar. (B).

Subsec. (e)(5). Pub. L. 104-59, §316(2), added par. (5).

1994—Subsec. (b)(2). Pub. L. 103-429 substituted “chapter 53 of title 49” for “the Federal Transit Act”.

#### EFFECTIVE DATE

Section effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as an Effective Date of 1991 Amendment note under section 104 of this title.

#### DIVISION OF STP FUNDS FOR AREAS OF LESS THAN 5,000 POPULATION

Pub. L. 105-178, title I, §1108(f), June 9, 1998, 112 Stat. 141, provided that:

“(1) SPECIAL RULE.—Notwithstanding section 133(c) of title 23, United States Code, and except as provided in paragraph (2), up to 15 percent of the amounts required to be obligated under section 133(d)(3)(B) of such title for each of fiscal years 1998 through 2003 may be obligated on roads functionally classified as minor collectors.

“(2) SUSPENSION.—The Secretary may suspend the application of paragraph (1) if the Secretary determines that paragraph (1) is being used excessively.”

#### ENCOURAGEMENT OF USE OF YOUTH CONSERVATION OR SERVICE CORPS

Pub. L. 105-178, title I, §1108(g), June 9, 1998, 112 Stat. 141, provided that: “The Secretary shall encourage the States to enter into contracts and cooperative agreements with qualified youth conservation or service corps to perform appropriate transportation enhancement activities under chapter 1 of title 23, United States Code.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 104, 105, 106, 126, 149, 157, 160, 322 of this title.

### § 134. Metropolitan planning

#### (a) GENERAL REQUIREMENTS.—

(1) FINDINGS.—It is in the national interest to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and through urbanized areas, while minimizing transportation-related fuel consumption and air pollution.

(2) DEVELOPMENT OF PLANS AND PROGRAMS.—To accomplish the objective stated in paragraph (1), metropolitan planning organizations designated under subsection (b), in cooperation with the State and public transit operators, shall develop transportation plans and programs for urbanized areas of the State.

(3) CONTENTS.—The plans and programs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan area and as an integral part of an intermodal transportation system for the State and the United States.

(4) PROCESS OF DEVELOPMENT.—The process for developing the plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(b) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

(1) IN GENERAL.—To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000 individuals—

(A) by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities as defined by the Bureau of the Census); or

(B) in accordance with procedures established by applicable State or local law.

(2) STRUCTURE.—Each policy board of a metropolitan planning organization that serves an area designated as a transportation management area, when designated or redesignated under this subsection, shall consist of—

(A) local elected officials;

(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area (including all transportation agencies included in the metropolitan planning organization as of June 1, 1991); and

(C) appropriate State officials.

(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on the date of the enactment of this section, of a public agency with multimodal transportation responsibilities to—

(A) develop plans and programs for adoption by a metropolitan planning organization; and

(B) develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

(4) CONTINUING DESIGNATION.—A designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

(5) REDESIGNATION.—

(A) PROCEDURES.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities as defined by the Bureau of the Census) as appropriate to carry out this section.

(B) CERTAIN REQUESTS TO REDESIGNATE.—A metropolitan planning organization shall be redesignated upon request of a unit or units of general purpose local government representing at least 25 percent of the affected population (including the central city or cities as defined by the Bureau of the Census) in any urbanized area (i) whose population is more than 5,000,000 but less than 10,000,000, or (ii) which is an extreme nonattainment area for ozone or carbon monoxide as defined under the Clean Air Act. Such redesignation shall be accomplished using procedures established by subparagraph (A).

(6) DESIGNATION OF MORE THAN 1 METROPOLITAN PLANNING ORGANIZATION.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 metropolitan planning organization for the area appropriate.

(c) METROPOLITAN PLANNING AREA BOUNDARIES.—

(1) IN GENERAL.—For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

(2) INCLUDED AREA.—Each metropolitan planning area—

(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period; and

(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

(3) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the boundaries of the met-

ropolitan planning area in existence as of the date of enactment of this paragraph shall be retained, except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in subsection (b)(5).

(4) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—In the case of an urbanized area designated after the date of enactment of this paragraph as a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

(A) shall be established in the manner described in subsection (b)(1);

(B) shall encompass the areas described in paragraph (2)(A);

(C) may encompass the areas described in paragraph (2)(B); and

(D) may address any nonattainment area identified under the Clean Air Act (42 U.S.C. 7401 et seq.) for ozone or carbon monoxide.

(d) COORDINATION IN MULTISTATE AREAS.—

(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

(2) INTERSTATE COMPACTS.—The consent of Congress is granted to any 2 or more States—

(A) to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(3) LAKE TAHOE REGION.—

(A) DEFINITION.—In this paragraph, the term “Lake Tahoe region” has the meaning given the term “region” in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96-551 (94 Stat. 3234).

(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

(ii) coordinate the transportation planning process with the planning process required of State and local governments under this section, section 135, and chapter 53 of title 49.

(C) INTERSTATE COMPACT.—

(i) IN GENERAL.—Subject to clause (ii), notwithstanding subsection (b), to carry out the transportation planning process required by this section, the consent of Congress is granted to the States of California and Nevada to designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and

Nevada and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities (as defined by the Bureau of the Census)), or in accordance with procedures established by applicable State or local law.

(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

(II) FUNDING.—In addition to funds made available to the metropolitan planning organization under other provisions of this title and under chapter 53 of title 49, not more than 1 percent of the funds allocated under section 202 may be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.

(D) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—

(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

(ii) may, in accordance with chapter 2, be funded using funds allocated under section 202.

(4) RECIPIENTS OF OTHER ASSISTANCE.—The Secretary shall encourage each metropolitan planning organization to coordinate, to the maximum extent practicable, the design and delivery of transportation services within the metropolitan planning area that are provided—

(A) by recipients of assistance under chapter 53 of title 49; and

(B) by governmental agencies and non-profit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services.

(e) COORDINATION OF MPOs.—

(1) NONATTAINMENT AREAS.—If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act, each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans and programs required by this section.

(2) PROJECT LOCATED IN MULTIPLE MPOs.—If a project is located within the boundaries of more than 1 metropolitan planning organization, the metropolitan planning organizations shall coordinate plans regarding the project.

(f) SCOPE OF PLANNING PROCESS.—

(1) IN GENERAL.—The metropolitan transportation planning process for a metropolitan

area under this section shall provide for consideration of projects and strategies that will—

(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety and security of the transportation system for motorized and nonmotorized users;

(C) increase the accessibility and mobility options available to people and for freight;

(D) protect and enhance the environment, promote energy conservation, and improve quality of life;

(E) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(F) promote efficient system management and operation; and

(G) emphasize the preservation of the existing transportation system.

(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a transportation improvement plan, a project or strategy, or the certification of a planning process.

(g) DEVELOPMENT OF LONG-RANGE TRANSPORTATION PLAN.—

(1) IN GENERAL.—Each metropolitan planning organization shall prepare, and update periodically, according to a schedule that the Secretary determines to be appropriate, a long-range transportation plan for its metropolitan area in accordance with the requirements of this subsection.

(2) LONG-RANGE TRANSPORTATION PLAN.—A long-range transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

(A) An identification of transportation facilities (including but not necessarily limited to major roadways, transit, and multimodal and intermodal facilities) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. In formulating the long-range transportation plan, the metropolitan planning organization shall consider factors described in subsection (f) as such factors relate to a 20-year forecast period.

(B) A financial plan that demonstrates how the adopted long-range transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted long-range transportation plan if reasonable additional resources beyond those identified in the financial plan were

available. For the purpose of developing the long-range transportation plan, the metropolitan planning organization and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

(C) Assess capital investment and other measures necessary to—

(i) ensure the preservation of the existing metropolitan transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit facilities; and

(ii) make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods.

(D) Indicate as appropriate proposed transportation enhancement activities.

(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas which are in non-attainment for ozone or carbon monoxide under the Clean Air Act, the metropolitan planning organization shall coordinate the development of a long-range transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

(4) PARTICIPATION BY INTERESTED PARTIES.—Before approving a long-range transportation plan, each metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the long-range transportation plan, in a manner that the Secretary deems appropriate.

(5) PUBLICATION OF LONG-RANGE TRANSPORTATION PLAN.—Each long-range transportation plan prepared by a metropolitan planning organization shall be—

(i) published or otherwise made readily available for public review; and

(ii) submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (2)(B), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B).

(h) METROPOLITAN TRANSPORTATION IMPROVEMENT PROGRAM.—

(1) DEVELOPMENT.—

(A) IN GENERAL.—In cooperation with the State and any affected public transit operator, the metropolitan planning organization designated for a metropolitan area shall develop a transportation improvement program for the area for which the organization is designated.

(B) OPPORTUNITY FOR COMMENT.—In developing the program, the metropolitan planning organization, in cooperation with the State and any affected public transit operator, shall provide citizens, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the proposed program.

(C) FUNDING ESTIMATES.—For the purpose of developing the transportation improvement program, the metropolitan planning organization, public transit agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

(D) UPDATING AND APPROVAL.—The program shall be updated at least once every 2 years and shall be approved by the metropolitan planning organization and the Governor.

(2) CONTENTS.—The transportation improvement program shall include—

(A) a priority list of proposed federally supported projects and strategies to be carried out within each 3-year period after the initial adoption of the transportation improvement program; and

(B) a financial plan that—

(i) demonstrates how the transportation improvement program can be implemented;

(ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;

(iii) identifies innovative financing techniques to finance projects, programs, and strategies; and

(iv) may include, for illustrative purposes, additional projects that would be included in the approved transportation improvement program if reasonable additional resources beyond those identified in the financial plan were available.

(3) INCLUDED PROJECTS.—

(A) PROJECTS UNDER THIS CHAPTER AND CHAPTER 53 OF TITLE 49.—A transportation improvement program developed under this subsection for a metropolitan area shall include the projects and strategies within the area that are proposed for funding under this chapter and chapter 53 of title 49.

(B) PROJECTS UNDER CHAPTER 2.—

(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

(C) CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.—Each project shall be con-

sistent with the long-range transportation plan developed under subsection (g) for the area.

(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

(4) NOTICE AND COMMENT.—Before approving a transportation improvement program, a metropolitan planning organization shall, in cooperation with the State and any affected public transit operator, provide citizens, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with reasonable notice of and an opportunity to comment on the proposed program.

(5) SELECTION OF PROJECTS.—

(A) IN GENERAL.—Except as otherwise provided in subsection (i)(4) and in addition to the transportation improvement program development required under paragraph (1), the selection of federally funded projects in metropolitan areas shall be carried out, from the approved transportation improvement program—

(i) by—

(I) in the case of projects under this chapter, the State; and

(II) in the case of projects under chapter 53 of title 49, the designated transit funding recipients; and

(ii) in cooperation with the metropolitan planning organization.

(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved transportation improvement program in place of another project in the program.

(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

(A) NO REQUIRED SELECTION.—Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv).

(B) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved transportation improvement program.

(7) PUBLICATION.—

(A) PUBLICATION OF TRANSPORTATION IMPROVEMENT PROGRAMS.—A transportation improvement program involving Government participation shall be published or otherwise made readily available by the

metropolitan planning organization for public review.

(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—An annual listing of projects for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the metropolitan planning organization for public review. The listing shall be consistent with the categories identified in the transportation improvement program.

(i) TRANSPORTATION MANAGEMENT AREAS.—

(1) DESIGNATION.—

(A) REQUIRED DESIGNATIONS.—The Secretary shall designate as a transportation management area each urbanized area with a population of over 200,000 individuals.

(B) DESIGNATIONS ON REQUEST.—The Secretary shall designate any additional area as a transportation management area on the request of the Governor and the metropolitan planning organization designated for the area.

(2) TRANSPORTATION PLANS AND PROGRAMS.—Within a transportation management area, transportation plans and programs shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and transit operators.

(3) CONGESTION MANAGEMENT SYSTEM.—Within a transportation management area, the transportation planning process under this section shall include a congestion management system that provides for effective management of new and existing transportation facilities eligible for funding under this title and chapter 53 of title 49 through the use of travel demand reduction and operational management strategies. The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section.

(4) SELECTION OF PROJECTS.—

(A) IN GENERAL.—All federally funded projects carried out within the boundaries of a transportation management area under this title (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) or under chapter 53 of title 49 shall be selected for implementation from the approved transportation improvement program by the metropolitan planning organization designated for the area in consultation with the State and any affected public transit operator.

(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects carried out within the boundaries of a transportation management area on the National Highway System and projects carried out within such boundaries under the bridge program or the Interstate maintenance program shall be selected for implementation from the approved transportation improvement program by the State in cooperation with the metropolitan planning organization designated for the area.

(5) CERTIFICATION.—

(A) IN GENERAL.—The Secretary shall—

(i) ensure that the metropolitan planning process in each transportation management area is being carried out in accordance with applicable provisions of Federal law; and

(ii) subject to subparagraph (B), certify, not less often than once every 3 years, that the requirements of this paragraph are met with respect to the transportation management area.

(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

(i) the transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

(ii) there is a transportation improvement program for the area that has been approved by the metropolitan planning organization and the Governor.

(C) EFFECT OF FAILURE TO CERTIFY.—

(i) WITHHOLDING OF FUNDS.—If a metropolitan planning process is not certified, the Secretary may withhold up to 20 percent of the apportioned funds attributable to the transportation management area under this title and chapter 53 of title 49.

(ii) RESTORATION OF WITHHELD FUNDS.—The withheld apportionments shall be restored to the metropolitan area at such time as the metropolitan planning organization is certified by the Secretary.

(iii) FEASIBILITY OF PRIVATE ENTERPRISE PARTICIPATION.—The Secretary shall not withhold certification under this paragraph based on the policies and criteria established by a metropolitan planning organization or transit grant recipient for determining the feasibility of private enterprise participation in accordance with section 5306(a) of title 49.

(D) REVIEW OF CERTIFICATION.—In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

(j) ABBREVIATED PLANS AND PROGRAMS FOR CERTAIN AREAS.—

(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated long-range transportation plan and transportation improvement program for the metropolitan area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans or programs for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

(k) TRANSFER OF FUNDS.—Funds made available for a highway project under chapter 53 of title 49 shall be transferred to and administered by the Secretary in accordance with the require-

ments of this title. Funds made available for a transit project under the Federal-Aid Highway Act of 1991 shall be transferred to and administered by the Secretary in accordance with the requirements of chapter 53 of title 49. The provisions of title 23, United States Code, regarding the non-Federal share shall apply to title 23 funds used for transit projects and the provisions of chapter 53 of title 49 regarding non-Federal share shall apply to chapter 53 funds used for highway projects.

(l) **ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.**—

(1) **IN GENERAL.**—Notwithstanding any other provisions of this title or chapter 53 of title 49, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be programmed in such area for any highway project that will result in a significant increase in carrying capacity for single-occupant vehicles unless the project is part of an approved congestion management system.

(2) **APPLICABILITY.**—This subsection applies to a nonattainment area within the metropolitan planning area boundaries determined under subsection (c).

(m) **LIMITATION ON STATUTORY CONSTRUCTION.**—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this title or chapter 53 of title 49.

(n) **FUNDING.**—

(1) **IN GENERAL.**—Funds set aside under section 104(f) of this title to carry out sections 5303 through 5305 of title 49 shall be available to carry out this section.

(2) **UNUSED FUNDS.**—Any funds that are not used to carry out this section may be made available by the metropolitan planning organization to the State to fund activities under section 135.

(o) **CONTINUATION OF CURRENT REVIEW PRACTICE.**—Since plans and programs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in the plans and programs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning plans and programs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a plan or program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(Added Pub. L. 87-866, §9(a), Oct. 23, 1962, 76 Stat. 1148; amended Pub. L. 91-605, title I, §143, Dec. 31, 1970, 84 Stat. 1737; Pub. L. 95-599, title I, §169, Nov. 6, 1978, 92 Stat. 2723; Pub. L. 102-240, title I, §1024(a), Dec. 18, 1991, 105 Stat. 1955; Pub. L. 102-388, title V, §502(b), Oct. 6, 1992, 106 Stat. 1566; Pub. L. 103-429, §3(5), Oct. 31, 1994, 108 Stat. 4377; Pub. L. 104-59, title III, §317, Nov. 28, 1995, 109 Stat. 588; Pub. L. 105-178, title I, §1203(a)-(m),

(o), June 9, 1998, 112 Stat. 170-179; Pub. L. 105-206, title IX, §9003(c), July 22, 1998, 112 Stat. 839.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (b)(3), probably means the date of enactment of Pub. L. 102-240, which amended this section generally and which was approved Dec. 18, 1991.

The Clean Air Act, referred to in subsecs. (b)(5)(B), (c)(3), (4)(D), (e)(1), (g)(3), (j)(2), and (l)(1), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 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 7401 of Title 42 and Tables.

The date of enactment of this paragraph, referred to in subsec. (c)(3), (4), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

Public Law 96-551, referred to in subsec. (d)(3)(A), is Pub. L. 96-551, Dec. 19, 1980, 94 Stat. 3233, which is not classified to the Code.

The Federal-Aid Highway Act of 1991, referred to in subsec. (k), was not enacted into law. However, provisions referred to as the Federal-Aid Highway Act of 1991 were contained in several bills and are similar to those appearing in part A of title I of Pub. L. 102-240, Dec. 18, 1991, 105 Stat. 1914, which Act is known as the Intermodal Surface Transportation Efficiency Act of 1991. For classification of that Act to the Code, see Short Title of 1991 Amendment note set out under section 101 of Title 49, Transportation, and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (o), 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.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178, §1203(a), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "It is in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner which will efficiently maximize mobility of people and goods within and through urbanized areas and minimize transportation-related fuel consumption and air pollution. To accomplish this objective, metropolitan planning organizations, in cooperation with the State, shall develop transportation plans and programs for urbanized areas of the State. Such plans and programs shall provide for the development of transportation facilities (including pedestrian walkways and bicycle transportation facilities) which will function as an intermodal transportation system for the State, the metropolitan areas, and the Nation. The process for developing such plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems."

Subsec. (b)(1), (2). Pub. L. 105-178, §1203(b)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

"(1) **IN GENERAL.**—To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area of more than 50,000 population by agreement among the Governor and units of general purpose local government which together represent at least 75 percent of the affected population (including the central city or cities as defined by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

"(2) **MEMBERSHIP OF CERTAIN MPO'S.**—In a metropolitan area designated as a transportation management area, the metropolitan planning organization des-

ignated for such area shall include local elected officials, officials of agencies which administer or operate major modes of transportation in the metropolitan area (including all transportation agencies included in the metropolitan planning organization on June 1, 1991) and appropriate State officials. This paragraph shall only apply to a metropolitan planning organization which is redesignated after the date of the enactment of this section."

Subsec. (b)(4). Pub. L. 105-178, §1203(b)(2), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: "Designations of metropolitan planning organizations, whether made under this section or other provisions of law, shall remain in effect until redesignated under paragraph (5) or revoked by agreement among the Governor and units of general purpose local government which together represent at least 75 percent of the affected population or as otherwise provided under State or local procedures."

Subsec. (b)(5)(A). Pub. L. 105-178, §1203(b)(3), substituted "agreement between the Governor" for "agreement among the Governor" and "government that together represent" for "government which together represent".

Subsec. (b)(6). Pub. L. 105-178, §1203(b)(4), amended heading and text of par. (6) generally. Prior to amendment, text read as follows: "More than 1 metropolitan planning organization may be designated within an urbanized area as defined by the Bureau of the Census only if the Governor determines that the size and complexity of the urbanized area make designation of more than 1 metropolitan planning organization for such area appropriate."

Subsec. (c). Pub. L. 105-178, §1203(c), inserted "Planning" before "Area" in subsec. heading, designated first sentence as par. (1), inserted par. heading, and inserted "planning" before "area", added pars. (2) to (4), realigned margins, and struck out at end "Each metropolitan area shall cover at least the existing urbanized area and the contiguous area expected to become urbanized within the 20-year forecast period and may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census. For areas designated as nonattainment areas for ozone or carbon monoxide under the Clean Air Act, the boundaries of the metropolitan area shall at least include the boundaries of the nonattainment area, except as otherwise provided by agreement between the metropolitan planning organization and the Governor."

Subsec. (d). Pub. L. 105-178, §1203(d), reenacted heading without change and amended text of subsec. (d) generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.—The Secretary shall establish such requirements as the Secretary considers appropriate to encourage Governors and metropolitan planning organizations with responsibility for a portion of a multi-State metropolitan area to provide coordinated transportation planning for the entire metropolitan area.

"(2) COMPACTS.—The consent of Congress is hereby given to any 2 or more States to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as such activities pertain to interstate areas and localities within such States and to establish such agencies, joint or otherwise, as such States may deem desirable for making such agreements and compacts effective."

Subsec. (e). Pub. L. 105-178, §1203(e), substituted "MPOs" for "MPO's" in subsec. heading, designated existing provisions as par. (1) and inserted par. heading, added par. (2), and realigned margins.

Subsec. (f). Pub. L. 105-178, §1203(f), amended heading and text of subsec. (f) generally, substituting provisions relating to scope of planning process for provisions relating to factors to be considered in developing transportation plans and programs.

Subsec. (g). Pub. L. 105-178, §1203(g)(6), substituted "Long-Range Transportation Plan" for "Long Range Plan" in heading.

Subsec. (g)(1). Pub. L. 105-178, §1203(g)(8), substituted "long-range transportation plan" for "long range plan".

Subsec. (g)(2). Pub. L. 105-178, §1203(g)(1), (7), (8), substituted "Long-range transportation plan" for "Long range plan" in heading and substituted "long-range transportation plan" for "long range plan" and "contain, at a minimum, the following" for " , at a minimum" in introductory provisions.

Subsec. (g)(2)(A). Pub. L. 105-178, §1203(g)(2), (8), substituted "An identification of" for "Identify" and "long-range transportation plan" for "long range plan".

Subsec. (g)(2)(B). Pub. L. 105-178, §1203(g)(3), added subpar. (B) and struck out former subpar. (B) which read as follows: "Include a financial plan that demonstrates how the long-range plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any innovative financing techniques to finance needed projects and programs, including such techniques as value capture, tolls and congestion pricing."

Subsec. (g)(3). Pub. L. 105-178, §1203(g)(8), substituted "long-range transportation plan" for "long range plan".

Subsec. (g)(4). Pub. L. 105-178, §1203(g)(4), (8), substituted "long-range transportation plan" for "long range plan" in two places and inserted "freight shippers, providers of freight transportation services," after "transportation agency employees," and "representatives of users of public transit," after "private providers of transportation."

Subsec. (g)(5). Pub. L. 105-178, §1203(g)(7), (8), substituted "long-range transportation plan" for "long range plan" in heading and in introductory provisions.

Subsec. (g)(6). Pub. L. 105-178, §1203(g)(5), added par. (6).

Subsec. (h). Pub. L. 105-178, §1203(h), amended heading and text of subsec. (h) generally. Prior to amendment, text related to transportation improvement program, providing for development of program, priority and selection of projects, major capital investments, requirement of inclusion of projects within area proposed for funding, and provision of reasonable notice and opportunity to comment for interested citizens.

Subsec. (h)(5)(A). Pub. L. 105-178, §1203(o), as added by Pub. L. 105-206, §9003(c), struck out "for implementation" after "federally funded projects" in introductory provisions.

Subsec. (i)(1). Pub. L. 105-178, §1203(i)(1), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: "The Secretary shall designate as transportation management areas all urbanized areas over 200,000 population. The Secretary shall designate any additional area as a transportation management area upon the request of the Governor and the metropolitan planning organization designated for such area or the affected local officials. Such additional areas shall include upon such a request the Lake Tahoe Basin as defined by Public Law 96-551."

Subsec. (i)(4). Pub. L. 105-178, §1203(i)(2), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: "All projects carried out within the boundaries of a transportation management area with Federal participation pursuant to this title (excluding projects undertaken on the National Highway System and pursuant to the bridge and Interstate maintenance programs) or pursuant to chapter 53 of title 49 shall be selected by the metropolitan planning organization designated for such area in consultation with the State and in conformance with the transportation improvement program for such area and priorities established therein. Projects undertaken within the boundaries of a transportation management area on the National Highway System or pursuant to the bridge and Interstate maintenance programs shall be selected by the State in cooperation with the metropolitan planning organization



designated for such area and shall be in conformance with the transportation improvement program for such area."

Subsec. (i)(5). Pub. L. 105-178, §1203(i)(3), reenacted heading without change and amended text of par. (5) generally. Prior to amendment, text read as follows: "The Secretary shall assure that each metropolitan planning organization in each transportation management area is carrying out its responsibilities under applicable provisions of Federal law, and shall so certify at least once every 3 years. The Secretary may make such certification only if (1) a metropolitan planning organization is complying with the requirements of this section and other applicable requirements of Federal law, and (2) there is a transportation improvement program for the area that has been approved by the metropolitan planning organization and the Governor. If after September 30, 1993, a metropolitan planning organization is not certified by the Secretary, the Secretary may withhold, in whole or in part, the apportionment under section 104(b)(3) attributed to the relevant metropolitan area pursuant to section 133(d)(3) and capital funds apportioned under the formula program under section 5336 of title 49. If a metropolitan planning organization remains uncertified for more than 2 consecutive years after September 30, 1994, 20 percent of the apportionment attributed to that metropolitan area under section 133(d)(3) and capital funds apportioned under the formula program under section 5336 of title 49 shall be withheld. The withheld apportionments shall be restored to the metropolitan area at such time as the metropolitan planning organization is certified by the Secretary. The Secretary shall not withhold certification under this section based upon the policies and criteria established by a metropolitan planning organization or transit grant recipient for determining the feasibility of private enterprise participation in accordance with section 5306(a) of title 49."

Subsec. (j). Pub. L. 105-178, §1203(j), reenacted heading without change and amended text of subsec. (j) generally. Prior to amendment, text read as follows: "For metropolitan areas not designated as transportation management areas under this section, the Secretary may provide for the development of abbreviated metropolitan transportation plans and programs that the Secretary determines to be appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems, including transportation related air quality problems, in such areas. In no event shall the Secretary provide abbreviated plans or programs for metropolitan areas which are in non-attainment for ozone or carbon monoxide under the Clean Air Act."

Subsec. (l). Pub. L. 105-178, §1203(k), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (n). Pub. L. 105-178, §1203(l), amended heading and text of subsec. (n) generally. Prior to amendment, text read as follows: "Any funds set aside pursuant to section 104(f) of this title that are not used for the purpose of carrying out this section may be made available by the metropolitan planning organization to the State for the purpose of funding activities under section 135."

Subsec. (o). Pub. L. 105-178, §1203(m), added subsec. (o).

1995—Subsec. (f)(16). Pub. L. 104-59 added par. (16).

1994—Subsecs. (h)(5), (i)(3), (4). Pub. L. 103-429, §3(5)(A), substituted "chapter 53 of title 49" for "the Federal Transit Act".

Subsec. (i)(5). Pub. L. 103-429, §3(5)(B), substituted "section 5336 of title 49" for "section 9 of the Federal Transit Act" in two places and "section 5306(a) of title 49" for "section 8(o) of the Federal Transit Act".

Subsec. (k). Pub. L. 103-429, §3(5)(C), (D), substituted "chapter 53 of title 49" for "the Federal Transit Act" wherever appearing and "chapter 53 funds" for "Federal Transit Act funds".

Subsecs. (l), (m). Pub. L. 103-429, §3(5)(C), substituted "chapter 53 of title 49" for "the Federal Transit Act".

1992—Subsec. (k). Pub. L. 102-388 inserted at end "The provisions of title 23, United States Code, regarding the

non-Federal share shall apply to title 23 funds used for transit projects and the provisions of the Federal Transit Act regarding non-Federal share shall apply to Federal Transit Act funds used for highway projects."

1991—Pub. L. 102-240 substituted section catchline for one which read: "Transportation planning in certain urban areas" and amended text generally, substituting present provisions for provisions relating to transportation planning in certain urban areas, including provisions stating transportation objectives, requiring continuing comprehensive planning process by States and local communities, and relating to redesignation of metropolitan planning organizations, designation of contiguous interstate areas as critical transportation regions and corridors, establishment of planning bodies for such regions and corridors, and authorization of appropriations.

1978—Subsec. (a). Pub. L. 95-599, §169(a), inserted provisions related to cooperation with local officials and specific considerations in the planning process.

Subsecs. (b), (c). Pub. L. 95-599, §169(b), added subsec. (b) and redesignated former subsec. (b) as (c).

1970—Pub. L. 91-605 designated existing provisions as subsec. (a), inserted provision prohibiting a highway construction project in any urban area of 50,000 or more population unless responsible public officials of such area have been consulted and their views considered with respect to the corridor, the location, and the design of the project, and added subsec. (b).

#### 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 this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### DEMONSTRATION PROJECT FOR RESTRICTED ACCESS TO CENTRAL BUSINESS DISTRICT OF METROPOLITAN AREAS

Section 155 of Pub. L. 95-599 authorized Secretary of Transportation to carry out a demonstration project in a metropolitan area respecting the restriction of access of motor vehicles to the central business district during peak hours of traffic, authorized the necessary appropriations, and required progress reports and a final report and recommendations not later than three years after Nov. 6, 1978.

#### REDUCTION OF URBAN BLIGHT ADJACENT TO FEDERAL-AID PRIMARY AND INTERSTATE HIGHWAYS LOCATED IN CENTRAL BUSINESS DISTRICTS

Section 159 of Pub. L. 95-599 directed Secretary to conduct a study and submit a report to Congress not later than two years after Nov. 6, 1978, respecting the potential for reducing urban blight adjacent to Federal-aid primary and interstate highways located in central business districts.

#### URBAN SYSTEM STUDY

Pub. L. 94-280, title I, §149, May 5, 1976, 90 Stat. 447, directed Secretary of Transportation to conduct a study of the factors involved in planning, selection, etc., of Federal-aid urban system routes including an analysis of organizations carrying out the planning process, the status of jurisdiction over roads, programing responsibilities under local and State laws, and authority of local units, such study to be submitted to Congress within six months of May 5, 1976.

## FRINGE PARKING DEMONSTRATION PROJECTS

Pub. L. 90-495, § 11, Aug. 23, 1968, 82 Stat. 820, authorized Secretary to approve construction of publicly owned parking facilities under this title until June 30, 1971, as a demonstration project, authorized the Federal share of any project under this section to be 50%, prevented approval of projects by the Secretary unless the State or political subdivision thereof where the project is located can construct, maintain, and operate the facility, unless the Secretary has entered into an agreement with the State or political subdivision governing the financing, maintenance, and operation of the facility, and unless the Secretary has approved design standards for construction of the facility, defined "parking facilities", permitted a State or political subdivision to contract for the operation of such facility, prohibited approval of the project by the Secretary unless it is carried on in accordance with section 134 of this title (this section), and required annual reports to Congress on the demonstration projects approved under this section, prior to repeal by Pub. L. 91-605, title I, § 134(c), Dec. 31, 1970, 84 Stat. 1734. See section 137 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 104, 115, 133, 135, 137, 142, 149, 182, 204, 217, 505 of this title; title 42 sections 7504, 7506; title 49 sections 5303, 5305.

**§ 135. Statewide planning**

## (a) GENERAL REQUIREMENTS.—

(1) FINDINGS.—It is in the national interest to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and through urbanized areas, while minimizing transportation-related fuel consumption and air pollution.

(2) DEVELOPMENT OF PLANS AND PROGRAMS.—Subject to section 134 of this title and sections 5303 through 5305 of title 49, each State shall develop transportation plans and programs for all areas of the State.

(3) CONTENTS.—The plans and programs for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

(4) PROCESS OF DEVELOPMENT.—The process for developing the plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—In carrying out planning under this section, a State shall coordinate such planning with the transportation planning activities carried out under section 134 of this title and sections 5303 through 5305 of title 49 for metropolitan areas of the State and shall carry out its responsibilities for the development of the transportation portion of the State implementation plan to the extent required by the Clean Air Act.

(c) SCOPE OF PLANNING PROCESS.—

(1) IN GENERAL.—Each State shall carry out a transportation planning process that provides for consideration of projects and strategies that will—

(A) support the economic vitality of the United States, the States, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety and security of the transportation system for motorized and nonmotorized users;

(C) increase the accessibility and mobility options available to people and for freight;

(D) protect and enhance the environment, promote energy conservation, and improve quality of life;

(E) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

(F) promote efficient system management and operation; and

(G) emphasize the preservation of the existing transportation system.

(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a transportation improvement plan, a project or strategy, or the certification of a planning process.

(d) ADDITIONAL REQUIREMENTS.—In carrying out planning under this section, each State shall, at a minimum, consider—

(1) with respect to nonmetropolitan areas, the concerns of local elected officials representing units of general purpose local government;

(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

(3) coordination of transportation plans, programs, and planning activities with related planning activities being carried out outside of metropolitan planning areas.

(e) LONG-RANGE TRANSPORTATION PLAN.—

(1) DEVELOPMENT.—Each State shall develop a long-range transportation plan, with a minimum 20-year forecast period, for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

(2) CONSULTATION WITH GOVERNMENTS.—

(A) METROPOLITAN AREAS.—With respect to each metropolitan area in the State, the long-range transportation plan shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134 of this title and section 5303 of title 49.

(B) NONMETROPOLITAN AREAS.—With respect to each nonmetropolitan area, the long-range transportation plan shall be developed in consultation with affected local officials with responsibility for transportation.

(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction

of an Indian tribal government, the long-range transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the long-range transportation plan, the State shall—

(A) provide citizens, affected public agencies, representatives of transportation agency employees, freight shippers, private providers of transportation, representatives of users of public transit, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed plan; and

(B) identify transportation strategies necessary to efficiently serve the mobility needs of people.

(4) FINANCIAL PLAN.—The long-range transportation plan may include a financial plan that demonstrates how the adopted long-range transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(5) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (4), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (4).

(f) STATE TRANSPORTATION IMPROVEMENT PROGRAM.—

(1) DEVELOPMENT.—

(A) IN GENERAL.—Each State shall develop a transportation improvement program for all areas of the State.

(B) CONSULTATION WITH GOVERNMENTS.—

(i) METROPOLITAN AREAS.—With respect to each metropolitan area in the State, the program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134 of this title and section 5303 of title 49.

(ii) NONMETROPOLITAN AREAS.—

(I) IN GENERAL.—With respect to each nonmetropolitan area in the State, the program shall be developed in consultation with affected local officials with responsibility for transportation.

(II) REVIEW.—Not later than 1 year after the date of enactment of this subclause, the State shall submit to the Secretary the details of the consultative planning process developed by the State for nonmetropolitan areas under subclause (I). The Secretary shall not review or approve such process.

(iii) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the

program shall be developed in consultation with the tribal government and the Secretary of the Interior.

(C) PARTICIPATION BY INTERESTED PARTIES.—In developing the program, the Governor shall provide citizens, affected public agencies, representatives of transportation agency employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the proposed program.

(2) INCLUDED PROJECTS.—

(A) IN GENERAL.—A transportation improvement program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

(B) CHAPTER 2 PROJECTS.—

(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

(C) CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.—Each project shall be—

(i) consistent with the long-range transportation plan developed under this section for the State;

(ii) identical to the project as described in an approved metropolitan transportation improvement program; and

(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.), if the project is carried out in an area designated as nonattainment for ozone or carbon monoxide under such Act.

(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

(E) FINANCIAL PLAN.—The transportation improvement program may include a financial plan that demonstrates how the approved transportation improvement program can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(F) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (E), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (E).

(ii) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (E) for inclusion in an approved transportation improvement program.

(G) PRIORITIES.—The program shall reflect the priorities for programming and expenditures of funds, including transportation enhancement activities, required by this title.

(3) PROJECT SELECTION FOR AREAS OF LESS THAN 50,000 POPULATION.—

(A) IN GENERAL.—Projects carried out in areas with populations of less than 50,000 individuals (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) shall be selected, from the approved statewide transportation improvement program, by the State in cooperation with the affected local officials.

(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects carried out in areas described in subparagraph (A) on the National Highway System and projects carried out in such areas under the bridge program or the Interstate maintenance program shall be selected, from the approved statewide transportation improvement program, by the State in consultation with the affected local officials.

(4) BIENNIAL REVIEW AND APPROVAL.—A transportation improvement program developed under this subsection shall be reviewed and, on a finding that the planning process through which the program was developed is consistent with this section, section 134, and sections 5303 through 5305 of title 49, approved not less frequently than biennially by the Secretary.

(5) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved statewide transportation improvement program in place of another project in the program.

(g) FUNDING.—Funds set aside pursuant to section 505(a) of title 23, United States Code, shall be available to carry out the requirements of this section.

(h) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT SYSTEMS.—For purposes of this section, section 134, and sections 5303–5306 and 5323(k)<sup>1</sup> of title 49, State laws, rules or regulations pertaining to congestion management systems or programs may constitute the congestion management system

under this Act<sup>1</sup> if the Secretary finds that the State laws, rules or regulations are consistent with, and fulfill the intent of, the purposes of this section, section 134 or sections 5303–5306 and 5323(k),<sup>1</sup> as appropriate.

(i) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since plans and programs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in the plans and programs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning plans and programs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a plan or program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(Added Pub. L. 90–495, §10(a), Aug. 23, 1968, 82 Stat. 820; amended Pub. L. 91–605, title I, §§106(g), 125, Dec. 31, 1970, 84 Stat. 1718, 1729; Pub. L. 93–87, title I, §119, Aug. 13, 1973, 87 Stat. 259; Pub. L. 94–280, title I, §123(a), May 5, 1976, 90 Stat. 439; Pub. L. 102–240, title I, §1025(a), Dec. 18, 1991, 105 Stat. 1962; Pub. L. 103–429, §3(6), Oct. 31, 1994, 108 Stat. 4378; Pub. L. 105–178, title I, §1204(a)–(h), June 9, 1998, 112 Stat. 180–184.)

#### REFERENCES IN TEXT

The Clean Air Act, referred to in subsecs. (b) and (f)(2)(C)(iii), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 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 7401 of Title 42 and Tables.

The date of enactment of this subclause, referred to in subsec. (f)(1)(B)(ii)(II), is the date of enactment of Pub. L. 105–178, which was approved June 9, 1998.

Section 5323(k) of title 49, referred to in subsec. (h), was redesignated section 5323(l) of title 49 and a new section 5323(k) was added by Pub. L. 105–178, title III, §3020(d), June 9, 1998, 112 Stat. 362.

This Act, referred to in subsec. (h), probably means Pub. L. 102–240, Dec. 18, 1991, 105 Stat. 1914, known as the Intermodal Surface Transportation Efficiency Act of 1991. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 101 of Title 49, Transportation, and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (i), 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.

#### PRIOR PROVISIONS

A prior section 135, Pub. L. 89–139, §4(a), Aug. 28, 1965, 79 Stat. 578, called for a highway safety program in each State approved by the Secretary, prior to repeal by Pub. L. 89–564, title I, §102(a), Sept. 9, 1966, 80 Stat. 734. See section 402 of this title.

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105–178, §1204(a), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “It is in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner

<sup>1</sup> See References in Text note below.

that will serve all areas of the State efficiently and effectively. Subject to section 134 of this title, the State shall develop transportation plans and programs for all areas of the State. Such plans and programs shall provide for development of transportation facilities (including pedestrian walkways and bicycle transportation facilities) which will function as an intermodal State transportation system. The process for developing such plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems."

Subsec. (b). Pub. L. 105-178, §1204(b), inserted "and sections 5303 through 5305 of title 49" after "section 134 of this title".

Subsec. (c). Pub. L. 105-178, §1204(c), amended heading and text of subsec. (c) generally, substituting provisions relating to scope of planning process for provisions relating to considerations to be involved in State's continuous transportation planning process.

Subsec. (d). Pub. L. 105-178, §1204(d), reenacted heading without change and amended text of subsec. (d) generally. Prior to amendment, text read as follows: "Each State in carrying out planning under this section shall, at a minimum, consider the following:

"(1) The coordination of transportation plans and programs developed for metropolitan areas of the State under section 134 with the State transportation plans and programs developed under this section and the reconciliation of such plans and programs as necessary to ensure connectivity within transportation systems.

"(2) Investment strategies to improve adjoining State and local roads that support rural economic growth and tourism development, Federal agency renewable resources management, and multipurpose land management practices, including recreation development.

"(3) The concerns of Indian tribal governments having jurisdiction over lands within the boundaries of the State."

Subsec. (e). Pub. L. 105-178, §1204(e), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: "The State shall develop a long-range transportation plan for all areas of the State. With respect to metropolitan areas of the State, the plan shall be developed in cooperation with metropolitan planning organizations designated for metropolitan areas in the State under section 134. With respect to areas of the State under the jurisdiction of an Indian tribal government, the plan shall be developed in cooperation with such government and the Secretary of the Interior. In developing the plan, the State shall provide citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the proposed plan. In addition, the State shall develop a long-range plan for bicycle transportation and pedestrian walkways for appropriate areas of the State which shall be incorporated into the long-range transportation plan."

Subsec. (f). Pub. L. 105-178, §1204(f), amended heading and text of subsec. (f) generally. Prior to amendment, text related to transportation improvement programs, including program development, requirement for inclusion of certain projects for State transportation improvement program, project selection for areas less than 50,000 population, and requirement of biennial review and approval.

Subsec. (g). Pub. L. 105-178, §1204(g), which directed substitution of "section 505(a)" for "section 307(c)(1)" in section 134(g), was executed by making the substitution in subsec. (g) of this section to reflect the probable intent of Congress.

Subsec. (i). Pub. L. 105-178, §1204(h), added subsec. (i). 1994—Subsec. (f)(2). Pub. L. 103-429, §3(6)(A), substituted "chapter 53 of title 49" for "the Federal Transit Act".

Subsec. (h). Pub. L. 103-429, §3(6)(B), substituted "sections 5303-5306 and 5323(k) of title 49" for "section 8 of the Federal Transit Act, United States Code" and "section 8 of such Act".

1991—Pub. L. 102-240 substituted section catchline for one which read: "Traffic operations improvement programs", and amended text generally. Prior to amendment, text read as follows:

"(a) The Congress hereby finds and declares it to be in the national interest that each State shall have a continuing program designed to reduce traffic congestion and facilitate the flow of traffic.

"(b) The Secretary may approve under this section any project for improvements on any public road which project will directly facilitate and control traffic flow on any of the Federal-aid systems."

1976—Pub. L. 94-280 struck out introductory words "Urban area" in section catchline.

Subsec. (a). Pub. L. 94-280 struck out "within the designated boundaries of urban areas of the State" and "in the urban areas" after "continuing program" and "flow of traffic", respectively.

Subsec. (b). Pub. L. 94-280 substituted "any project for improvements on any public road which project will directly facilitate and control traffic flow on any of the Federal-aid systems" for "any project on an extension of the Federal-aid primary or secondary system in urban areas and on the Federal-aid urban system for improvements which directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and loading and unloading ramps. If such project is located in an urban area of more than fifty thousand population, such project shall be based on a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title".

Subsec. (c). Pub. L. 94-280 struck out subsec. (c) which provided for an annual report by the Secretary on projects approved under this section with recommendations for further improvement of traffic operations in accordance with this section.

1973—Subsecs. (c), (d). Pub. L. 93-87 struck out subsec. (c) which provided for apportionment of sums authorized to carry out this section in accordance with section 104(b)(3) of this title, and redesignated subsec. (d) as (c).

1970—Subsec. (b). Pub. L. 91-605 inserted reference to the Federal-aid urban system and required that projects under this section be based on a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title only in urban areas of more than fifty thousand population.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE

Section effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as an Effective Date of 1968 Amendment note under section 101 of this title.

#### PARTICIPATION OF LOCAL ELECTED OFFICIALS

Pub. L. 105-178, title I, §1204(i), June 9, 1998, 112 Stat. 184, provided that:

"(1) STUDY.—The Secretary shall conduct a study on the effectiveness of the participation of local elected officials in transportation planning and programming. In conducting the study, the Secretary shall consider the degree of cooperation between each State, local officials in rural areas in the State, and regional planning and development organizations in the State.

"(2) REPORT.—Not later than 2 years after the date of enactment of this Act [June 9, 1998], the Secretary

shall transmit to Congress a report containing the results of the study with any recommendations the Secretary determines appropriate as a result of the study.”

ADVANCED TRAVEL FORECASTING PROCEDURES PROGRAM

Pub. L. 105-178, title I, §1210, June 9, 1998, 112 Stat. 187, provided that:

“(a) ESTABLISHMENT.—The Secretary shall establish an advanced travel forecasting procedures program—

“(1) to provide for completion of the advanced transportation model developed under the Transportation Analysis Simulation System (referred to in this section as ‘TRANSIMS’); and

“(2) to provide support for early deployment of the advanced transportation modeling computer software and graphics package developed under TRANSIMS and the program established under this section to States, local governments, and metropolitan planning organizations with responsibility for travel modeling.

“(b) ELIGIBLE ACTIVITIES.—The Secretary shall use funds made available under this section to—

“(1) provide funding for completion of core development of the advanced transportation model;

“(2) develop user-friendly advanced transportation modeling computer software and graphics packages;

“(3) provide training and technical assistance with respect to the implementation and application of the advanced transportation model to States, local governments, and metropolitan planning organizations with responsibility for travel modeling; and

“(4) allocate funds to not more than 12 entities described in paragraph (3), representing a diversity of populations and geographic regions, for a pilot program to enable transportation management areas designated under section 134(i) of title 23, United States Code, to convert from the use of travel forecasting procedures in use by the areas as of the date of enactment of this Act [June 9, 1998] to the use of the advanced transportation model.

“(c) FUNDING.—

“(1) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$4,000,000 for fiscal year 1998, \$3,000,000 for fiscal year 1999, \$6,500,000 for fiscal year 2000, \$5,000,000 for fiscal year 2001, \$4,000,000 for fiscal year 2002, and \$2,500,000 for fiscal year 2003.

“(2) ALLOCATION OF FUNDS.—

“(A) FISCAL YEARS 1998 AND 1999.—For each of fiscal years 1998 and 1999, 100 percent of the funds made available under paragraph (1) shall be allocated to activities as described in paragraphs (1), (2), and (3) of subsection (b).

“(B) FISCAL YEARS 2000 THROUGH 2003.—For each of fiscal years 2000 through 2003, not more than 50 percent of the funds made available under paragraph (1) may be allocated to activities described in subsection (b)(4).

“(3) CONTRACT AUTHORITY.—Funds authorized under this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share of the cost of—

“(A) any activity described in paragraph (1), (2), or (3) of subsection (b) shall not exceed 100 percent; and

“(B) any activity described in subsection (b)(4) shall not exceed 80 percent.”

DEMONSTRATION PROJECT FOR AUTOMATED ROADWAY MANAGEMENT SYSTEM

Pub. L. 95-599, title I, §154, Nov. 6, 1978, 92 Stat. 2716, provided that:

“(a) The Secretary of Transportation is authorized to carry out a demonstration project of the use of a sophisticated automated roadway management system to increase the capacity and safety of automobile travel

in high density travel corridors without providing additional lanes of pavement. The management system shall coordinate the traffic flow in major freeways and arterials servicing the travel corridor by use of an integrated system of vehicle sensors to monitor traffic, computers to assess traffic conditions throughout the corridor, and devices to communicate with drivers, police, and emergency equipment.

“(b) There is authorized to be appropriated to carry out this section, out of the Highway Trust Fund, not to exceed \$1,500,000 for the fiscal year ending September 30, 1979, not to exceed \$2,500,000 for the fiscal year ending September 30, 1980, and not to exceed \$26,000,000 for the fiscal year ending September 30, 1981.

“(c) The Federal share payable on account of any project authorized under this section shall not exceed 90 per centum of the total cost thereof.

“(d) Funds authorized by this section shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share of the cost of any project under this section shall not exceed 90 per centum.”

TRAFFIC CONTROL SIGNALIZATION DEMONSTRATION PROJECTS; REPORTS TO SECRETARY OF TRANSPORTATION; REPORT TO CONGRESS

Section 146 of Pub. L. 94-280 provided that:

“(a) The Secretary of Transportation is authorized to carry out traffic control signalization demonstration projects designed to demonstrate through the use of technology not now in general use the increased capacity of existing highways, the conservation of fuel, the decrease in traffic congestion, the improvement in air and noise quality, and the furtherance of highway safety, giving priority to those projects providing coordinated signalization of two or more intersections. Such projects can be carried out on any highway whether on or off a Federal-aid system.

“(b) There is authorized to be appropriated to carry out this section of the Highway Trust Fund, not to exceed \$40,000,000 for the fiscal year ending September 30, 1977, and \$40,000,000 for the fiscal year ending September 30, 1978.

“(c) Each participating State shall report to the Secretary of Transportation not later than September 30, 1977, and not later than September 30 of each year thereafter, on the progress being made in implementing this section and the effectiveness of the improvements made under it. Each report shall include an analysis and evaluation of the benefits resulting from such projects comparing an adequate time period before and after treatment in order to properly assess the benefits occurring from such traffic control signalization. The Secretary of Transportation shall submit a report to the Congress not later than January 1, 1978, on the progress being made in implementing this section and an evaluation of the benefits resulting therefrom.”

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 89-285, title III, §304, Oct. 22, 1965, 79 Stat. 1033, as amended by Pub. L. 97-449, §2(a), Jan. 12, 1983, 96 Stat. 2439, provided that: “There is authorized to be appropriated the sum of \$500,000 to enable the Secretary to carry out his functions under section 135 of title 23 of the United States Code relating to highway safety programs.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 108, 115, 133, 134, 149, 182, 204, 217, 505 of this title; title 45 section 822; title 49 sections 5303, 5323.

§ 136. Control of junkyards

(a) The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate System and the primary system should be con-

trolled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the establishment and maintenance along the Interstate System and the primary system of outdoor junkyards which are within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that by January 1, 1968, such junkyards shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight.

(d) The term "junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or non-ferrous material.

(e) The term "automobile graveyard" shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(f) The term "junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(g) Notwithstanding any provision of this section, junkyards, auto graveyards, and scrap metal processing facilities may be operated within areas adjacent to the Interstate System and the primary system which are within one thousand feet of the nearest edge of the right-of-way and which are zoned industrial under authority of State law, or which are not zoned under authority of State law, but are used for industrial activities, as determined by the several States subject to approval by the Secretary.

(h) Notwithstanding any provision of this section, any junkyard in existence on the date of enactment of this section which does not conform to the requirements of this section and which the Secretary finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.

(i) The Federal share of landscaping and screening costs under this section shall be 75 per centum.

(j) Just compensation shall be paid the owner for the relocation, removal, or disposal of junk-

yards lawfully established under State law. The Federal share of such compensation shall be 75 per centum.

(k) All public lands or reservations of the United States which are adjacent to any portion of the interstate and primary systems shall be effectively controlled in accordance with the provisions of this section.

(l) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to outdoor junkyards on the Federal-aid highway systems than those established under this section.

(m) There is authorized to be appropriated to carry out this section, out of any money in the Treasury not otherwise appropriated, not to exceed \$20,000,000 for the fiscal year ending June 30, 1966, not to exceed \$20,000,000 for the fiscal year ending June 30, 1967, not to exceed \$3,000,000 for the fiscal year ending June 30, 1970, not to exceed \$3,000,000 for the fiscal year ending June 30, 1971, not to exceed \$3,000,000 for the fiscal year ending June 30, 1972, and not to exceed \$5,000,000 for the fiscal year ending June 30, 1973. The provisions of this chapter relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967.

(Added Pub. L. 89-285, title II, § 201, Oct. 22, 1965, 79 Stat. 1030; amended Pub. L. 89-574, § 8(a), Sept. 13, 1966, 80 Stat. 768; Pub. L. 90-495, § 6(e), Aug. 23, 1968, 82 Stat. 818; Pub. L. 91-605, title I, § 122(b), Dec. 31, 1970, 84 Stat. 1726; Pub. L. 93-643, § 110, Jan. 4, 1975, 88 Stat. 2285.)

#### AMENDMENTS

1975—Subsec. (j). Pub. L. 93-643 substituted provision that compensation shall be paid the owner for the relocation, removal, or disposal of junkyards lawfully established under State law, for provision relating to payment of just compensation for relocation, removal, or disposal of junkyards (1) lawfully in existence on Oct. 22, 1965, (2) lawfully along any highway made a part of the interstate or primary system on or after Oct. 22, 1965, and before Jan. 1, 1968, and (3) lawfully established on or after Jan. 1, 1968.

1970—Subsec. (m). Pub. L. 91-605 authorized to be appropriated not to exceed \$3,000,000, \$3,000,000, and \$5,000,000, for the fiscal years ending June 30, 1971, 1972, and 1973, respectively.

1968—Subsec. (m). Pub. L. 90-495 inserted provision authorizing an appropriation of not to exceed \$3,000,000 for the fiscal year ending June 30, 1970.

1966—Subsec. (m). Pub. L. 89-574 substituted provisions making applicable to the funds authorized to be appropriated to carry out this section after June 30, 1967, the provisions of chapter 1 of this title relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds for provisions prohibiting the use of any part of the Highway Trust Fund in carrying out this section.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective August 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 502 of this title.

#### ACQUISITION OF DWELLINGS

Prohibition against the use of eminent domain to acquire any dwelling (including related buildings) under the terms of Pub. L. 89-285, see section 305 of Pub. L. 89-285, set out as a note under section 131 of this title.

TAKING OF PRIVATE PROPERTY WITHOUT JUST  
COMPENSATION

Prohibition against the taking of private property or the restriction of reasonable and existing use by such taking without just compensation under the terms of Pub. L. 89-285, see section 401 of Pub. L. 89-285, set out as a note under section 131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 131 of this title.

**§ 137. Fringe and corridor parking facilities**

(a) The Secretary may approve as a project on the Federal-aid urban system the acquisition of land adjacent to the right-of-way outside a central business district, as defined by the Secretary, and the construction of publicly owned parking facilities thereon or within such right-of-way, including the use of the air space above and below the established grade line of the highway pavement, to serve an urban area of fifty thousand population or more. Such parking facility shall be located and designed in conjunction with existing or planned public transportation facilities. In the event fees are charged for the use of any such facility, the rate thereof shall not be in excess of that required for maintenance and operation (including compensation to any person for operating such facility).

(b) The Secretary shall not approve any project under this section until—

(1) he has determined that the State, or the political subdivision thereof, where such project is to be located, or any agency or instrumentality of such State or political subdivision, has the authority and capability of constructing, maintaining, and operating the facility;

(2) he has entered into an agreement governing the financing, maintenance, and operation of the parking facility with such State, political subdivision, agency, or instrumentality, including necessary requirements to insure that adequate public transportation services will be available to persons using such facility; and

(3) he has approved design standards for constructing such facility developed in cooperation with the State transportation department.

(c) The term “parking facilities” for purposes of this section shall include access roads, buildings, structures, equipment, improvements, and interests in lands.

(d) Nothing in this section, or in any rule or regulation issued under this section, or in any agreement required by this section, shall prohibit (1) any State, political subdivision, or agency or instrumentality thereof, from contracting with any person to operate any parking facility constructed under this section, or (2) any such person from so operating such facility.

(e) The Secretary shall not approve any project under this section unless he determines that it is based on a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title.

(f)(1) The Secretary may approve for Federal financial assistance from funds apportioned under section 104(b)(4), projects for designating existing facilities, or for acquisition of rights of

way or construction of new facilities, for use as preferential parking for carpools, provided that such facilities (A) are located outside of a central business district and within an interstate highway corridor, and (B) have as their primary purpose the reduction of vehicular traffic on the interstate highway.

(2) Nothing in this subsection, or in any rule or regulation issued under this subsection, or in any agreement required by this subsection, shall prohibit (A) any State, political subdivision, or agency or instrumentality thereof, from contracting with any person to operate any parking facility designated or constructed under this subsection, or (B) any such person from so operating such facility. Any fees charged for the use of any such facility in connection with the purpose of this subsection shall not be in excess of the amount required for operation and maintenance, including compensation to any person for operating the facility.

(3) For the purposes of this subsection, the terms “facilities” and “parking facilities” are synonymous and shall have the same meaning given “parking facilities” in subsection (c) of this section.

(Added Pub. L. 89-574, §8(c)(1), Sept. 13, 1966, 80 Stat. 768; amended Pub. L. 91-605, title I, §134(a), Dec. 31, 1970, 84 Stat. 1733; Pub. L. 97-424, title I, §118, Jan. 6, 1983, 96 Stat. 2110; Pub. L. 105-178, title I, §§1103(l)(3)(B), 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 126, 193.)

AMENDMENTS

1998—Subsec. (b)(3). Pub. L. 105-178, §1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department”.

Subsec. (f)(1). Pub. L. 105-178, §1103(l)(3)(B), substituted “section 104(b)(4)” for “section 104(b)(5)(B) of this title”.

1983—Subsec. (f). Pub. L. 97-424 added subsec. (f).

1970—Pub. L. 91-605 substituted “Fringe and corridor parking facilities” for “Limitation on authorization of appropriations for certain purposes” in section catchline.

Subsec. (a). Pub. L. 91-605 substituted provisions permitting the Secretary to approve construction of publicly owned parking facilities under the Federal-aid urban system for provisions limiting authorization of appropriations under section 131, 136, and 319(b) of this title, or any highway safety bill enacted after May 1, 1966 by preventing these sections and provisions from being construed as authority for any appropriations not specifically authorized in these sections and provisions.

Subsec. (b). Pub. L. 91-605 substituted provisions preventing project approval by the Secretary unless the State or political subdivision thereof where the project is located can construct, maintain, and operate the facility, unless the Secretary has entered into an agreement with the State or political subdivision governing the financing, maintenance, and operation of the facility, and unless the Secretary has approved design standards for construction of the facility for provisions limiting authorization of appropriations under sections 131, 136, and 319(b) of this title, or any highway safety bill enacted after May 1, 1966 by preventing appropriations to carry out these sections and provisions unless they are specific as to the amount authorized and as to the fiscal year.

Subsec. (c). Pub. L. 91-605 substituted provisions defining “parking facilities” for provisions limiting authorization of appropriations under sections 131, 136, and 319(b) of this title, or any highway safety bill enacted after May 1, 1966 by preventing the highway trust



fund from being a source of appropriation for these sections and provisions in an amount exceeding the tax imposed by section 4061(a)(2) of Title 26, if such tax was imposed at a rate of 1% plus additional amounts appropriated from the general fund to the highway trust fund for such purposes except that the total of all appropriations made from such fund to carry out these sections and provisions shall never exceed the total of all appropriations made to such fund based on the imposition of such tax plus additional amounts appropriated from the general fund to the highway trust fund for such purposes.

Subsecs. (d), (e). Pub. L. 91-605 added subsecs. (d) and (e).

### § 138. Preservation of parklands

It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project (other than any project for a park road or parkway under section 204 of this title) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. In carrying out the national policy declared in this section the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.

(Added Pub. L. 89-574, §15(a), Sept 13, 1966, 80 Stat. 771; amended Pub. L. 90-495, §18(a), Aug. 23, 1968, 82 Stat. 823; Pub. L. 94-280, title I, §124, May 5, 1976, 90 Stat. 440; Pub. L. 100-17, title I, §133(b)(10), Apr. 2, 1987, 101 Stat. 171.)

#### REFERENCES IN TEXT

The effective date of the Federal-Aid Highway Act of 1968, referred to in text, is the effective date of Pub. L. 90-495, which was approved Aug. 23, 1968.

#### AMENDMENTS

1987—Pub. L. 100-17 inserted “(other than any project for a park road or parkway under section 204 of this title)” before “which requires” in third sentence.

1976—Pub. L. 94-280 authorized the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, to conduct studies as to the most feasible Federal-aid routes for the movement

of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.

1968—Pub. L. 90-495 amended section generally so as to render it identical to section 1653(f) of Title 49, Transportation, governing all programs and projects subject to the jurisdiction of the Secretary of Transportation.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

#### STUDY OF TRANSIT NEEDS IN NATIONAL PARKS AND RELATED PUBLIC LANDS

Pub. L. 105-178, title III, §3039, June 9, 1998, 112 Stat. 393, as amended by Pub. L. 105-206, title IX, §9009(y), July 22, 1998, 112 Stat. 862, provided that:

“(a) PURPOSES.—The purposes of this section are to encourage and promote the development of transportation systems for the betterment of the national parks and other units of the National Park System, national wildlife refuges, recreational areas, and other public lands in order to conserve natural, historical, and cultural resources and prevent adverse impact, relieve congestion, minimize transportation fuel consumption, reduce pollution (including noise and visual pollution), and enhance visitor mobility and accessibility and the visitor experience.

“(b) STUDY.—

“(1) IN GENERAL.—The Secretary, in coordination with the Secretary of the Interior, shall undertake a comprehensive study of alternative transportation needs in national parks and related public lands managed by Federal land management agencies [to] assist in carrying out the purposes described in subsection (a). The study shall be submitted to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than January 1, 2000.

“(2) STUDY ELEMENTS.—The study required by paragraph (1) shall—

“(A) identify transportation strategies that improve the management of the national parks and related public lands;

“(B) identify national parks and related public lands with existing and potential problems of adverse impact, high congestion, and pollution, or which can benefit from alternative transportation modes;

“(C) assess the feasibility of alternative transportation modes; and

“(D) identify and estimate the costs of alternative transportation modes for each of the national parks and related public lands referred to in paragraph (1).

“(3) DEFINITION.—For purposes of this subsection, the term ‘Federal land management agencies’ means the National Park Service, the United States Fish and Wildlife Service, and the Bureau of Land Management.”

#### STUDY OF ALTERNATIVE TRANSPORTATION MODES IN NATIONAL PARK SYSTEM

Pub. L. 102-240, title I, §1050, Dec. 18, 1991, 105 Stat. 2000, provided that:

“(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act [Dec. 18, 1991], the Secretary, in consultation with the Secretary of the Interior, shall conduct and transmit to Congress a study of alternative transportation modes for use in the National Park System. In conducting such study, the Secretary shall consider (1) the economic and technical feasibility, environmental effects, projected costs and benefits as compared to the costs and benefits of existing transportation systems, and general suitability of transportation modes that would provide efficient and

environmentally sound ingress to and egress from National Park lands; and (2) methods to obtain private capital for the construction of such transportation modes and related infrastructure.

“(b) FUNDING.—From sums authorized to be appropriated for park roads and parkways for fiscal year 1992, \$300,000 shall be available to carry out this section.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 206, 323 of this title.

#### [§ 139. Repealed. Pub. L. 105-178, title I, § 1106(c)(2)(A), June 9, 1998, 112 Stat. 136]

Section, added Pub. L. 90-495, §16(a), Aug. 23, 1968, 82 Stat. 823; amended Pub. L. 91-605, title I, §§106(b)(1), 140, Dec. 31, 1970, 84 Stat. 1716, 1736; Pub. L. 94-280, title I, §125, May 5, 1976, 90 Stat. 440; Pub. L. 97-134, §10, Dec. 29, 1981, 95 Stat. 1702; Pub. L. 97-424, title I, §116(a)(3), Jan. 6, 1983, 96 Stat. 2109; Pub. L. 98-229, §8(a), Mar. 9, 1984, 98 Stat. 56, related to additions to the Interstate System.

#### § 140. Nondiscrimination

(a) Prior to approving any programs for projects as provided for in subsection (a) of section 105<sup>1</sup> of this title, the Secretary shall require assurances from any State desiring to avail itself of the benefits of this chapter that employment in connection with proposed projects will be provided without regard to race, color, creed, national origin, or sex. He shall require that each State shall include in the advertised specifications, notification of the specific equal employment opportunity responsibilities of the successful bidder. In approving programs for projects on any of the Federal-aid systems, the Secretary shall, where he considers it necessary to assure equal employment opportunity, require certification by any State desiring to avail itself of the benefits of this chapter that there are in existence and available on a regional, statewide, or local basis, apprenticeship, skill improvement or other upgrading programs, registered with the Department of Labor or the appropriate State agency, if any, which provide equal opportunity for training and employment without regard to race, color, creed, national origin, or sex. In implementing such programs, a State may reserve training positions for persons who receive welfare assistance from such State; except that the implementation of any such program shall not cause current employees to be displaced or current positions to be supplanted or preclude workers that are participating in an apprenticeship, skill improvement, or other upgrading program registered with the Department of Labor or the appropriate State agency from being referred to, or hired on, projects funded under this title without regard to the length of time of their participation in such program. The Secretary shall periodically obtain from the Secretary of Labor and the respective State transportation departments information which will enable him to judge compliance with the requirements of this section and the Secretary of Labor shall render to the Secretary such assistance and information as he shall

deem necessary to carry out the equal employment opportunity program required hereunder.

(b) The Secretary, in cooperation with any other department or agency of the Government, State agency, authority, association, institution, Indian tribal government, corporation (profit or nonprofit), or any other organization or person, is authorized to develop, conduct, and administer highway construction and technology training, including skill improvement programs, and to develop and fund summer transportation institutes. Whenever apportionments are made under section 104(b)(3) of this title, the Secretary shall deduct such sums as he may deem necessary, not to exceed \$2,500,000 for the transition quarter ending September 30, 1976, and not to exceed \$10,000,000 per fiscal year, for the administration of this subsection. Such sums so deducted shall remain available until expended. The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not be applicable to contracts and agreements made under the authority herein granted to the Secretary. Notwithstanding any other provision of law, not to exceed ½ of 1 percent of funds apportioned to a State for the surface transportation program under section 104(b) and the bridge program under section 144 may be available to carry out this subsection upon request of the State transportation department to the Secretary.

(c) The Secretary, in cooperation with any other department or agency of the Government, State agency, authority, association, institution, Indian tribal government, corporation (profit or nonprofit), or any other organization or person, is authorized to develop, conduct, and administer training programs and assistance programs in connection with any program under this title in order that minority businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts. Whenever apportionments are made under subsection<sup>2</sup> 104(b)(3) of this title, the Secretary shall deduct such sums as he may deem necessary, not to exceed \$10,000,000 per fiscal year, for the administration of this subsection. The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not be applicable to contracts and agreements made under the authority herein granted to the Secretary notwithstanding the provisions of section 302(e)<sup>1</sup> of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(e)).

(d) INDIAN EMPLOYMENT AND CONTRACTING.—Consistent with section 703(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(i)), nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservation roads. States may implement a preference for employment of Indians on projects carried out under this title near Indian reservations. The Secretary shall cooperate with Indian tribal governments and the States to implement this subsection.

(Added Pub. L. 90-495, §22(a), Aug. 23, 1968, 82 Stat. 826; amended Pub. L. 91-605, title I, §110,

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Probably should be “section”.

Dec. 31, 1970, 84 Stat. 1719; Pub. L. 93-87, title I, § 120, Aug. 13, 1973, 87 Stat. 259; Pub. L. 94-280, title I, § 126, May 5, 1976, 90 Stat. 440; Pub. L. 97-424, title I, § 119, Jan. 6, 1983, 96 Stat. 2110; Pub. L. 100-17, title I, § 122, Apr. 2, 1987, 101 Stat. 160; Pub. L. 102-240, title I, § 1026, Dec. 18, 1991, 105 Stat. 1965; Pub. L. 102-388, title IV, § 412, Oct. 6, 1992, 106 Stat. 1565; Pub. L. 105-178, title I, §§ 1208, 1212(a)(2)(A), June 9, 1998, 112 Stat. 186, 193.)

## REFERENCES IN TEXT

Section 105 of this title, referred to in subsec. (a), was amended generally by Pub. L. 105-178, title I, § 1104(a), June 9, 1998, 112 Stat. 127, and no longer refers to program of highway project approval process by Secretary but to minimum guarantee to States for allocations of appropriations.

Subsection (e) of section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(e)), referred to in subsec. (c), was struck out by section 2714(a)(1)(B) of Pub. L. 98-369 and restated in subsection (c)(1) of section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(1)).

## AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178, §§ 1208(a), 1212(a)(2)(A)(ii), inserted “In implementing such programs, a State may reserve training positions for persons who receive welfare assistance from such State; except that the implementation of any such program shall not cause current employees to be displaced or current positions to be supplanted or preclude workers that are participating in an apprenticeship, skill improvement, or other upgrading program registered with the Department of Labor or the appropriate State agency from being referred to, or hired on, projects funded under this title without regard to the length of time of their participation in such program.” after third sentence and substituted “State transportation departments” for “State highway departments”.

Subsec. (b). Pub. L. 105-178, §§ 1208(b), 1212(a)(2)(A)(i), inserted “and technology” after “highway construction” and “”, and to develop and fund summer transportation institutes” after “skill improvement programs” and substituted “section 104(b)(3)” for “section 104(b)” and “State transportation department” for “State highway department”.

Subsec. (c). Pub. L. 105-178, § 1208(c), substituted “104(b)(3)” for “104(a)”.

1992—Subsec. (b). Pub. L. 102-388 substituted “½ of 1 percent” for “¼ of 1 percent” in last sentence.

1991—Subsec. (b). Pub. L. 102-240, § 1026(a), (b), inserted “Indian tribal government,” after “institution,” and inserted at end “Notwithstanding any other provision of law, not to exceed ¼ of 1 percent of funds apportioned to a State for the surface transportation program under section 104(b) and the bridge program under section 144 may be available to carry out this subsection upon request of the State highway department to the Secretary.”

Subsec. (c). Pub. L. 102-240, § 1026(b), inserted “Indian tribal government,” after “institution.”

Subsec. (d). Pub. L. 102-240, § 1026(c), inserted after first sentence “States may implement a preference for employment of Indians on projects carried out under this title near Indian reservations.”

1987—Subsec. (d). Pub. L. 100-17 added subsec. (d).

1983—Pub. L. 97-424, § 119(c), substituted “Non-discrimination” for “Equal employment opportunity” in section catchline.

Subsec. (a). Pub. L. 97-424, § 119(a), substituted “, national origin, or sex” for “or national origin” after “color, creed”, in two places.

Subsec. (c). Pub. L. 97-424, § 119(b), added subsec. (c).

1976—Subsec. (b). Pub. L. 94-280 substituted second sentence “Whenever apportionments are made under section 104(b) of this title, the Secretary shall deduct

such sums as he may deem necessary, not to exceed \$2,500,000 for the transition quarter ending September 30, 1976, and not to exceed \$10,000,000 per fiscal year, for the administration of this subsection.” for “Whenever an apportionment is made under subsections 104(b)(1), (b)(2), (b)(3), (b)(5), and (b)(6) of this title of the sums authorized to be appropriated for expenditure upon the Federal-aid primary and secondary systems, and their extensions within urban areas, the Interstate System, and the Federal-aid urban system for the fiscal years 1972, 1973, 1974, 1975, and 1976, the Secretary shall deduct such sums as he may deem necessary not to exceed \$5,000,000 per fiscal year for the fiscal years 1972 and 1973, and \$10,000,000 per fiscal year for the fiscal years 1974, 1975 and 1976, for administering the provisions of this subsection to be financed from the appropriation for the Federal-aid systems.”

1973—Subsec. (b). Pub. L. 93-87 included apportionment of appropriated moneys for administration of subsec. (b) provisions for fiscal years 1974, 1975, and 1976, and substituted provisions which made available for such administration \$5,000,000 per fiscal year for fiscal years 1972, and 1973, and \$10,000,000 per fiscal year for fiscal years 1974, 1975, and 1976, for prior provision making available \$5,000,000 per fiscal year for such administration.

1970—Pub. L. 91-605 designated existing provisions as subsec. (a) and added subsec. (b).

## EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

## EFFECTIVE DATE

Section effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as an Effective Date of 1968 Amendment note under section 101 of this title.

## § 141. Enforcement of requirements

(a) Each State shall certify to the Secretary before January 1 of each year that it is enforcing all State laws respecting maximum vehicle size and weights permitted on the Federal-aid primary system, the Federal-aid urban system, and the Federal-aid secondary system, including the Interstate System in accordance with section 127 of this title. Each State shall also certify that it is enforcing and complying with the provisions of section 127(d) of this title and section 31112 of title 49.

(b)(1) Each State shall submit to the Secretary such information as the Secretary shall, by regulation, require as necessary, in his opinion, to verify the certification of such State under subsection (b) of this section.

(2) If a State fails to certify as required by subsection (b) of this section or if the Secretary determines that a State is not adequately enforcing all State laws respecting such maximum vehicle size and weights, notwithstanding such a certification, then Federal-aid highway funds apportioned to such State for such fiscal year shall be reduced by amounts equal to 10 per centum of the amount which would otherwise be apportioned to such State under section 104 of this title.

(3) If within one year from the date that the apportionment for any State is reduced in accordance with paragraph (2) of this subsection the Secretary determines that such State is en-

forcing all State laws respecting maximum size and weights, the apportionment of such State shall be increased by an amount equal to such reduction. If the Secretary does not make such a determination within such one-year period, the amounts so withheld shall be reapportioned to all other eligible States.

(c) The Secretary shall reduce the State's apportionment of Federal-aid highway funds under section 104(b)(4) in an amount up to 25 per centum of the amount to be apportioned in any fiscal year beginning after September 30, 1984, during which heavy vehicles, subject to the use tax imposed by section 4481 of the Internal Revenue Code of 1986, may be lawfully registered in the State without having presented proof of payment, in such form as may be prescribed by the Secretary of the Treasury, of the use tax imposed by section 4481 of such Code. Amounts withheld from apportionment to a State under this subsection shall be apportioned to the other States pursuant to the formulas of section 104(b)(4) and shall be available in the same manner and to the same extent as other Interstate funds apportioned at the same time to other States.

(Added Pub. L. 93-643, §107(a), Jan. 4, 1975, 88 Stat. 2284; amended Pub. L. 95-599, title I, §123(d), Nov. 6, 1978, 92 Stat. 2702; Pub. L. 97-424, title I, §143, Jan. 6, 1983, 96 Stat. 2129; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102-240, title I, §1023(c), Dec. 18, 1991, 105 Stat. 1954; Pub. L. 103-429, §3(7), Oct. 31, 1994, 108 Stat. 4378; Pub. L. 104-59, title II, §205(d)(1)(A), Nov. 28, 1995, 109 Stat. 577; Pub. L. 105-178, title I, §1103(l)(3)(C), June 9, 1998, 112 Stat. 126.)

#### REFERENCES IN TEXT

Section 4481 of the Internal Revenue Code of 1986, referred to in subsec. (c), is classified to section 4481 of Title 26, Internal Revenue Code.

#### PRIOR PROVISIONS

A prior section 141, Pub. L. 90-495, §35(a), Aug. 23, 1968, 82 Stat. 836, related to real property acquisition policies, prior to repeal by Pub. L. 91-646, title III, §306, Jan. 2, 1971, 84 Stat. 1907, such repeal becoming effective as to all States after July 1, 1972, the date on which sections 4630 and 4655 of Title 42, The Public Health and Welfare, covering similar subject matter, became applicable to all States.

#### AMENDMENTS

1998—Subsec. (c). Pub. L. 105-178 substituted “section 104(b)(4)” for “section 104(b)(5) of this title” in two places.

1995—Pub. L. 104-59 redesignated subsecs. (b) to (d) as (a) to (c), respectively, and struck out former subsec. (a) which read as follows: “Each State shall certify to the Secretary before January 1 of each year that it is enforcing all speed limits on public highways in accordance with section 154 of this title. The Secretary shall not approve any project under section 106 of this title in any State which has failed to certify in accordance with this subsection.”

1994—Subsec. (b). Pub. L. 103-429 substituted “section 3112 of title 49” for “section 411(j) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. App. 2311(j))”.

1991—Subsec. (b). Pub. L. 102-240 inserted at end “Each State shall also certify that it is enforcing and complying with the provisions of section 127(d) of this title and section 411(j) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. App. 2311(j)).”

1986—Subsec. (d). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1983—Subsec. (d). Pub. L. 97-424 added subsec. (d).

1978—Pub. L. 95-599 designated existing provisions as subsecs. (a) and (b) and added subsec. (c).

#### EFFECTIVE DATE OF 1995 AMENDMENT

Section 205(d)(3) of Pub. L. 104-59 provided that: “The amendments made by paragraph (1) [amending this section and repealing section 154 of this title] shall be applicable to a State on the 10th day following the date of the enactment of this Act [Nov. 28, 1995]; except that if the legislature of a State is not in session on such date of enactment and the chief executive officer of the State declares, before such 10th day, that the legislature is not in session and that the State prefers an applicability date for such amendments that is after the date on which the legislature will convene, such amendments shall be applicable to the State on the 60th day following the date on which the legislature next convenes.”

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 123(e) of Pub. L. 95-599 provided that subsec. (c)(2) and (3) of this section be applicable to certifications required by this section to be filed on or after Jan. 1, 1980, prior to repeal by Pub. L. 96-106, §12, Nov. 9, 1979, 93 Stat. 798.

#### ENFORCEMENT OF VEHICLE WEIGHT LIMITATIONS

Section 123(a)-(c) of Pub. L. 95-599, as amended by Pub. L. 100-17, title I, §133(c)(4), Apr. 2, 1987, 101 Stat. 173, provided that:

“(a) Not later than the one-hundred-eightieth day after the date of enactment of this section [Nov. 6, 1978], the Secretary of Transportation, hereunder referred to as the ‘Secretary’, in consultation with each State shall inventory the existing system of penalties for violations of vehicle weight laws, rules, and regulations on any portion of any Federal-aid system in such State. Each State shall annually thereafter report to the Secretary its current inventory.

“(b)(1) Not later than the one-hundred-eightieth day after the date of enactment of this section [Nov. 6, 1978], the Secretary, in consultation with each State, shall inventory the existing system in such State for the issuance of special permits. Each State shall annually thereafter report to the Secretary its current inventory.

“(2) For purposes of this subsection, the term ‘special permit’ means a license or permit issued pursuant to State law, rule, or regulation which authorizes a vehicle to exceed the weight limitation for such vehicle established under State law, rule, or regulation.

“(c) Not later than January 1 of the second calendar year which begins after the date of enactment of this section [Nov. 6, 1978] and each calendar year thereafter the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation [now Committee on Transportation and Infrastructure] of the House of Representatives an annual report together with such recommendations as the Secretary deems necessary on (1) the latest annual inventory of State systems of penalties required by subsection (a) of this section; (2) the latest annual inventory of State systems for the issuance of special permits required by subsection (b) of this section; (3) the annual certification submitted by each State required by section 141(b) of title 23, United States Code.”

### § 142. Public transportation

(a)(1) To encourage the development, improvement, and use of public mass transportation systems operating motor vehicles (other than on rail) on Federal-aid highways for the transportation of passengers (hereafter in this section referred to as "buses"), so as to increase the traffic capacity of the Federal-aid systems for the movement of persons, the Secretary may approve as a project on any Federal-aid system the construction of exclusive or preferential high occupancy vehicle lanes, highway traffic control devices, bus passenger loading areas and facilities (including shelters), and fringe and transportation corridor parking facilities to serve high occupancy vehicle and public mass transportation passengers, and sums apportioned under section 104(b) of this title shall be available to finance the cost of projects under this paragraph. If fees are charged for the use of any parking facility constructed under this section, the rate thereof shall not be in excess of that required for maintenance and operation of the facility and the cost of providing shuttle service to and from the facility (including compensation to any person for operating the facility and for providing such shuttle service).

(2) In addition to the projects under paragraph (1), the Secretary may approve as a project on the the<sup>1</sup> surface transportation program for payment from sums apportioned under section 104(b)(3) for carrying out any capital transit project eligible for assistance under chapter 53 of title 49, capital improvement to provide access and coordination between intercity and rural bus service, and construction of facilities to provide connections between highway transportation and other modes of transportation.

(b) Sums apportioned in accordance with section 104(b)(4) shall be available to finance the Federal share of projects for exclusive or preferential high occupancy vehicle, truck, and emergency vehicle routes or lanes. Routes constructed under this subsection shall not be subject to the third sentence of section 109(b) of this title.

(c) ACCOMMODATION OF OTHER MODES OF TRANSPORTATION.—The Secretary may approve as a project on any Federal-aid system for payment from sums apportioned under section 104(b) modifications to existing highway facilities on such system necessary to accommodate other modes of transportation if such modifications will not adversely affect automotive safety.

(d) METROPOLITAN PLANNING.—Any project carried out under this section in an urbanized area shall be subject to the metropolitan planning requirements of section 134.

(e)(1) For all purposes of this title, a project authorized by subsection (a)(1) of this section shall be deemed to be a highway project.

(2) Notwithstanding section 209(f)(1) of the Highway Revenue Act of 1956, the Highway Trust Fund shall be available for making expenditures to meet obligations resulting from projects authorized by subsection (a)(2) of this section and such projects shall be subject to,

and governed in accordance with, all provisions of this title applicable to projects on the surface transportation program, except to the extent determined inconsistent by the Secretary.

(3) The Federal share payable on account of projects authorized by subsection (a) of this section shall be that provided in section 120 of this title.

(f) AVAILABILITY OF RIGHTS-OF-WAY.—In any case where sufficient land or air space exists<sup>2</sup> within the publicly acquired rights-of-way of any highway, constructed in whole or in part with Federal-aid highway funds, to accommodate needed passenger, commuter, or high speed rail, magnetic levitation systems, and highway and nonhighway public mass transit facilities, the Secretary shall authorize a State to make such lands, air space, and rights-of-way available with or without charge to a publicly or privately owned authority or company or any other person for such purposes if such accommodation will not adversely affect automotive safety.

(g) The provision of assistance under subsection (a)(2) shall not be construed as bringing within the application of chapter 15 of title 5, United States Code, any non-supervisory employee of an urban mass transportation system (or of any other agency or entity performing related functions) to whom such chapter is otherwise inapplicable.

(h) Funds available for expenditure to carry out the purposes of subsection (a)(2) of this section shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to chapter 53 of title 49.

(i) The provisions of section 5323(a)(1)(D) of title 49 shall apply in carrying out subsection (a)(2) of this section.

(Added Pub. L. 91-605, title I, §111(a), Dec. 31, 1970, 84 Stat. 1719; amended Pub. L. 93-87, title I, §121(a), Aug. 13, 1973, 87 Stat. 259; Pub. L. 94-280, title I, §127, May 5, 1976, 90 Stat. 440; Pub. L. 97-424, title I, §120, Jan. 6, 1983, 96 Stat. 2111; Pub. L. 102-240, title I, §1027(a)-(e), title III, §3003(b), Dec. 18, 1991, 105 Stat. 1966, 2088; Pub. L. 103-272, §5(f)(2), July 5, 1994, 108 Stat. 1374; Pub. L. 103-429, §7(a)(4)(C), Oct. 31, 1994, 108 Stat. 4389; Pub. L. 105-178, title I, §1103(l)(3)(D), (4), June 9, 1998, 112 Stat. 126.)

#### REFERENCES IN TEXT

Section 209(f)(1) of the Highway Revenue Act of 1956, referred to in subsec. (e)(2), is set out as a note under section 120 of this title.

#### AMENDMENTS

1998—Subsec. (b). Pub. L. 105-178, §1103(l)(4), substituted "section 104(b)(4)" for "paragraph (5) of subsection (b) of section 104 of this title".

Subsec. (c). Pub. L. 105-178, §1103(l)(3)(D), struck out "(other than section 104(b)(5)(A))" after "section 104(b)".

1994—Subsec. (a)(2). Pub. L. 103-272, §5(f)(2)(A), substituted "chapter 53 of title 49" for "the Federal Transit Act".

Subsec. (h). Pub. L. 103-272, §5(f)(2)(B), as amended by Pub. L. 103-429, §7(a)(4)(C), substituted "chapter 53 of title 49" for "the Federal Transit Act, as amended".

Subsec. (i). Pub. L. 103-272, §5(f)(2)(C), as amended by Pub. L. 103-429, §7(a)(4)(C), substituted "section

<sup>1</sup> So in original.

<sup>2</sup> So in original. Probably should be "exists".

5323(a)(1)(D) of title 49" for "section 3(e)(4) of the Federal Transit Act, as amended."

1991—Subsec. (a)(2). Pub. L. 102-240, §1027(a), struck out "beginning with the fiscal year ending June 30, 1975," after "the Secretary may", substituted "the surface transportation program" for "Federal-aid urban system," and substituted "104(b)(3) for carrying out any capital transit project eligible for assistance under the Federal Transit Act, capital improvement to provide access and coordination between intercity and rural bus service, and construction of facilities to provide connections between highway transportation and other modes of transportation." for "104(b)(6) of this title, the purchase of buses, and, beginning with the fiscal year ending June 30, 1976, approve as a project on the Federal-aid urban system, for payment from sums apportioned under section 104(b)(6) of this title, the construction, reconstruction, and improvement of fixed rail facilities, including the purchase of rolling stock for fixed rail, except that not more than \$200,000,000 of all sums apportioned for the fiscal year ending June 30, 1975, under section 104(b)(6) shall be available for the payment of the Federal share of projects for the purchase of buses."

Subsec. (c). Pub. L. 102-240, §1027(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Whenever responsible local officials of an urbanized area notify the State highway department that, in lieu of a highway project the Federal share of which is to be paid from funds apportioned under section 104(b)(6) of this title for the fiscal years ending June 30, 1974, and June 30, 1975, their needs require a nonhighway public mass transit project involving the construction of fixed rail facilities, or the purchase of passenger equipment, including rolling stock for any mode of mass transit, or both, and the State highway department determines that such public mass transit project is in accordance with the planning process under section 134 of this title and is entitled to priority under such planning process, such public mass transit project shall be submitted for approval to the Secretary. Approval of the plans, specifications, and estimates for such project by the Secretary shall be deemed a contractual obligation of the United States for payment out of the general funds of its proportional share of the cost of such project in an amount equal to the Federal share which would have been paid if such project were a highway project under section 120(a) of this title. Funds previously apportioned to such State under section 104(b)(6) of this title shall be reduced by an amount equal to such Federal share."

Subsec. (d). Pub. L. 102-240, §1027(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "The establishment of routes and schedules of such public mass transportation systems in urbanized areas shall be based upon a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title."

Subsec. (e)(2). Pub. L. 102-240, §1027(e)(1), substituted "surface transportation program" for "Federal-aid urban system".

Subsec. (f). Pub. L. 102-240, §1027(e)(2), (3), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: "No project authorized by this section shall be approved unless the Secretary of Transportation has received assurances satisfactory to him from the State that high occupancy vehicles will fully utilize the proposed project."

Subsec. (g). Pub. L. 102-240, §1027(e)(3), (4), redesignated subsec. (h) as (g) and struck out "or subsection (c) of this section" after "(a)(2)". Former subsec. (g) redesignated (f).

Pub. L. 102-240, §1027(d), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "In any case where sufficient land exists within the publicly acquired rights-of-way of any Federal-aid highway to accommodate needed rail or non-highway public mass transit facilities and where this can be accomplished without impairing automotive safety or future highway improvements, the Administrator may

authorize a State to make such lands and rights-of-way available without charge to a publicly owned mass transit authority for such purposes wherever he may deem that the public interest will be served thereby."

Subsec. (h). Pub. L. 102-240, §3003(b), substituted "Federal Transit Act" for "Urban Mass Transportation Act of 1964".

Pub. L. 102-240, §1027(e)(3), (5), redesignated subsec. (i) as (h) and struck out "and subsection (c)" after "(a)(2)". Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 102-240, §3003(b), substituted "Federal Transit Act" for "Urban Mass Transportation Act of 1964".

Pub. L. 102-240, §1027(e)(3), (5), redesignated subsec. (j) as (i) and struck out "and subsection (c)" after "(a)(2)". Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 102-240, §1027(e)(3), redesignated subsec. (j) as (i).

Subsec. (k). Pub. L. 102-240, §1027(e)(2), struck out subsec. (k) which read as follows: "The Secretary shall not approve any project under subsection (a)(2) of this section in any fiscal year when there has been enacted an Urban Transportation Trust Fund or similar assured funding for both highway and public transportation."

1983—Subsec. (a)(1). Pub. L. 97-424, §120(a), inserted "and the cost of providing shuttle service to and from the facility" after "of the facility", and "and for providing such shuttle service" after "operating the facility".

Pub. L. 97-424, §120(b)(1), substituted "high occupancy vehicle lanes" for "bus lanes" after "preferential", and "high occupancy vehicle and" for "bus and other" after "facilities to serve".

Subsec. (b). Pub. L. 97-424, §120(b)(2), substituted "high occupancy vehicle" for "bus" after "preferential".

Subsec. (f). Pub. L. 97-424, §120(b)(3), substituted "high occupancy vehicles" for "public mass transportation systems".

1976—Subsec. (a)(1). Pub. L. 94-280, §127(a), inserted provision that if fees are charged for the use of any parking facility constructed under this section, the rate thereof shall not be in excess of that required for maintenance and operation of the facility (including compensation to any person for operating the facility).

Subsec. (e)(3). Pub. L. 94-280, §127(b), substituted "section 120 of this title" for "section 120 of this section".

1973—Subsec. (a). Pub. L. 93-87 designated existing provisions as par. (1), substituted "operating motor vehicles (other than on rail) on Federal-aid highways" for "operating motor vehicles on highways, other than on rails", struck out "within urbanized areas" after "buses)", inserted "for the movement of persons" after "Federal-aid systems", and substituted provisions respecting availability of sums apportioned under section 104(b) of this title for prior provisions for such sums apportioned in accordance with pars. (3), (5), and (6) of section 104(b) of this title, and added par. (2).

Subsec. (b). Pub. L. 93-87 added subsec. (b). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 93-87 added subsec. (c). Former subsec. (c) incorporated in subsec. (e)(1), (3) of this section.

Subsec. (d). Pub. L. 93-87 redesignated former subsec. (b) as (d), inserted "in urbanized areas" after "transportation systems", and struck out former subsec. (d) provisions which prohibited any project authorized by this section, other than a project for fringe or transportation parking facilities, from being approved unless the project would avoid the construction of a highway project which increases automobile traffic capacity, would provide a capacity for the movement of persons at least equal to that which would be provided by the avoided highway project, and would not exceed in the amount of the Federal share, the Federal share of the cost of the avoided highway project; or no other feasible or prudent highway project could provide the additional capacity for the movement of persons by motor vehicles on highways (other than on rails) provided by this project.

Subsec. (e). Pub. L. 93-87 incorporated provisions of former subsec. (c) in pars. (1) and (3) and added par. (2). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 93-87 redesignated former subsec. (e) as (f) and substituted "will fully utilize" for "will have adequate capability to fully utilize".

Subsecs. (g) to (k). Pub. L. 93-87 added subsecs. (g) to (k).

#### EFFECTIVE DATE OF 1994 AMENDMENT

Section 7(a) of Pub. L. 103-429 provided in part that the amendment made by that section is effective July 5, 1994.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 1027 of Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### RURAL HIGHWAY TRANSPORTATION DEMONSTRATION PROGRAM; APPROPRIATIONS AUTHORIZATION; PUBLIC NOTICE AND HEARING

Section 147 of Pub. L. 93-87, as amended by Pub. L. 93-643, §103, Jan. 4, 1975, 88 Stat. 2282; Pub. L. 94-280, title I, §129, May 5, 1976, 90 Stat. 440; Pub. L. 95-599, title I, §132, Nov. 6, 1978, 92 Stat. 2708, provided for authorization of appropriations of \$15,000,000 for the fiscal year ending June 30, 1975, and \$60,000,000 for the fiscal year ending June 30, 1976, to carry out demonstration projects for public mass transportation projects in rural and small urban areas, authorized availability of such sums for a period of two years after the close of the fiscal year for which authorized, and required public notice and hearing for such projects.

#### TRANSPORTATION FOR ELDERLY AND HANDICAPPED PERSONS

Pub. L. 93-643, §105(a), Jan. 4, 1975, 88 Stat. 2282, provided that: "It is hereby declared to be the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services; that special efforts shall be made in the planning, design, construction, and operation of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured; and that all Federal programs offering assistance for mass transportation (including the programs under title 23, United States Code, the Federal-Aid Highway Act of 1973, and this Act [see Short Title of 1973 Amendment note under 101 of this title]) effectively implement this policy."

#### BUS AND OTHER PROJECT STANDARDS

Section 165 of Pub. L. 93-87, as amended by Pub. L. 93-643, §105(b), Jan. 4, 1975, 88 Stat. 2283, provided that:

"(a) The Secretary of Transportation shall require that buses acquired with Federal financial assistance under (1) subsection (a) or (c) of section 142 of title 23, United States Code, (2) paragraph (4) of subsection (e) of section 103, title 23, United States Code, or (3) section 147 of the Federal-aid Highway Act of 1973 [set out as a note under this section] meet the standards prescribed by the Administrator of the Environmental Protection Agency under section 202 of the Clean Air Act [section 7521 of Title 42, The Public Health and Welfare], and under section 6 of the Noise Control Act of 1972 [section 4905 of Title 42], and shall authorize the acquisition, wherever practicable, of buses which meet the special criteria for low-emission vehicles set forth in section 212 of the Clean Air Act [section 7546 of Title 42], and for low-noise-emission products set forth in section 15 of the Noise Control Act of 1972 [section 4914 of Title 42].

"(b) The Secretary of Transportation shall require that projects receiving Federal financial assistance

under (1) subsection (a) or (c) of section 142 of title 23, United States Code, (2) paragraph (4) of subsection (e) of section 103, title 23, United States Code, or (3) section 147 of the Federal-Aid Highway Act of 1973 [set out as a note above] shall be planned, designed, constructed, and operated to allow effective utilization by elderly or handicapped persons who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including those who are nonambulatory wheelchair-bound and those with semiambulatory capabilities, are unable without special facilities or special planning or design to utilize such facilities and services effectively. The Secretary shall not approve any program or project to which this section applies which does not comply with the provisions of this subsection requiring access to public mass transportation facilities, equipment, and services for elderly or handicapped persons."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 156 of this title; title 15 section 794; title 49 section 5323.

### § 143. Highway use tax evasion projects

(a) STATE DEFINED.—In this section, the term "State" means the 50 States and the District of Columbia.

(b) PROJECTS.—

(1) IN GENERAL.—The Secretary shall carry out highway use tax evasion projects in accordance with this subsection.

(2) ALLOCATION OF FUNDS.—Funds made available to carry out this section may be allocated to the Internal Revenue Service and the States at the discretion of the Secretary.

(3) CONDITIONS ON FUNDS ALLOCATED TO INTERNAL REVENUE SERVICE.—The Secretary shall not impose any condition on the use of funds allocated to the Internal Revenue Service under this subsection.

(4) LIMITATION ON USE OF FUNDS.—Funds made available to carry out this section shall be used only—

(A) to expand efforts to enhance motor fuel tax enforcement;

(B) to fund additional Internal Revenue Service staff, but only to carry out functions described in this paragraph;

(C) to supplement motor fuel tax examinations and criminal investigations;

(D) to develop automated data processing tools to monitor motor fuel production and sales;

(E) to evaluate and implement registration and reporting requirements for motor fuel taxpayers;

(F) to reimburse State expenses that supplement existing fuel tax compliance efforts; and

(G) to analyze and implement programs to reduce tax evasion associated with other highway use taxes.

(5) MAINTENANCE OF EFFORT.—The Secretary may not make an allocation to a State under this subsection for a fiscal year unless the State certifies that the aggregate expenditure of funds of the State, exclusive of Federal funds, for motor fuel tax enforcement activities will be maintained at a level that does not fall below the average level of such expenditure for the preceding 2 fiscal years of the State.

(6) FEDERAL SHARE.—The Federal share of the cost of a project carried out under this subsection shall be 100 percent.

(7) PERIOD OF AVAILABILITY.—Funds authorized to carry out this section shall remain available for obligation for a period of 3 years after the last day of the fiscal year for which the funds are authorized.

(8) USE OF SURFACE TRANSPORTATION PROGRAM FUNDING.—In addition to funds made available to carry out this section, a State may expend up to ¼ of 1 percent of the funds apportioned to the State for a fiscal year under section 104(b)(3) on initiatives to halt the evasion of payment of motor fuel taxes.

(c) EXCISE FUEL REPORTING SYSTEM.—

(1) IN GENERAL.—Not later than August 1, 1998, the Secretary shall enter into a memorandum of understanding with the Commissioner of the Internal Revenue Service for the purposes of the development and maintenance by the Internal Revenue Service of an excise fuel reporting system (in this subsection referred to as the “system”).

(2) ELEMENTS OF MEMORANDUM OF UNDERSTANDING.—The memorandum of understanding shall provide that—

(A) the Internal Revenue Service shall develop and maintain the system through contracts;

(B) the system shall be under the control of the Internal Revenue Service; and

(C) the system shall be made available for use by appropriate State and Federal revenue, tax, and law enforcement authorities, subject to section 6103 of the Internal Revenue Code of 1986.

(3) FUNDING PRIORITY.—Of the amounts made available to carry out this section for each of fiscal years 1998 through 2003, and prior to funding any other activity under this section, the Secretary shall make available sufficient funds to the Internal Revenue Service to establish and operate an automated fuel reporting system.

(Added Pub. L. 91-605, title I, §127(a), Dec. 31, 1970, 84 Stat. 1729; amended Pub. L. 93-87, title I, §122, Aug. 13, 1973, 87 Stat. 261; Pub. L. 105-178, title I, §1114(a), (c), June 9, 1998, 112 Stat. 152; Pub. L. 105-206, title IX, §9002(h), July 22, 1998, 112 Stat. 836.)

REFERENCES IN TEXT

Section 6103 of the Internal Revenue Code of 1986, referred to in subsec. (c)(2)(C), is classified to section 6103 of Title 26, Internal Revenue Code.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 102-240, title I, §1040, Dec. 18, 1991, 105 Stat. 1992, as amended, which was set out as a note under section 101 of this title, prior to repeal by Pub. L. 105-178, §1114(b)(2).

AMENDMENTS

1998—Pub. L. 105-178 amended section catchline and text generally, substituting provisions relating to highway use tax evasion projects for provisions relating to economic growth center development highways.

Subsec. (c)(1). Pub. L. 105-178, §1114(c)(1), as added by Pub. L. 105-206, §9002(h), substituted “August 1” for “April 1”.

Subsec. (c)(3). Pub. L. 105-178, §1114(c)(2), (3), as added by Pub. L. 105-206, §9002(h), in heading inserted “priority” after “Funding” and in text inserted “and prior to funding any other activity under this section,” after “2003.”

1973—Subsec. (a). Pub. L. 93-87, §122(a), (c), substituted “projects” for “demonstration projects” and “a Federal-aid system (other than the Interstate System)” for “the Federal-aid primary system” and deleted “to demonstrate the role that highways can play” before “to promote”.

Subsec. (b). Pub. L. 93-87, §122(a), substituted “projects” for “demonstration projects” and “a Federal-aid system (other than the Interstate System)” for “the Federal-aid primary system”.

Subsec. (c). Pub. L. 93-87, §122(a), substituted “project” for “demonstration project” and “a Federal-aid system (other than the Interstate System)” for “the Federal-aid primary system”.

Subsec. (d). Pub. L. 93-87, §122(a), substituted “highways on the Federal-aid system on which such development highway is located” for “Federal-aid primary highways”.

Subsec. (e). Pub. L. 93-87, §122(b), inserted introductory text “Except as otherwise provided in subsection (c) of this section,” and substituted “the Federal share of the cost of any project for construction, reconstruction, or improvement of a development highway under this section shall be the same as that provided under this title for any other project on the Federal-aid system on which such development highway is located” for “the Federal share of the cost of any project for construction, reconstruction, or improvement of a development highway under this section shall be increased by not to exceed an additional 20 per centum of the cost of such project, except that in no case shall the Federal share exceed 95 per centum of the cost of such project”.

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 this title.

HIGHWAY USE TAX EVASION PROJECTS

Pub. L. 102-240, title VIII, §8002(g), (h), Dec. 18, 1991, 105 Stat. 2204, 2205, as amended by Pub. L. 105-178, title I, §1114(b)(3), June 9, 1998, 112 Stat. 154, provided that:

“(g) USE OF REVENUES FOR ENFORCEMENT OF HIGHWAY TRUST FUND TAXES.—The Secretary of Transportation shall not impose any condition on the use of funds transferred under section 143 of title 23, United States Code, to the Internal Revenue Service. The Secretary of the Treasury shall, at least 60 days before the beginning of each fiscal year (after fiscal year 1992) for which such funds are to be transferred, submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate detailing the increased enforcement activities to be financed with such funds with respect to taxes referred to in section 9503(b)(1) of the Internal Revenue Code of 1986 [26 U.S.C. 9503(b)(1)].

“[(h) Repealed. Pub. L. 105-178, title I, §1114(b)(3)(B), June 9, 1998, 112 Stat. 154.]”

**§ 144. Highway bridge replacement and rehabilitation program**

(a) Congress hereby finds and declares it to be in the vital interest of the Nation that a highway bridge replacement and rehabilitation program be established to enable the several States to replace or rehabilitate highway bridges over waterways, other topographical barriers, other



highways, or railroads when the States and the Secretary finds that a bridge is significantly important and is unsafe because of structural deficiencies, physical deterioration, or functional obsolescence.

(b) The Secretary, in consultation with the States, shall (1) inventory all those highway bridges on any Federal-aid system which are bridges over waterways, other topographical barriers, other highways, and railroads; (2) classify them according to serviceability, safety, and essentiality for public use; (3) based on that classification, assign each a priority for replacement or rehabilitation; and (4) determine the cost of replacing each such bridge with a comparable facility or of rehabilitating such bridge.

(c)(1) The Secretary, in consultation with the States, shall (1) inventory all those highway bridges on public roads, other than those on any Federal-aid system, which are bridges over waterways, other topographical barriers, other highways, and railroads, (2) classify them according to serviceability, safety, and essentiality for public use, (3) based on the classification, assign each a priority for replacement or rehabilitation and (4) determine the cost of replacing each such bridge with a comparable facility or of rehabilitating such bridge.

(2) The Secretary may, at the request of a State, inventory bridges, on and off the Federal-aid system, for historic significance.

(3) INVENTORY OF INDIAN RESERVATION AND PARK BRIDGES.—As part of the activities carried out under paragraph (1), the Secretary, in consultation with the Secretary of the Interior, shall (A) inventory all those highway bridges on Indian reservation roads and park roads which are bridges over waterways, other topographical barriers, other highways, and railroads, (B) classify them according to serviceability, safety, and essentiality for public use, (C) based on the classification, assign each a priority for replacement or rehabilitation, and (D) determine the cost of replacing each such bridge with a comparable facility or of rehabilitating such bridge.

(d) Whenever any State or States make application to the Secretary for assistance in replacing or rehabilitating a highway bridge which the priority system established under subsection (b) and (c) of this section shows to be eligible, the Secretary may approve Federal participation in replacing such bridge with a comparable facility or in rehabilitating such bridge. Whenever any State makes application to the Secretary for assistance in painting and seismic retrofit, or applying calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or installing scour countermeasures to, the structure of a highway bridge, the Secretary may approve Federal participation in the painting or seismic retrofit of, or application of such acetate or sodium acetate/formate or such anti-icing or de-icing composition or installation of such countermeasures to, such structure. The Secretary shall determine the eligibility of highway bridges for replacement or rehabilitation for each State based upon the unsafe highway bridges in such State, except that a State may carry out a project for seismic retrofit of a bridge under this section without re-

gard to whether the bridge is eligible for replacement or rehabilitation under this section. In approving projects (other than projects for bridge structure painting or seismic retrofit or application of such acetate or sodium acetate/formate or such anti-icing or de-icing composition or installation of such countermeasures) under this section, the Secretary shall give consideration to those projects which will remove from service those highway bridges most in danger of failure.

(e) Funds authorized to carry out this section shall be apportioned among the several States on October 1 of the fiscal year for which authorized in accordance with this subsection. Each deficient bridge shall be placed into one of the following categories: (1) Federal-aid system bridges eligible for replacement, (2) Federal-aid system bridges eligible for rehabilitation, (3) off-system bridges eligible for replacement, and (4) off-system bridges eligible for rehabilitation. The square footage of deficient bridges in each category shall be multiplied by the respective unit price on a State-by-State basis, as determined by the Secretary; and the total cost in each State divided by the total cost of the deficient bridges in all States shall determine the apportionment factors. For purposes of the preceding sentence, the total cost of deficient bridges in a State and in all States shall be reduced by the total cost of any highway bridges constructed under subsection (m) in such State, relating to replacement of destroyed bridges and ferryboat services, and, if a State transfers funds apportioned to the State under this section in a fiscal year beginning after September 30, 1997, to any other apportionment of funds to such State under this title, the total cost of deficient bridges in such State and in all States to be determined for the succeeding fiscal year shall be reduced by the amount of such transferred funds. No State shall receive more than 10 per centum or less than 0.25 per centum of the total apportionment for any one fiscal year. The Secretary shall make these determinations based upon the latest available data, which shall be updated annually. Funds apportioned under this section shall be available for expenditure for the same period as funds apportioned for projects on the Federal-aid primary system under this title. Any funds not obligated at the expiration of such period shall be reapportioned by the Secretary to the other States in accordance with this subsection. The use of funds authorized under this section to carry out a project for the seismic retrofit of a bridge shall not affect the apportionment of funds under this section.

(f) The Federal share payable on account of any project under this section shall be 80 per centum of the cost thereof.

(g) SET ASIDES.—

(1) DISCRETIONARY BRIDGE PROGRAM.—

(A) FISCAL YEARS 1992 THROUGH 1997.—Of the amounts authorized for each of fiscal years 1992, 1993, 1994, 1995, 1996, and 1997 by section 103 of the Intermodal Surface Transportation Efficiency Act of 1991, all but \$57,000,000 in the case of fiscal year 1992, \$68,000,000 in the case of fiscal years 1993 and 1994, and \$69,000,000 in the case of fiscal years

1995, 1996, and 1997 shall be apportioned as provided in subsection (e) of this section. \$49,000,000 in the case of fiscal year 1992, \$59,500,000 in the case of fiscal years 1993 and 1994, and \$60,500,000 in the case of fiscal years 1995, 1996, and 1997 of the amount authorized for each of such fiscal years shall be available for obligation on the date of each such apportionment in the same manner and to the same extent as the sums apportioned on such date, except that the obligation of \$49,000,000 in the case of fiscal year 1992, \$59,500,000 in the case of fiscal years 1993 and 1994, and \$60,500,000 in the case of fiscal years 1995, 1996, and 1997 shall be at the discretion of the Secretary, and \$8,500,000 per fiscal year (\$8,000,000 in the case of fiscal year 1992) of the amount authorized for each of such fiscal years shall be available in accordance with section 1039 of the Intermodal Surface Transportation Efficiency Act of 1991, relating to highway timber bridges.

(B) FISCAL YEAR 1998.—Of the amounts authorized to be appropriated to carry out the bridge program under this section for fiscal year 1998, all but \$25,000,000 shall be apportioned as provided in subsection (e) of this section. Such \$25,000,000 shall be available only for projects for the seismic retrofit of a bridge described in subsection (l).

(C) FISCAL YEARS 1999 THROUGH 2003.—Of the amounts authorized to be appropriated to carry out the bridge program under this section for each of fiscal years 1999 through 2003, all but \$100,000,000 shall be apportioned as provided in subsection (e). Such \$100,000,000 shall be available at the discretion of the Secretary; except that not to exceed \$25,000,000 shall be available only for projects for the seismic retrofit of bridges, including projects in the New Madrid fault region.

(2) ELIGIBLE DISCRETIONARY PROJECTS.—Subject to section 149(d) of the Federal-Aid Highway Act of 1987, amounts made available by paragraph (1) for obligation at the discretion of the Secretary may be obligated only—

(A) for a project for a highway bridge the replacement or rehabilitation cost of which is more than \$10,000,000, and

(B) for a project for a highway bridge the replacement or rehabilitation cost of which is less than \$10,000,000 if such cost is at least twice the amount apportioned to the State in which such bridge is located under subsection (e) for the fiscal year in which application is made for a grant for such bridge.

(3) OFF-SYSTEM BRIDGES.—Not less than 15 percent nor more than 35 percent of the amount apportioned to each State in each of fiscal years 1987 through 2003 shall be expended for projects to replace, rehabilitate, paint or seismic retrofit, or apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures to highway bridges located on public roads, other than those on a Federal-aid highway. The Secretary, after consultation with State and local

officials, may, with respect to such State, reduce the requirement for expenditure for bridges not on a Federal-aid highway when the Secretary determines that such State has inadequate needs to justify such expenditure.

(h) Notwithstanding any other provision of law, the General Bridge Act of 1946 (33 U.S.C. 525–533) shall apply to bridges authorized to be replaced, in whole or in part, by this section, except that subsection (b) of section 502 of such Act of 1946 and section 9 of the Act of March 3, 1899 (30 Stat. 1151) shall not apply to any bridge constructed, reconstructed, rehabilitated, or replaced with assistance under this title, if such bridge is over waters (1) which are not used and are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce, and (2) which are (a) not tidal, or (b) if tidal, used only by recreational boating, fishing, and other small vessels less than 21 feet in length.

(i) INVENTORIES AND REPORTS.—The Secretary shall—

(1) report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on projects approved under this section;

(2) annually revise the current inventories authorized by subsections (b) and (c) of this section;

(3) report to such committees on such inventories; and

(4) report to such committees such recommendations as the Secretary may have for improvements of the program authorized by this section.

Such reports shall be submitted to such committees biennially at the same time as the report required by section 307(f)<sup>1</sup> of this title is submitted to Congress.

(j) Sums apportioned to a State under this section shall be made available for obligation throughout such State on a fair and equitable basis.

(k) Not later than six months after the date of enactment of this subsection, and periodically thereafter, the Secretary shall review the procedure used in approving or disapproving applications submitted under this section to determine what changes, if any, may be made to expedite such procedure. Any such changes shall be implemented by the Secretary as soon as possible. Not later than nine months after the date of enactment of this subsection, the Secretary shall submit a report to Congress which describes such review and such changes, including any recommendations for legislative changes.

(l) Notwithstanding any other provision of law, any bridge which is owned and operated by an agency (1) which does not have taxing powers, (2) whose functions include operating a federally assisted public transit system subsidized by toll revenues, shall be eligible for assistance under this section but the amount of such assistance shall in no event exceed the cumulative amount which such agency has expended for capital and operating costs to subsidize such

<sup>1</sup> See References in Text note below.

transit system. Before authorizing an expenditure of funds under this subsection, the Secretary shall determine that the applicant agency has insufficient reserves, surpluses, and projected revenues (over and above those required for bridge and transit capital and operating costs) to fund the necessary bridge replacement or rehabilitation project. Any non-Federal funds expended for the seismic retrofit of the bridge may be credited toward the non-Federal share required as a condition of receipt of any Federal funds for seismic retrofit of the bridge made available after the date of the expenditure.

(m) REPLACEMENT OF DESTROYED BRIDGES AND FERRYBOAT SERVICE.—

(1) GENERAL RULE.—Notwithstanding any other provision of this section or of any other provision of law, a State may utilize any of the funds provided under this section to construct any bridge which—

(A) replaces any low water crossing (regardless of the length of such low water crossing),

(B) replaces any bridge which was destroyed prior to 1965,

(C) replaces any ferry which was in existence on January 1, 1984, or

(D) replaces any road bridges rendered obsolete as a result of United States Corps of Engineers flood control or channelization projects and not rebuilt with funds from the United States Corps of Engineers.

(2) FEDERAL SHARE.—The Federal share payable on any bridge construction carried out under paragraph (1) shall be 80 percent of the cost of such construction.

(n) OFF-SYSTEM BRIDGE PROGRAM.—Notwithstanding any other provision of law, with respect to any project not on a Federal-aid highway for the replacement of a bridge or rehabilitation of a bridge which is wholly funded from State and local sources, is eligible for Federal funds under this section, is noncontroversial, is certified by the State to have been carried out in accordance with all standards applicable to such projects under this section, and is determined by the Secretary upon completion to be no longer a deficient bridge, any amount expended after the date of the enactment of this subsection from State and local sources for such project in excess of 20 percent of the cost of construction thereof may be credited to the non-Federal share of the cost of the projects in such State which are eligible for Federal funds under this section. Such crediting shall be in accordance with such procedures as the Secretary may establish.

(o) HISTORIC BRIDGE PROGRAM.—

(1) COORDINATION.—The Secretary shall, in cooperation with the States, implement the programs described in this section in a manner that encourages the inventory, retention, rehabilitation, adaptive reuse, and future study of historic bridges.

(2) STATE INVENTORY.—The Secretary shall require each State to complete an inventory of all bridges on and off the Federal-aid system to determine their historic significance.

(3) ELIGIBILITY.—Reasonable costs associated with actions to preserve, or reduce the impact

of a project under this chapter on, the historic integrity of historic bridges shall be eligible as reimbursable project costs under this title (including this section) if the load capacity and safety features of the bridge are adequate to serve the intended use for the life of the bridge; except that in the case of a bridge which is no longer used for motorized vehicular traffic, the costs eligible as reimbursable project costs pursuant to this subsection shall not exceed the estimated cost of demolition of such bridge.

(4) PRESERVATION.—Any State which proposes to demolish a historic bridge for a replacement project with funds made available to carry out this section shall first make the bridge available for donation to a State, locality, or responsible private entity if such State, locality, or responsible entity enters into an agreement to—

(A) maintain the bridge and the features that give it its historic significance; and

(B) assume all future legal and financial responsibility for the bridge, which may include an agreement to hold the State highway agency harmless in any liability action.

Costs incurred by the State to preserve the historic bridge, including funds made available to the State, locality, or private entity to enable it to accept the bridge, shall be eligible as reimbursable project costs under this chapter up to an amount not to exceed the cost of demolition. Any bridge preserved pursuant to this paragraph shall thereafter not be eligible for any other funds authorized pursuant to this title.

(5) HISTORIC BRIDGE DEFINED.—As used in this subsection, “historic bridge” means any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

(p) APPLICABILITY OF STATE STANDARDS FOR PROJECTS.—A project not on a Federal-aid highway under this section shall be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards.

(q) As used in this section the term “rehabilitate” in any of its forms means major work necessary to restore the structural integrity of a bridge as well as work necessary to correct a major safety defect.

(Added Pub. L. 91-605, title II, §204(a), Dec. 31, 1970, 84 Stat. 1741; amended Pub. L. 93-87, title II, §204, Aug. 13, 1973, 87 Stat. 284; Pub. L. 93-643, §113, Jan. 4, 1975, 88 Stat. 2286; Pub. L. 95-599, title I, §124(a), Nov. 6, 1978, 92 Stat. 2702; Pub. L. 96-106, §§7, 8(a), Nov. 9, 1979, 93 Stat. 797; Pub. L. 97-327, §5(c), Oct. 15, 1982, 96 Stat. 1612; Pub. L. 97-424, title I, §§121(a), 122(a), Jan. 6, 1983, 96 Stat. 2111, 2112; Pub. L. 100-17, title I, §§123(a)-(d)(1), (3), (e), (f)(2), 128, 133(b)(11), Apr. 2, 1987, 101 Stat. 161-163, 167, 172; Pub. L. 102-240, title I, §1028(a)-(f), Dec. 18, 1991, 105 Stat. 1967, 1968; Pub. L. 103-220, §1, Mar. 17, 1994, 108 Stat. 100; Pub. L. 104-59, title III, §§318, 325(b), Nov. 28, 1995, 109 Stat. 588, 592; Pub. L. 105-178, title I, §§1109, 1115(f)(3); June 9, 1998, 112 Stat. 141; Pub. L. 105-206, title IX, §9002(i), July 22, 1998, 112 Stat. 836.)

## REFERENCES IN TEXT

Section 103 of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (g)(1)(A), probably means section 1003 of Pub. L. 102-240, title I, Dec. 18, 1991, 105 Stat. 1918, which is not classified to the Code. Pub. L. 102-240 does not contain a section 103.

Section 1039 of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (g)(1)(A), is section 1039 of Pub. L. 102-240, which is set out as a note below.

Section 149(d) of the Federal-Aid Highway Act of 1987, referred to in subsec. (g)(2), is section 149(d) of Pub. L. 100-17, which is not classified to the Code.

The General Bridge Act of 1946, referred to in subsec. (h), is title V of act Aug. 2, 1946, ch. 753, 60 Stat. 847, as amended, which is classified generally to subchapter III (§525 et seq.) of chapter 11 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 525 of Title 33 and Tables.

Section 502(b) of such Act of 1946, referred to in subsec. (h), in section 502(b) of act Aug. 2, 1946, which is classified to section 525(b) of Title 33.

Section 9 of the Act of March 3, 1899, referred to in subsec. (h), is section 9 of act Mar. 3, 1899, ch. 425, 30 Stat. 1151, which is classified to section 401 of Title 33.

Section 307 of this title, referred to in subsec. (i), was repealed by Pub. L. 105-178, title V, §5119(b), June 9, 1998, 112 Stat. 452.

The date of enactment of this subsection, referred to in subsec. (k), is Nov. 6, 1978, the date of enactment of Pub. L. 95-599.

The date of the enactment of this subsection, referred to in subsec. (n), is the date of enactment of Pub. L. 100-17, which was approved Apr. 2, 1987.

## AMENDMENTS

1998—Subsec. (d). Pub. L. 105-178, §1109(d)(1), (2), inserted “, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or installing scour countermeasures” after “magnesium acetate” and inserted “or sodium acetate/formate or such anti-icing or de-icing composition or installation of such countermeasures” after “such acetate” in two places.

Subsec. (e). Pub. L. 105-178, §1109(a), inserted “, and, if a State transfers funds apportioned to the State under this section in a fiscal year beginning after September 30, 1997, to any other apportionment of funds to such State under this title, the total cost of deficient bridges in such State and in all States to be determined for the succeeding fiscal year shall be reduced by the amount of such transferred funds” after “destroyed bridges and ferryboat services”.

Subsec. (g)(1). Pub. L. 105-178, §1109(b), designated existing provisions as subpar. (A), inserted heading, realigned margins, and added subpars. (B) and (C).

Subsec. (g)(3). Pub. L. 105-178, §1109(c), (d)(3), substituted “through 2003” for “1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, and 1997,” substituted “Federal-aid highway” for “Federal-aid system” in two places, and inserted “, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures” after “magnesium acetate”.

Subsec. (g)(4). Pub. L. 105-178, §1115(f)(3), as added by Pub. L. 105-206, §9002(i), struck out heading and text of par. (4). Text read as follows: “Not less than 1 percent of the amount apportioned to each State which has an Indian reservation within its boundaries for each fiscal year shall be expended for projects to replace, rehabilitate, paint, or apply calcium magnesium acetate to highway bridges located on Indian reservation roads. Upon determining a State bridge apportionment and before transferring funds to the States, the Secretary shall transfer the Indian reservation bridge allocation under this paragraph to the Secretary of the Interior for expenditure pursuant to this paragraph. The Secretary, after consultation with State and Indian tribal

government officials and with the concurrence of the Secretary of the Interior, may, with respect to such State, reduce the requirement for expenditure for bridges under this paragraph when the Secretary determines that there are inadequate needs to justify such expenditure. The non-Federal share payable on account of such a project may be provided from funds made available for Indian reservation roads under chapter 2 of this title.”

Subsec. (n). Pub. L. 105-178, §1109(e), substituted “Federal-aid highway” for “Federal-aid system”.

1995—Subsec. (i)(1). Pub. L. 104-59, §325(b), substituted “Committee on Transportation and Infrastructure” for “Committee on Public Works and Transportation”.

Subsec. (l). Pub. L. 104-59, §318, inserted at end “Any non-Federal funds expended for the seismic retrofit of the bridge may be credited toward the non-Federal share required as a condition of receipt of any Federal funds for seismic retrofit of the bridge made available after the date of the expenditure.”

1994—Subsec. (d). Pub. L. 103-220, §1(1), inserted before period at end of third sentence “, except that a State may carry out a project for seismic retrofit of a bridge under this section without regard to whether the bridge is eligible for replacement or rehabilitation under this section”.

Subsec. (e). Pub. L. 103-220, §1(2), inserted at end “The use of funds authorized under this section to carry out a project for the seismic retrofit of a bridge shall not affect the apportionment of funds under this section.”

1991—Subsec. (c)(3). Pub. L. 102-240, §1028(a), added par. (3).

Subsec. (d). Pub. L. 102-240, §1028(b), inserted “Whenever any State makes application to the Secretary for assistance in painting and seismic retrofit, or applying calcium magnesium acetate to, the structure of a highway bridge, the Secretary may approve Federal participation in the painting or seismic retrofit of, or application of such acetate to, such structure.” after first sentence and “(other than projects for bridge structure painting or seismic retrofit or application of such acetate)” after “projects” in last sentence.

Subsec. (f). Pub. L. 102-240, §1028(c), substituted “project” for “highway bridge replaced or rehabilitated”.

Subsec. (g)(1). Pub. L. 102-240, §1028(d), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Of the amount authorized per fiscal year for each of fiscal years 1987, 1988, 1989, 1990, and 1991 by section 106(a)(5) of the Federal-Aid Highway Act of 1987, all but \$225,000,000 per fiscal year shall be apportioned as provided in subsection (e) of this section. \$225,000,000 per fiscal year of the amount authorized for each of such fiscal years shall be available for obligation on the date of each such apportionment in the same manner and to the same extent as the sums apportioned on such date, except that the obligation of such \$225,000,000 shall, subject to section 149(d) of the Federal-Aid Highway Act of 1987, be at the discretion of the Secretary.”

Subsec. (g)(3). Pub. L. 102-240, §1028(e)(1), substituted “1991, 1992, 1993, 1994, 1995, 1996, and 1997” for “and 1991” and “, rehabilitate, paint or seismic retrofit, or apply calcium magnesium acetate to” for “or rehabilitate”.

Subsec. (g)(4). Pub. L. 102-240, §1028(f), added par. (4). Subsecs. (p), (q). Pub. L. 102-240, §1028(e)(2), added subsec. (p) and redesignated former subsec. (p) as (q).

1987—Subsec. (e). Pub. L. 100-17, §133(b)(11), inserted at end “Funds apportioned under this section shall be available for expenditure for the same period as funds apportioned for projects on the Federal-aid primary system under this title. Any funds not obligated at the expiration of such period shall be reapportioned by the Secretary to the other States in accordance with this subsection.”

Pub. L. 100-17, §123(d)(3), inserted after third sentence “For purposes of the preceding sentence, the total cost of deficient bridges in a State and in all States shall be reduced by the total cost of any highway bridges constructed under subsection (m) in such State, relating to

replacement of destroyed bridges and ferryboat services.”

Subsec. (g). Pub. L. 100-17, §123(a), amended subsec. (g) generally, revising and restating as pars. (1) to (3) provisions formerly contained in pars. (1) and (2).

Subsec. (h). Pub. L. 100-17, §123(b), substituted “(1)” for “which are not subject to the ebb and flow of the tide, and” and added cl. (2).

Subsec. (i). Pub. L. 100-17, §128, substituted “307(f)” for “307(e)” in last sentence.

Pub. L. 100-17, §123(c), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: “The Secretary shall report annually on projects approved under this section, shall annually revise and report the current inventories authorized by subsections (b) and (c) of this section, and shall report such recommendations as he may have for improvement of the program authorized by this section.”

Subsec. (m). Pub. L. 100-17, §123(d)(1), added subsec. (m). Former subsec. (m) redesignated (p).

Subsec. (n). Pub. L. 100-17, §123(e), which directed that this section be amended by adding subsec. (n) after subsec. (l), was executed by adding subsec. (n) after subsec. (m), to reflect the probable intent of Congress.

Subsec. (o). Pub. L. 100-17, §123(f)(2), which directed that this section be amended by adding subsec. (o) after subsec. (l), was executed by adding subsec. (o) after subsec. (n), to reflect the probable intent of Congress.

Subsec. (p). Pub. L. 100-17, §123(d)(1), redesignated former subsec. (m) as (p).

1983—Subsec. (e). Pub. L. 97-424, §121(a), substituted provisions setting forth categorization, formula for apportionment factors, and limitations respecting deficient bridges for provisions relating to apportionment of funds for fiscal years ending Sept. 30, 1979, through Sept. 30, 1983, availability for expenditure of such funds, and reapportionment by the Secretary.

Pub. L. 97-327, §5(c)(1), substituted “September 30, 1982, and September 30, 1983” for “and September 30, 1982”.

Subsec. (g). Pub. L. 97-424, §122(a), designated existing provisions as par. (1), struck out provisions added by section 5(c)(2) of Pub. L. 97-327 relating to apportionment of amounts for fiscal year ending Sept. 30, 1983, and added par. (2).

Pub. L. 97-327, §5(c)(2), inserted provision that, of the amount authorized for the fiscal year ending September 30, 1983, by paragraph (1) of section 5(a) of the Federal-Aid Highway Act of 1982, all but \$200,000,000 (multiplied by the factor determined under section 4(a) of such Act) be apportioned, and that \$200,000,000 (multiplied by such factor) of the amount authorized for such fiscal year be available for obligation on the date of each such apportionment in the same manner and to the same extent as the sums apportioned on such date with specific limitations applicable to the obligation of such \$200,000,000.

1979—Subsec. (d). Pub. L. 96-106, §7(a), substituted “such bridge with a comparable facility or in rehabilitating such bridge” for “or rehabilitating such bridge with a comparable facility”.

Subsec. (g). Pub. L. 96-106, §8(a), inserted “, and for any project for a highway bridge the replacement or rehabilitation costs of which is less than \$10,000,000 if such costs is at least twice the amount apportioned to the State in which such bridge is located under subsection (e) of this section for the fiscal year in which application is made for a grant for such bridge”.

Subsec. (m). Pub. L. 96-106, §7(b), substituted “major work” for “major repairs”.

1978—Subsec. (a). Pub. L. 95-599 substituted provisions relating to Congressional findings as to highway bridge replacement and rehabilitation for provisions relating to Congressional findings as to special bridge replacement.

Subsec. (b). Pub. L. 95-599 added cl. (4).

Subsec. (c). Pub. L. 95-599 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 95-599 redesignated former subsec. (c) as (d) and among other amendments struck out pro-

visions requiring Secretary to consider economy of area and approval of projects without regard to allocation formulas under this title.

Subsec. (e). Pub. L. 95-599 added subsec. (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 95-599 redesignated former subsec. (d) as (f), substituted “80” for “75”, and inserted “highway” after “account of any”. Former subsec. (f) was struck out.

Subsec. (g). Pub. L. 95-599 redesignated former subsec. (e) as (g) and inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979 through Sept. 30, 1982. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 95-599 redesignated former subsec. (g) as (h) and inserted provisions relating to exceptions to applications of the General Bridge Act of 1946. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95-599 redesignated former subsec. (h) as (i) and inserted provisions relating to revision and report of current inventories.

Subsecs. (j) to (m). Pub. L. 95-599 added subsecs. (j) to (m).

1975—Subsec. (e). Pub. L. 93-643 increased appropriations authorization to \$125,000,000 from \$75,000,000 for fiscal year ending June 30, 1976.

1973—Subsec. (e). Pub. L. 93-87, §204(a), provided for appropriations authorization of \$25,000,000, \$75,000,000, and \$75,000,000 for fiscal years ending June 30, 1974, 1975, and 1976.

Subsecs. (f) to (h). Pub. L. 93-87, §204(b), (c), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

#### 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 this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Section 123(d)(2) of Pub. L. 100-17 provided that: “The amendment made by subsection (a) [amending this section] shall apply to funds apportioned to the States under section 144 of title 23, United States Code, after September 30, 1986.”

#### EFFECTIVE DATE OF 1983 AMENDMENT

Section 121(b) of Pub. L. 97-424 provided that: “The amendment made by subsection (a) of this section [amending this section] shall take effect October 1, 1982, and shall apply with respect to each fiscal year beginning on or after such date. Notwithstanding subsection (e) of section 144 of title 23, United States Code, as soon as practical after the date of enactment of this Act [Jan. 6, 1983], the Secretary of Transportation shall apportion under such subsection (e), as amended by subsection (a) of this section, sums authorized to be appropriated to carry out such section 144 for the fiscal year ending September 30, 1983.”

#### NATIONAL HISTORIC COVERED BRIDGE PRESERVATION

Pub. L. 105-178, title I, §1224, as added by Pub. L. 105-206, title IX, §9003(a), July 22, 1998, 112 Stat. 837, provided that:

“(a) HISTORIC COVERED BRIDGE DEFINED.—In this section, the term ‘historic covered bridge’ means a covered

bridge that is listed or eligible for listing on the National Register of Historic Places.

“(b) HISTORIC COVERED BRIDGE PRESERVATION.—Subject to the availability of appropriations under subsection (d), the Secretary shall—

“(1) collect and disseminate information concerning historic covered bridges;

“(2) foster educational programs relating to the history and construction techniques of historic covered bridges;

“(3) conduct research on the history of historic covered bridges; and

“(4) conduct research, and study techniques, on protecting historic covered bridges from rot, fire, natural disasters, or weight-related damage.

“(c) DIRECT FEDERAL ASSISTANCE.—

“(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall make a grant to a State that submits an application to the Secretary that demonstrates a need for assistance in carrying out 1 or more historic covered bridge projects described in paragraph (2).

“(2) TYPES OF PROJECT.—A grant under paragraph (1) may be made for a project—

“(A) to rehabilitate or repair a historic covered bridge; and

“(B) to preserve a historic covered bridge, including through—

“(i) installation of a fire protection system, including a fireproofing or fire detection system and sprinklers;

“(ii) installation of a system to prevent vandalism and arson; or

“(iii) relocation of a bridge to a preservation site.

“(3) AUTHENTICITY.—A grant under paragraph (1) may be made for a project only if—

“(A) to the maximum extent practicable, the project—

“(i) is carried out in the most historically appropriate manner; and

“(ii) preserves the existing structure of the historic covered bridge; and

“(B) the project provides for the replacement of wooden components with wooden components, unless the use of wood is impracticable for safety reasons.

“(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out with a grant under this subsection shall be 80 percent.

“(d) FUNDING.—There is authorized to be appropriated to carry out this section \$10,000,000 for each of fiscal years 1999 through 2003. Such funds shall remain available until expended.”

#### HIGHWAY TIMBER BRIDGE RESEARCH AND DEMONSTRATION PROGRAM

Section 1039 of Pub. L. 102-240, as amended by Pub. L. 102-388, title IV, § 408, Oct. 6, 1992, 106 Stat. 1564, provided that:

“(a) RESEARCH GRANTS.—The Secretary may make grants to other Federal agencies, universities, private businesses, nonprofit organizations, and any research or engineering entity to carry out research on 1 or more of the following:

“(1) Development of new, economical highway timber bridge systems.

“(2) Development of engineering design criteria for structural wood products for use in highway bridges in order to improve methods for characterizing lumber design properties.

“(3) Preservative systems for use in highway timber bridges which demonstrate new alternatives and current treatment processes and procedures and which are environmentally sound with respect to application, use, and disposal of treated wood.

“(4) Alternative transportation system timber structures which demonstrate the development of applications for railing, sign, and lighting supports, sound barriers, culverts, and retaining walls in highway applications.

“(5) Rehabilitation measures which demonstrate effective, safe, and reliable methods for rehabilitating existing highway timber structures.

“(b) TECHNOLOGY AND INFORMATION TRANSFER.—The Secretary shall take such action as may be necessary to ensure that the information and technology resulting from research conducted under subsection (a) is made available to State and local transportation departments and other interested persons.

“(c) CONSTRUCTION GRANTS.—

“(1) AUTHORITY.—The Secretary shall make grants to States for construction of highway timber bridges on public roads.

“(2) APPLICATIONS.—A State interested in receiving a grant under this subsection must submit an application therefor to the Secretary. Such application shall be in such form and contain such information as the Secretary may require by regulation.

“(3) APPROVAL CRITERIA.—The Secretary shall select and approve applications for grants under this subsection based on the following criteria:

“(A) Bridge designs which have both initial and long-term structural and environmental integrity.

“(B) Bridge designs which utilize timber species native to the State or region.

“(C) Innovative bridge designs which have the possibility of increasing knowledge, cost effectiveness, and future use of such designs.

“(D) Environmental practices for preservative treated timber, and construction techniques which comply with all environmental regulations, will be utilized.

“(d) FEDERAL SHARE.—The Federal share of the costs of research and construction projects carried out under this section shall be 80 percent.

“(e) FUNDING.—From the funds reserved from apportionment under section 144(g)(1) of title 23, United States Code, for each of fiscal years 1992, 1993, 1994, 1995, 1996, and 1997—

“(1) \$1,000,000 shall be available to the Secretary for carrying out subsections (a) and (b); and

“(2) \$7,500,000 (\$7,000,000 in the case of fiscal year 1992) shall be available to the Secretary for carrying out subsection (c).

Such sums shall remain available until expended.

“(f) STATE DEFINED.—For purposes of this section, the term ‘State’ has the meaning such term has under section 101 of title 23, United States Code.”

#### FEASIBILITY OF INTERNATIONAL BORDER HIGHWAY INFRASTRUCTURE DISCRETIONARY PROGRAM

Section 1089 of Pub. L. 102-240 directed Secretary of Transportation to conduct a study of advisability and feasibility of establishing an international border highway infrastructure discretionary program and, not later than Sept. 30, 1993, transmit to Congress a report on results of the study, together with any recommendations.

#### HISTORIC BRIDGES; CONGRESSIONAL FINDINGS AND DECLARATIONS

Section 123(f)(1) of Pub. L. 100-17 provided that: “Congress hereby finds and declares it to be in the national interest to encourage the rehabilitation, reuse and preservation of bridges significant in American history, architecture, engineering and culture. Historic bridges are important links to our past, serve as safe and vital transportation routes in the present, and can represent significant resources for the future.”

#### STUDY BY TRANSPORTATION RESEARCH BOARD ON EFFECTS OF BRIDGE PROGRAM ON PRESERVATION AND REHABILITATION OF HISTORIC BRIDGES; RECOMMENDATION OF STANDARDS FOR REHABILITATION OF HISTORIC BRIDGES; REPORT

Section 123(f)(3) of Pub. L. 100-17 provided that:

“(A) TRANSPORTATION RESEARCH BOARD.—The Secretary shall make appropriate arrangements with the Transportation Research Board of the National Acad-

emy of Sciences to carry out a study on the effects of the bridge program conducted under section 144 of title 23, United States Code, on the preservation and rehabilitation of historic bridges. The Transportation Research Board shall also develop recommendations of specific standards which shall apply only to the rehabilitation of historic bridges, and shall provide an analysis of any other factors which would serve to enhance the rehabilitation of historic bridges.

“(B) REPORT.—Not later than 1 year after entering into appropriate arrangements under subparagraph (A), the Transportation Research Board shall submit to the Secretary and the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives a report on the results of the study conducted under subparagraph (A) and on the recommendations developed pursuant to subparagraph (A).”

#### STUDY OF HIGHWAY BRIDGES WHICH CROSS RAIL LINES; REPORT

Section 160 of Pub. L. 100-17 directed Secretary to conduct a comprehensive study and investigation of improvement and maintenance needs for highway bridges which cross rail lines and whose ownership has been disputed and, not later than 30 months after Apr. 2, 1987, submit to Congress a report on the study and investigation along with recommendations on how the bridge needs could best be addressed on a long term basis in a cost-effective manner.

#### FOUR-LANE BRIDGES

Section 130 of Pub. L. 97-424 provided that: “Whenever any law of the United States, enacted after January 1, 1970, and before the date of enactment of this Act [Jan. 6, 1983], authorizes payment, in financing the relocation of an existing road, for the cost of construction of a two-lane bridge with a substructure and deck truss capable of supporting a four-lane bridge, payment for the cost of completing the construction of such bridge as a four-lane bridge is authorized upon the completion of such substructure and deck truss.”

#### DISCRETIONARY BRIDGE CRITERIA

Section 161 of Pub. L. 97-424, as amended by Pub. L. 100-17, title I, §123(h), Apr. 2, 1987, 101 Stat. 164, provided that: “The Secretary of Transportation shall develop a selection process for discretionary bridges authorized to be funded under section 144(g) of title 23, United States Code, and shall propose and issue a final regulation no later than six months after the date of enactment of this Act [Jan. 6, 1983], including a formula resulting in a rating factor based on the following criteria for such process. Such criteria shall give funding priority to those discretionary bridges already eligible under section 144(g) of title 23, United States Code, including a bridge replacement of which was partially funded under the Supplemental Appropriations Act, 1983 [Pub. L. 98-63] (97 Stat. 341). Eligible bridges after the issuance of a final regulation shall only include those with a rating factor of one hundred or less, based on a scale of zero to infinity. The criteria for such additional bridges which the Secretary shall consider are:

“(1) sufficiency rating computed as illustrated in appendix A of the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges, USDOT/FHWA (latest edition);

“(2) average daily traffic using the most current value from the national bridge inventory data;

“(3) average daily truck traffic;

“(4) defense highway system status;

“(5) the State's unobligated balance of funds received under section 144 of title 23, United States Code, and the total funds received under section 144 of title 23, United States Code;

“(6) total project cost; and

“(7) special consideration should be given to bridges closed to all traffic or restricted to loads less than

ten tons. Other unique considerations and the need to administer the program from a balanced national perspective should also be considered.”

#### TRANSFER OF DISCRETIONARY BRIDGE FUNDS

Section 8(b) of Pub. L. 96-106 provided for the transfer of discretionary bridge funds authorized under subsec. (g) of this section for fiscal year 1980 to a State's apportionment under section 104(b)(6) of this title to repay funds obligated under section 104(b)(6) between June 1 and July 31, 1979, for bridge projects which are eligible for funding by virtue of the amendment of subsec. (g) of this section by section 8(a) of Pub. L. 96-106.

#### TIME FOR COMPLETION OF INVENTORY AND CLASSIFICATION OF HIGHWAY BRIDGES

Section 124(c) of Pub. L. 95-599 directed Secretary of Transportation to complete the requirements of subsec. (c) of this section, as amended by subsec. (a) of section 124 of Pub. L. 95-599, not later than the last day of the second full calendar year which begins after Nov. 6, 1978.

#### ACCELERATION OF BRIDGE PROJECTS; OHIO RIVER BRIDGE FUND REPROGRAMMING; REPORTS TO CONGRESS

Section 147 of Pub. L. 95-599, as amended by Pub. L. 96-106, §15, Nov. 19, 1979, 93 Stat. 798; Pub. L. 99-272, title IV, §4105, Apr. 7, 1986, 100 Stat. 116, directed Secretary of Transportation to conduct two projects to construct or replace high-traffic-volume bridges on the Federal-aid highway system which span major bodies of water in order to demonstrate the feasibility of reducing the time required to replace unsafe bridges; authorized funds for the projects; directed Secretary to report to Congress within six months after the completion of each project; redirected certain funds in excess of amounts needed to complete the projects for use in further projects for construction of three state-of-the-art Ohio River bridges linking designated cities in Kentucky and Ohio; and directed Secretary to report to Congress within a year after the completion of these bridges.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 105, 115, 117, 126, 140, 151, 204, 303, 409, 505 of this title; title 49 section 104.

### § 145. Federal-State relationship

(a) PROTECTION OF STATE SOVEREIGNTY.—The authorization of the appropriation of Federal funds or their availability for expenditure under this chapter shall in no way infringe on the sovereign rights of the States to determine which projects shall be federally financed. The provisions of this chapter provide for a federally assisted State program.

(b) PURPOSE OF PROJECTS.—The projects described in section 1602 of the Transportation Equity Act for the 21st Century, sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2027 et seq.), and section 149(a) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (101 Stat. 181 et seq.) are intended to establish eligibility for Federal-aid highway funds made available for such projects by section 1101(a)(13) of the Transportation Equity Act for the 21st Century, 117<sup>1</sup> of title 23, United States Code, sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991, and subsections (b), (c), and (d) of section 149 of the Surface Transportation and Uniform

<sup>1</sup> So in original. Probably should be preceded by “section”.

Relocation Assistance Act of 1987, respectively, and are not intended to define the scope or limits of Federal action in a manner inconsistent with subsection (a).

(Added Pub. L. 93-87, title I, §123(a), Aug. 13, 1973, 87 Stat. 261; (As amended Pub. L. 105-178, title I, §1601(b), June 9, 1998, 112 Stat. 256.)

#### REFERENCES IN TEXT

Section 1602 of the Transportation Equity Act for the 21st Century, referred to in subsec. (b), is section 1602 of Pub. L. 105-178, title I, June 9, 1998, 112 Stat. 256, which is not classified to the Code.

Sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (b), are sections 1103 to 1108 of Pub. L. 102-240, title I, Dec. 18, 1991, 105 Stat. 2027-2063. See Tables for classification.

Section 149(a) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, referred to in subsec. (b), is section 149(a) of Pub. L. 100-17, title I, Apr. 2, 1987, 101 Stat. 181, which is not classified to the Code.

Section 1101(a)(13) of the Transportation Equity Act for the 21st Century, referred to in subsec. (b), is section 1101(a)(13) of Pub. L. 105-178, title I, June 9, 1998, 112 Stat. 113, which is not classified to the Code.

#### AMENDMENTS

1998—Pub. L. 105-178 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

### § 146. Carpool and vanpool projects

(a) In order to conserve fuel, decrease traffic congestion during rush hours, improve air quality, and enhance the use of existing highways and parking facilities, the Secretary may approve for Federal financial assistance from funds apportioned under sections 104(b)(1) and 104(b)(3) of this title, projects designed to encourage the use of carpools and vanpools. (As used hereafter in this section, the term “carpool” includes a vanpool.) Such a project may include, but is not limited to, such measures as providing carpooling opportunities to the elderly and handicapped, systems for locating potential riders and informing them of convenient carpool opportunities, acquiring vehicles appropriate for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use as preferential parking for carpools.

(b) A project authorized by this section shall be subject to and carried out in accordance with all provisions of this title, except those provisions which the Secretary determines are inconsistent with this section.

(Added Pub. L. 95-599, title I, §126(a), Nov. 6, 1978, 92 Stat. 2705; amended Pub. L. 105-178, title I, §1103(l)(1), June 9, 1998, 112 Stat. 125.)

#### PRIOR PROVISIONS

A prior section 146, Pub. L. 93-87, title I, §125(a), Aug. 13, 1973, 87 Stat. 262, related to a special urban high density traffic program, prior to repeal by Pub. L. 94-280, title I, §128(a), May 5, 1976, 90 Stat. 440.

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178 substituted “sections 104(b)(1) and 104(b)(3)” for “sections 104(b)(1), 104(b)(2), and 104(b)(6)”.

#### USE OF HIGH OCCUPANCY LANES

Pub. L. 97-424, title I, §163, Jan. 6, 1983, 96 Stat. 2136, as amended by Pub. L. 100-17, title I, §133(a)(4), (5), Apr. 2, 1987, 101 Stat. 170, 171; Pub. L. 102-240, title I, §1056, Dec. 18, 1991, 105 Stat. 2002, provided that: “Notwithstanding any other provision of this Act or any other law, no funds apportioned or allocated to a State for Federal-aid highways shall be obligated for a project for constructing, resurfacing, restoring, rehabilitating, or reconstructing a Federal-aid highway which has a lane designated as a carpool lane unless the use of such lane includes use by motorcycles. Upon certification by the State to the Secretary of Transportation, after notice in the Federal Register and an opportunity for public comment, and acceptance of such certification by the Secretary, the State may restrict such use by motorcycles if such use would create a safety hazard. Any certification made before the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991 [Dec. 18, 1991] shall not be recognized by the Secretary until the Secretary publishes notice of such certification in the Federal Register and provides an opportunity for public comment on such certification.”

#### EXPENDITURE OF ADMINISTRATIVE FUNDS FOR CARPOOLING AND VANPOOLING PROGRAMS

Pub. L. 97-424, title I, §123(b), Jan. 6, 1983, 96 Stat. 2113, provided that: “The Secretary of Transportation is authorized and directed to expend such sums as are necessary out of the administrative funds authorized by subsection (a) of section 104, title 23, United States Code, to carry out the provisions of subsection (d) of section 126 of the Federal-Aid Highway Act of 1978 [section 126(d) of Pub. L. 95-599, set out below].”

#### GRANTS TO STATES, COUNTIES, ETC., TO PROMOTE CARPOOLING AND VANPOOLING PROGRAMS

Section 126(d)-(h) of Pub. L. 95-599, as amended by Pub. L. 102-240, title III, §3004(b), Dec. 18, 1991, 105 Stat. 2088, provided that:

“(d) It is hereby declared to be national policy that special effort should be made to promote commuter modes of transportation which conserve energy, reduce pollution, and reduce traffic congestion. The Secretary is directed to assist both public and private employers and employees who wish to establish carpooling and vanpooling programs where they are needed and desired, and to assist local and State governments, and their instrumentalities, in encouraging such modes by removing legal and regulatory barriers to such programs, supporting existing carpooling and vanpooling programs, and providing technical assistance, for the purpose of increasing participation in such modes.

“(e) The Secretary of Transportation is authorized to make grants and loans to States, counties, municipalities, metropolitan planning organizations, and other units of local and regional government consistent with the policy of subsection (d) of this section. Such grants and loans shall be awarded in a manner which emphasizes energy conservation, although the Secretary may use other factors as he deems appropriate. The Federal share of the costs of any project approved under this subsection shall not exceed 75 per centum. No grant awarded under this subsection may be used for the purchase or lease of vehicles.

“(f) There is hereby authorized to be appropriated, out of the Highway Trust Fund, not to exceed \$1,000,000 for the fiscal year ending September 30, 1979, \$1,000,000 for the fiscal year ending September 30, 1980, and \$1,000,000 for the fiscal year ending September 30, 1981, for expenditures incurred by the Secretary of Transportation in carrying out the provisions of subsection (d) of this section, and \$3,000,000 for the fiscal year ending September 30, 1979, and \$9,000,000 for the fiscal year ending September 30, 1980, for the purpose of carrying out the program described in subsection (e) of this section.

“(g) The Secretary of Transportation shall not approve any project under subsection (d) or (e) of this sec-



tion or under section 146 of title 23, United States Code; which will have an adverse effect on any mass transportation system.

“(h) The Secretary of Transportation is directed to study the administrative effectiveness of carpooling and vanpooling programs within the Department of Transportation, including programs of the Federal Highway Administration, the Federal Transit Administration, and the Office of the Secretary. Such study shall be completed no later than September 30, 1979. Upon completion of such study, the Secretary shall propose a plan to centralize or modify such programs to make delivery of services and grants more efficient, more cost-effective, and to avoid duplication of effort. Such plan shall list statutory changes needed to implement such a plan, which shall be sent to Congress no later than March 30, 1980.”

[“Federal Transit Administration” substituted for “Urban Mass Transit Administration” in section 126(h) of Pub. L. 95-599, set out above, pursuant to section 3004(a) of Pub. L. 102-240, set out as a note under section 107 of Title 49, Transportation.]

#### FEDERAL FACILITY RIDESHARING PROGRAM

For provisions relating to the Federal Facilities Ridesharing Program, see Ex. Ord. No. 12191, Feb. 1, 1980, 45 F.R. 7997, set out as a note under section 6361 of Title 42, The Public Health and Welfare.

### § 147. Priority primary routes

(a) High traffic sections of highways on the Federal-aid primary system which connect to the Interstate System shall be selected by each State transportation department, in consultation with appropriate local officials, subject to approval by the Secretary, for priority of improvement to supplement the service provided by the Interstate System by furnishing needed adequate traffic collector and distributor facilities. For the purpose of this section such highways shall hereafter in this section be referred to as “priority primary routes”.

(b) The Federal share of any project on a priority primary route shall be that provided in section 120(a) of this title. All provisions of this title applicable to the Federal-aid primary system shall be applicable to the priority primary routes selected under this section.

(c) The initial selection of the priority primary routes and the estimated cost of completing such routes shall be reported to Congress on or before July 1, 1974.

(d) There is authorized to be appropriated out of the Highway Trust Fund to carry out this section not to exceed \$100,000,000 for the fiscal year ending June 30, 1974, \$200,000,000 for the fiscal year ending June 30, 1975, and \$300,000,000 for the fiscal year ending June 30, 1976.

(Added Pub. L. 93-87, title I, §126(a), Aug. 13, 1973, 87 Stat. 263; amended Pub. L. 94-280, title I, §130, May 5, 1976, 90 Stat. 440; Pub. L. 105-178, title I, §1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193.)

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178 substituted “State transportation department” for “State highway department”.

1976—Subsec. (b). Pub. L. 94-280 amended subsec. (b) generally, striking out apportionment provisions.

### § 148. Development of a national scenic and recreational highway

(a) As soon as possible after the date of enactment of this section, the Secretary shall estab-

lish criteria for the location and construction or reconstruction of the Great River Road by the ten States bordering the Mississippi River. Such criteria shall include requirements that—

(1) priority be given in the location of the Great River Road near or easily accessible to the larger population centers of the State<sup>1</sup> and further priority be given to the construction and improvement of the Great River Road in the proximity of the confluence of the Mississippi River and the Wisconsin River;

(2) the Great River Road be connected with other Federal-aid highways and preferably with the Interstate System;

(3) the Great River Road be marked with uniform identifying signs;

(4) effective control, as defined in section 131 of this title, of signs, displays, and devices will be provided along the Great River Road;

(5) the provisions of section 129(a) of this title shall not apply to any bridge or tunnel on the Great River Road and no fees shall be charged for the use of any facility constructed with assistance under this section, except for parks, recreational areas, and historical sites operated by State or local governments where admission fees may be charged to cover operational costs.

(b) For the purpose of this section, the term “construction” includes the acquisition of areas of historical, archeological, or scientific interest, necessary easements for scenic purposes, and the construction or reconstruction of roadside rest areas (including appropriate recreational facilities), scenic viewing areas, and other appropriate facilities as determined by the Secretary.

(c) Highways constructed or reconstructed pursuant to this section (except subsection (f)) shall be part of the Federal-aid system.

(d) Funds appropriated for each fiscal year pursuant to subsection (g) shall be apportioned among the ten States bordering the Mississippi River on the basis of their relative needs as determined by the Secretary for payments to carry out this section.

(e) The Federal share of the cost of any project for any construction or reconstruction pursuant to the preceding subsections of this section shall be that provided in section 120 of this title for the Federal-aid system on which such project is located, and if such project is not on such a system, such share shall be 75 per centum of such cost.

(f) The Secretary is authorized to consult with the heads of other Federal departments and agencies having jurisdiction over Federal lands open to the public in order to enter into appropriate arrangements for necessary construction or reconstruction of highways on such lands to carry out this section. Highways constructed or reconstructed by a State pursuant to this section which are not on a Federal-aid system, and highways constructed or reconstructed under this subsection, shall be subject to the criteria applicable to highways constructed or reconstructed pursuant to subsection (c) of this section. Funds authorized pursuant to subsection

<sup>1</sup> So in original. Probably should be “States”.

(g) shall be used to pay the entire cost of construction or reconstruction pursuant to the first sentence of this subsection.

(g) There is authorized to be appropriated to carry out this section, out of the Highway Trust Fund, for construction or reconstruction of roads on a Federal-aid highway system, not to exceed \$10,000,000 for the fiscal year ending June 30, 1974, \$25,000,000 for the fiscal year ending June 30, 1975, and \$25,000,000 for the fiscal year ending June 30, 1976, for allocations to the States pursuant to this section, and there is authorized to be appropriated to carry out this section out of any money in the Treasury not otherwise appropriated, not to exceed \$10,000,000 for each of the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976, for construction and reconstruction of roads not on a Federal-aid highway system.

(h) The Secretary is authorized to provide for the construction of such spur highways as he determines necessary to connect the Great River Road, by the most direct feasible routes, with existing bridges across the Mississippi for the purpose of providing persons traveling such road with access to significant scenic, historical, recreational, or archeological features on the opposite side of the Mississippi River from the Great River Road.

(Added Pub. L. 93-87, title I, §129(b), Aug. 13, 1973, 87 Stat. 265; amended Pub. L. 95-599, title I, §§125, 129(d), Nov. 6, 1978, 92 Stat. 2705, 2707.)

#### REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a), means Aug. 13, 1973, the date of approval of Pub. L. 93-87.

#### AMENDMENTS

1978—Subsec. (a)(5). Pub. L. 95-599, §125(b), inserted provision authorizing charging of a fee in certain cases to cover operational costs.

Subsec. (e). Pub. L. 95-599, §129(d), substituted “75 per centum” for “70 per centum”.

Subsec. (h). Pub. L. 95-599, §125(a), added subsec. (h).

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 129(d) of Pub. L. 95-599 effective with respect to obligations incurred after Nov. 6, 1978, see section 129(h) of Pub. L. 95-599, set out as a note under section 120 of this title.

### § 149. Congestion mitigation and air quality improvement program

(a) ESTABLISHMENT.—The Secretary shall establish and implement a congestion mitigation and air quality improvement program in accordance with this section.

(b) ELIGIBLE PROJECTS.—Except as provided in subsection (c), a State may obligate funds apportioned to it under section 104(b)(2) for the congestion mitigation and air quality improvement program only for a transportation project or program if the project or program is for an area in the State that is or was designated as a nonattainment area for ozone, carbon monoxide, or particulate matter under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) and classified pursuant to section 181(a), 186(a), 188(a), or 188(b) of the Clean Air Act (42 U.S.C. 7511(a), 7512(a), 7513(a), or 7513(b)) or is or was designated as a nonattainment area under such section 107(d) after December 31, 1997, and—

(1)(A) if the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines, on the basis of information published by the Environmental Protection Agency pursuant to section 108(f)(1)(A) of the Clean Air Act (other than clause (xvi) of such section), that the project or program is likely to contribute to—

(i) the attainment of a national ambient air quality standard; or

(ii) the maintenance of a national ambient air quality standard in a maintenance area; or

(B) in any case in which such information is not available, if the Secretary, after such consultation, determines that the project or program is part of a program, method, or strategy described in such section;

(2) if the project or program is included in a State implementation plan that has been approved pursuant to the Clean Air Act and the project will have air quality benefits;

(3) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the project or program is likely to contribute to the attainment of a national ambient air quality standard, whether through reductions in vehicle miles traveled, fuel consumption, or through other factors;

(4) to establish or operate a traffic monitoring, management, and control facility or program if the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the facility or program is likely to contribute to the attainment of a national ambient air quality standard; or

(5) if the program or project improves traffic flow, including projects to improve signalization, construct high occupancy vehicle lanes, improve intersections, and implement intelligent transportation system strategies and such other projects that are eligible for assistance under this section on the day before the date of enactment of this paragraph.

No funds may be provided under this section for a project which will result in the construction of new capacity available to single occupant vehicles unless the project consists of a high occupancy vehicle facility available to single occupant vehicles only at other than peak travel times. In areas of a State which are nonattainment for ozone or carbon monoxide, or both, and for PM-10 resulting from transportation activities, the State may obligate such funds for any project or program under paragraph (1) or (2) without regard to any limitation of the Department of Transportation relating to the type of ambient air quality standard such project or program addresses.

(c) STATES RECEIVING MINIMUM APPORTIONMENT.—

(1) STATES WITHOUT A NONATTAINMENT AREA.—If a State does not have, and never has had, a nonattainment area designated under the Clean Air Act (42 U.S.C. 7401 et seq.), the State may use funds apportioned to the State under section 104(b)(2) for any project eligible under the surface transportation program under section 133.

(2) STATES WITH A NONATTAINMENT AREA.—If a State has a nonattainment area or maintenance area and receives funds under section 104(b)(2)(D) above the amount of funds that the State would have received based on its nonattainment and maintenance area population under subparagraphs (B) and (C) of section 104(b)(2), the State may use that portion of the funds not based on its nonattainment and maintenance area population under subparagraphs (B) and (C) of section 104(b)(2) for any project in the State eligible under section 133.

(d) APPLICABILITY OF PLANNING REQUIREMENTS.—Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135 of this title.

(e) PARTNERSHIPS WITH NONGOVERNMENTAL ENTITIES.—

(1) IN GENERAL.—Notwithstanding any other provision of this title and in accordance with this subsection, a metropolitan planning organization, State transportation department, or other project sponsor may enter into an agreement with any public, private, or nonprofit entity to cooperatively implement any project carried out under this section.

(2) FORMS OF PARTICIPATION BY ENTITIES.—Participation by an entity under paragraph (1) may consist of—

(A) ownership or operation of any land, facility, vehicle, or other physical asset associated with the project;

(B) cost sharing of any project expense;

(C) carrying out of administration, construction management, project management, project operation, or any other management or operational duty associated with the project; and

(D) any other form of participation approved by the Secretary.

(3) ALLOCATION TO ENTITIES.—A State may allocate funds apportioned under section 104(b)(2) to an entity described in paragraph (1).

(4) ALTERNATIVE FUEL PROJECTS.—In the case of a project that will provide for the use of alternative fuels by privately owned vehicles or vehicle fleets, activities eligible for funding under this subsection—

(A) may include the costs of vehicle refueling infrastructure, including infrastructure that would support the development, production, and use of emerging technologies that reduce emissions of air pollutants from motor vehicles, and other capital investments associated with the project;

(B) shall include only the incremental cost of an alternative fueled vehicle, as compared to a conventionally fueled vehicle, that would otherwise be borne by a private party; and

(C) shall apply other governmental financial purchase contributions in the calculation of net incremental cost.

(5) PROHIBITION ON FEDERAL PARTICIPATION WITH RESPECT TO REQUIRED ACTIVITIES.—A Federal participation payment under this subsection may not be made to an entity to fund an obligation imposed under the Clean Air Act

(42 U.S.C. 7401 et seq.) or any other Federal law.

(Added Pub. L. 93-87, title I, §142(a), Aug. 13, 1973, 87 Stat. 272; amended Pub. L. 102-240, title I, §1008(a), Dec. 18, 1991, 105 Stat. 1932; Pub. L. 102-388, title III, §380, Oct. 6, 1992, 106 Stat. 1562; Pub. L. 104-59, title III, §319(a)(1), (b), Nov. 28, 1995, 109 Stat. 588, 589; Pub. L. 104-88, title IV, §405(a)(2), (b), Dec. 29, 1995, 109 Stat. 956, 957; Pub. L. 105-178, title I, §1110(a)-(d)(1), June 9, 1998, 112 Stat. 142, 143.)

#### REFERENCES IN TEXT

The Clean Air Act, referred to in subsecs. (b)(2), (c)(1), and (e)(5), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. Section 108(f)(1)(A) of the Act is classified to section 7408(f)(1)(A) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The date of enactment of this paragraph, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178, §1110(a), substituted “shall establish and implement” for “shall establish”.

Subsec. (b). Pub. L. 105-178, §1110(b)(1), in introductory provisions, substituted “that is or was designated as a nonattainment area for ozone, carbon monoxide, or particulate matter under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) and classified pursuant to section 181(a), 186(a), 188(a), or 188(b) of the Clean Air Act (42 U.S.C. 7511(a), 7512(a), 7513(a), or 7513(b)) or is or was designated as a nonattainment area under such section 107(d) after December 31, 1997,” for “that was designated as a nonattainment area under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) during any part of fiscal year 1994”.

Subsec. (b)(1)(A). Pub. L. 105-178, §1110(b)(2), substituted “clause (xvi) of such section” for “clauses (xii) and (xvi) of such section”.

Subsec. (b)(1)(A)(ii). Pub. L. 105-178, §1110(b)(3), substituted “a maintenance area” for “an area that was designated as a nonattainment area but that was later redesignated by the Administrator of the Environmental Protection Agency as an attainment area under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d))”.

Subsec. (b)(5). Pub. L. 105-178, §1110(b)(4)-(6), added par. (5).

Subsec. (c). Pub. L. 105-178, §1110(c), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: “If a State does not have a nonattainment area for ozone or carbon monoxide under the Clean Air Act located within its borders, the State may use funds apportioned to it under section 104(b)(2) for any project eligible for assistance under the surface transportation program.”

Subsec. (e). Pub. L. 105-178, §1110(d)(1), added subsec. (e).

1995—Subsec. (b). Pub. L. 104-59, §319(a)(1)(A), in introductory provisions, inserted “if the project or program is for an area in the State that was designated as a nonattainment area under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) during any part of fiscal year 1994 and” after “project or program”.

Subsec. (b)(1)(A). Pub. L. 104-59, §319(a)(1)(B), substituted “contribute to—” and cls. (i) and (ii) for “contribute to the attainment of a national ambient air quality standard; or”.

Subsec. (b)(2). Pub. L. 104-59, §319(b)(1), struck out “or” at end.

Subsec. (b)(3). Pub. L. 104-88, §405(b)(1), inserted “or” after semicolon at end.

Pub. L. 104-59, §319(b)(2), substituted a semicolon for period at end.

Subsec. (b)(4). Pub. L. 104-88, § 405(b)(2), substituted a period for “; or” at end.

Pub. L. 104-59, § 319(b)(3), as amended by Pub. L. 104-88, § 405(a)(2), added par. (4).

1992—Subsec. (b). Pub. L. 102-388 inserted at end “In areas of a State which are nonattainment for ozone or carbon monoxide, or both, and for PM-10 resulting from transportation activities, the State may obligate such funds for any project or program under paragraph (1) or (2) without regard to any limitation of the Department of Transportation relating to the type of ambient air quality standard such project or program addresses.”

1991—Pub. L. 102-240 substituted section catchline for one which read: “Truck lanes” and amended text generally. Prior to amendment, text read as follows: “The Secretary may approve as a project on any Federal-aid system the construction of exclusive or preferential truck lanes.”

#### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by section 405(b) of Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

Section 405(a) of Pub. L. 104-88 provided that the amendment made by that section is effective Nov. 28, 1995.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### DETERMINATION BY SECRETARY; WATER-PHASED HYDROCARBON FUEL EMULSION TECHNOLOGIES

Pub. L. 105-178, title I, § 1110(d)(2), June 9, 1998, 112 Stat. 144, as amended by Pub. L. 105-206, title IX, § 9002(g), July 22, 1998, 112 Stat. 836, provided that: “For the purposes of section 149(e) of title 23, United States Code, the Secretary shall determine in accordance with the procedures specified in section 149(b) of such title whether water-phased hydrocarbon fuel emulsion technologies that consist of a hydrocarbon base and water in an amount not less than 20 percent by volume reduce emissions of hydrocarbon, particulate matter, carbon monoxide, or nitrogen oxide from motor vehicles.”

#### STUDY OF CMAQ PROGRAM

Pub. L. 105-178, title I, § 1110(e), June 9, 1998, 112 Stat. 144, provided that:

“(1) IN GENERAL.—The Secretary and the Administrator of the Environmental Protection Agency shall enter into arrangements with the National Academy of Sciences to complete, by not later than January 1, 2001, a study of the congestion mitigation and air quality improvement program under section 149 of title 23, United States Code. The study shall, at a minimum—

“(A) evaluate the air quality impacts of emissions from motor vehicles;

“(B) evaluate the negative effects of traffic congestion, including the economic effects of time lost due to congestion;

“(C) determine the amount of funds obligated under the program and make a comprehensive analysis of the types of projects funded under the program;

“(D) evaluate the emissions reductions attributable to projects of various types that have been funded under the program;

“(E) assess the effectiveness, including the quantitative and nonquantitative benefits, of projects funded under the program and include, in the assessment, an estimate of the cost per ton of pollution reduction;

“(F) assess the cost effectiveness of projects funded under the program with respect to congestion mitigation;

“(G) compare—

“(i) the costs of achieving the air pollutant emissions reductions achieved under the program; to

“(ii) the costs that would be incurred if similar reductions were achieved by other measures, including pollution controls on stationary sources;

“(H) include recommendations on improvements, including other types of projects, that will increase the overall effectiveness of the program;

“(I) include recommendations on expanding the scope of the program to address traffic-related pollutants that, as of the date of the study, are not addressed by the program.

“(2) REPORT.—Not later than January 1, 2000, the National Academy of Sciences shall transmit to the Secretary, the Committee on Transportation and Infrastructure and the Committee on Commerce of the House of Representatives, and the Committee on Environment and Public Works of the Senate a report on the results of the study with recommendations for modifications to the congestion mitigation and air quality improvement program in light of the results of the study.

“(3) FUNDING.—Before making the apportionment of funds under section 104(b)(2) of title 23, United States Code, for each of fiscal years 1999 and 2000, the Secretary shall deduct from the amount to be apportioned under such section for such fiscal year, and make available, \$500,000 for such fiscal year to carry out this subsection.”

#### EFFECT OF LIMITATION ON APPORTIONMENT

Notwithstanding any other provision of law, for each of fiscal years 1996 and 1997, amendment by section 319(a)(1) of Pub. L. 104-59 not to affect any apportionment adjustments under section 1015 of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, see section 319(c) of Pub. L. 104-59, set out as a note under section 104 of this title.

#### VALUE PRICING PILOT PROGRAM

Pub. L. 102-240, title I, § 1012(b), Dec. 18, 1991, 105 Stat. 1938, as amended by Pub. L. 104-59, title III, § 325(e), Nov. 28, 1995, 109 Stat. 592; Pub. L. 105-178, title I, § 1216(a), June 9, 1998, 112 Stat. 211; Pub. L. 105-206, title IX, § 9006(b), July 22, 1998, 112 Stat. 848, provided that:

“(1) The Secretary shall solicit the participation of State and local governments and public authorities for one or more value pricing pilot programs. The Secretary may enter into cooperative agreements with as many as 15 such State or local governments or public authorities to establish, maintain, and monitor value pricing programs.

“(2) Notwithstanding section 129 of title 23, United States Code, the Federal share payable for such programs shall be 80 percent. The Secretary shall fund all preimplementation costs and project design, and all of the development and other start up costs of such projects, including salaries and expenses, for a period of at least 1 year, and thereafter until such time that sufficient revenues are being generated by the program to fund its operating costs without Federal participation, except that the Secretary may not fund the preimplementation or implementation costs of any project for more than 3 years.

“(3) Revenues generated by any pilot project under this subsection must be applied to projects eligible under such title.

“(4) Notwithstanding sections 129 and 301 of title 23, United States Code, the Secretary shall allow the use of tolls on the Interstate System as part of any value pricing pilot program under this subsection.

“(5) The Secretary shall monitor the effect of such programs for a period of at least 10 years, and shall report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives every 2 years on the effects such programs are having on driver behavior, traffic volume, transit rider-

ship, air quality, and availability of funds for transportation programs.

“(6) HOV PASSENGER REQUIREMENTS.—Notwithstanding section 102(a) of title 23, United States Code, a State may permit vehicles with fewer than 2 occupants to operate in high occupancy vehicle lanes if the vehicles are part of a value pricing pilot program under this subsection.

“(7) FINANCIAL EFFECTS ON LOW-INCOME DRIVERS.—Any value pricing pilot program under this subsection shall include, if appropriate, an analysis of the potential effects of the pilot program on low-income drivers and may include mitigation measures to deal with any potential adverse financial effects on low-income drivers.

“(8) FUNDING.—

“(A) AVAILABILITY.—Funds allocated by the Secretary to a State under this subsection shall remain available for obligation by the State for a period of 3 years after the last day of the fiscal year for which the funds are authorized.

“(B) USE OF UNALLOCATED FUNDS.—If the total amount of funds made available from the Highway Trust Fund to carry out this subsection for fiscal year 1998 and fiscal years thereafter but not allocated exceeds \$8,000,000 as of September 30 of any year, the excess amount—

“(i) shall be apportioned in the following fiscal year by the Secretary to all States in accordance with section 104(b)(3) of title 23, United States Code;

“(ii) shall be considered to be a sum made available for expenditure on the surface transportation program, except that the amount shall not be subject to section 133(d) of such title; and

“(iii) shall be available for any purpose eligible for funding under section 133 of such title.

“(C) CONTRACT AUTHORITY.—Funds authorized to carry out this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code; except that the Federal share of the cost of any project under this subsection and the availability of funds authorized to carry out this subsection shall be determined in accordance with this subsection.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 106, 322 of this title.

### **[§ 150. Repealed. Pub. L. 105-178, title I, § 1103(l)(5), as added Pub. L. 105-206, title IX, § 9002(c)(1), July 22, 1998, 112 Stat. 834]**

Section, added Pub. L. 93-87, title I, § 157(a), Aug. 13, 1973, 87 Stat. 277; amended Pub. L. 97-424, title I, § 124, Jan. 6, 1983, 96 Stat. 2113, related to allocation of urban system funds.

#### EFFECTIVE DATE OF REPEAL

Repeal effective simultaneously with enactment of Pub. L. 105-178 and to be treated as included in Pub. L. 105-178 at time of enactment, see section 9016 of Pub. L. 105-206, set out as an Effective Date of 1998 Amendment note under section 101 of this title.

### **§ 151. National bridge inspection program**

(a) NATIONAL BRIDGE INSPECTION STANDARDS.—The Secretary, in consultation with the State transportation departments and interested and knowledgeable private organizations and individuals, shall establish national bridge inspection standards for the proper safety inspection and evaluation of all highway bridges.

(b) MINIMUM REQUIREMENTS OF INSPECTION STANDARDS.—The standards established under subsection (a) shall, at a minimum—

(1) specify, in detail, the method by which such inspections shall be carried out by the States;

(2) establish the maximum time period between inspections;

(3) establish the qualification for those charged with carrying out the inspections;

(4) require each State to maintain and make available to the Secretary upon request—

(A) written reports on the results of highway bridge inspections together with notations of any action taken pursuant to the findings of such inspections; and

(B) current inventory data for all highway bridges reflecting the findings of the most recent highway bridge inspections conducted; and

(5) establish a procedure for national certification of highway bridge inspectors.

(c) TRAINING PROGRAM FOR BRIDGE INSPECTORS.—The Secretary, in cooperation with the State transportation departments, shall establish a program designed to train appropriate governmental employees to carry out highway bridge inspections. Such training program shall be revised from time to time to take into account new and improved techniques.

(d) AVAILABILITY OF FUNDS.—To carry out this section, the Secretary may use funds made available pursuant to the provisions of section 104(a), section 502, and section 144 of this title.

(Added Pub. L. 100-17, title I, § 125(a), Apr. 2, 1987, 101 Stat. 166; amended Pub. L. 105-178, title I, § 1212(a)(2)(A)(ii), title V, § 5119(e), June 9, 1998, 112 Stat. 193, 452.)

#### PRIOR PROVISIONS

A prior section 151, added Pub. L. 93-87, title II, § 205(a), Aug. 13, 1973, 87 Stat. 284; amended Pub. L. 94-280, title II, § 207, May 5, 1976, 90 Stat. 454; Pub. L. 95-599, title I, § 127, Nov. 6, 1978, 92 Stat. 2707; Pub. L. 96-470, title II, § 209(c), Oct. 19, 1980, 94 Stat. 2245; Pub. L. 97-375, title I, § 111(a), Dec. 21, 1982, 96 Stat. 1821, related to a pavement marking demonstration program, prior to repeal by Pub. L. 100-17, title I, § 125(a), Apr. 2, 1987, 101 Stat. 166.

#### AMENDMENTS

1998—Subsecs. (a), (c). Pub. L. 105-178, § 1212(a)(2)(A)(ii), substituted “State transportation departments” for “State highway departments”.

Subsec. (d). Pub. L. 105-178, § 5119(e), substituted “section 502,” for “section 307(a),”.

### **§ 152. Hazard elimination program**

(a) IN GENERAL.—

(1) PROGRAM.—Each State shall conduct and systematically maintain an engineering survey of all public roads to identify hazardous locations, sections, and elements, including roadside obstacles and unmarked or poorly marked roads, which may constitute a danger to motorists, bicyclists, and pedestrians, assign priorities for the correction of such locations, sections, and elements, and establish and implement a schedule of projects for their improvement.

(2) HAZARDS.—In carrying out paragraph (1), a State may, at its discretion—

(A) identify, through a survey, hazards to motorists, bicyclists, pedestrians, and users of highway facilities; and

(B) develop and implement projects and programs to address the hazards.

(b) The Secretary may approve as a project under this section any safety improvement project, including a project described in subsection (a).

(c) Funds authorized to carry out this section shall be available for expenditure on—

- (1) any public road;
- (2) any public surface transportation facility or any publicly owned bicycle or pedestrian pathway or trail; or
- (3) any traffic calming measure.

(d) The Federal share payable on account of any project under this section shall be 90 percent of the cost thereof.

(e) Funds authorized to be appropriated to carry out this section shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under section 104(b), except that the Secretary is authorized to waive provisions he deems inconsistent with the purposes of this section.

(f) Each State shall establish an evaluation process approved by the Secretary, to analyze and assess results achieved by safety improvement projects carried out in accordance with procedures and criteria established by this section. Such evaluation process shall develop cost-benefit data for various types of corrections and treatments which shall be used in setting priorities for safety improvement projects.

(g) Each State shall report to the Secretary of Transportation not later than December 30 of each year, on the progress being made to implement safety improvement projects for hazard elimination and the effectiveness of such improvements. Each State report shall contain an assessment of the cost of, and safety benefits derived from, the various means and methods used to mitigate or eliminate hazards and the previous and subsequent accident experience at these locations. The Secretary of Transportation shall submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives not later than April 1 of each year on the progress being made by the States in implementing the hazard elimination program (including but not limited to any projects for pavement marking). The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, means and methods used, and the previous and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (a) and include recommendations for future implementation of the hazard elimination program.

(h) For the purposes of this section the term "State" shall have the meaning given it in section 401 of this title.

(Added Pub. L. 93-87, title II, §209(a), Aug. 13, 1973, 87 Stat. 286; amended Pub. L. 94-280, title I, §131, May 5, 1976, 90 Stat. 441; Pub. L. 95-599, title I, §168(a), Nov. 6, 1978, 92 Stat. 2722; Pub. L. 96-106, §10(b), Nov. 9, 1979, 93 Stat. 798; Pub. L. 97-375, title II, §210(b), Dec. 21, 1982, 96 Stat. 1826;

Pub. L. 97-424, title I, §125, Jan. 6, 1983, 96 Stat. 2113; Pub. L. 100-17, title I, §133(b)(12), Apr. 2, 1987, 101 Stat. 172; Pub. L. 104-59, title III, §325(c), Nov. 28, 1995, 109 Stat. 592; Pub. L. 105-178, title I, §1401, June 9, 1998, 112 Stat. 235.)

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178, §1401(1), inserted subsec. heading, designated existing provisions as par. (1) and inserted par. heading, realigned margins, substituted "motorists, bicyclists, and pedestrians" for "motorists and pedestrians", and added par. (2).

Subsec. (b). Pub. L. 105-178, §1401(2), substituted "safety improvement project, including a project described in subsection (a)" for "highway safety improvement project".

Subsec. (c). Pub. L. 105-178, §1401(3), substituted "on—  
" (1) any public road;

" (2) any public surface transportation facility or any publicly owned bicycle or pedestrian pathway or trail; or

" (3) any traffic calming measure" for "on any public road (other than a highway on the Interstate System)".

Subsec. (e). Pub. L. 105-178, §1401(4), struck out "apportioned to the States as provided in section 402(c) of this title. Such funds shall be" before "available for obligation" and substituted "section 104(b)" for "section 104(b)(1)".

Subsecs. (f), (g). Pub. L. 105-178, §1401(5), substituted "safety improvement projects" for "highway safety improvement projects" wherever appearing.

1995—Subsec. (g). Pub. L. 104-59 substituted "Committee on Transportation and Infrastructure" for "Committee on Public Works and Transportation".

1987—Subsec. (g). Pub. L. 100-17 substituted "the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives" for "the Congress".

1983—Subsec. (c). Pub. L. 97-424 substituted provision that funds authorized to carry out this section shall be available for expenditure on any public road (other than a highway on the Interstate System), for provision that funds authorized to carry out this section would be available solely for expenditure for projects on any Federal-aid system (other than the Interstate System) except in the Virgin Islands, Guam, and American Samoa.

1982—Subsec. (g). Pub. L. 97-375 inserted "(including but not limited to any projects for pavement marking)" after "implementing the hazard elimination program".

1979—Subsec. (g). Pub. L. 96-106 substituted "December 30" for "September 30" and "April 1" for "January 1".

1978—Subsec. (a). Pub. L. 95-599 substituted "public roads" for "highways" and inserted provisions relating to identification of hazardous sections and elements.

Subsec. (b). Pub. L. 95-599 substituted provisions relating to approval of highway safety improvement projects by the Secretary for provisions authorizing appropriations for fiscal years ending June 30, 1974 through June 30, 1976.

Subsec. (c). Pub. L. 95-599 reenacted subsec. (c) without substantive change.

Subsec. (d). Pub. L. 95-599 substituted provisions prescribing the Federal share payable on account of any project under this section for provisions relating to apportionment of funds made available under subsec. (b) to the States. See subsec. (e) of this section.

Subsec. (e). Pub. L. 95-599 substituted provisions relating to apportionment of funds to the States under this section for provisions relating to progress reports required of the States under this section. See subsec. (g).

Subsecs. (f) to (h). Pub. L. 95-599 added subsecs. (f) and (g) and redesignated former subsec. (f) as (h).

1976—Subsec. (f). Pub. L. 94-280 added subsec. (f).

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 133, 154, 164, 409 of this title.

**§ 153. Use of safety belts and motorcycle helmets**

(a) **AUTHORITY TO MAKE GRANTS.**—The Secretary may make grants to a State in a fiscal year in accordance with this section if the State has in effect in such fiscal year—

(1) a law which makes unlawful throughout the State the operation of a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet; and

(2) a law which makes unlawful throughout the State the operation of a passenger vehicle whenever an individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body.

(b) **USE OF GRANTS.**—A grant made to a State under this section shall be used to adopt and implement a traffic safety program to carry out the following purposes:

(1) **EDUCATION.**—To educate the public about motorcycle and passenger vehicle safety and motorcycle helmet, safety belt, and child restraint system use and to involve public health education agencies and other related agencies in these efforts.

(2) **TRAINING.**—To train law enforcement officers in the enforcement of State laws described in subsection (a).

(3) **MONITORING.**—To monitor the rate of compliance with State laws described in subsection (a).

(4) **ENFORCEMENT.**—To enforce State laws described in subsection (a).

(c) **MAINTENANCE OF EFFORT.**—A grant may not be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all other sources for any traffic safety program described in subsection (b) at or above the average level of such expenditures in the State's 2 fiscal years preceding the date of the enactment of this section.

(d) **FEDERAL SHARE.**—A State may not receive a grant under this section in more than 3 fiscal years. The Federal share payable for a grant under this section shall not exceed—

(1) in the first fiscal year the State receives a grant, 75 percent of the cost of implementing in such fiscal year a traffic safety program described in subsection (b);

(2) in the second fiscal year the State receives a grant, 50 percent of the cost of implementing in such fiscal year such traffic safety program; and

(3) in the third fiscal year the State receives a grant, 25 percent of the cost of implementing in such fiscal year such traffic safety program.

(e) **MAXIMUM AGGREGATE AMOUNT OF GRANTS.**—The aggregate amount of grants made to a State under this section shall not exceed 90 percent of the amount apportioned to such State for fiscal year 1990 under section 402.

(f) **ELIGIBILITY FOR GRANTS.**—

(1) **GENERAL RULE.**—A State is eligible in a fiscal year for a grant under this section only if the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State implements in such fiscal year a traffic safety program described in subsection (b).

(2) **SECOND-YEAR GRANTS.**—A State is eligible for a grant under this section in a fiscal year succeeding the first fiscal year in which a State receives a grant under this section only if the State in the preceding fiscal year—

(A) had in effect at all times a State law described in subsection (a)(1) and achieved a rate of compliance with such law of not less than 75 percent; and

(B) had in effect at all times a State law described in subsection (a)(2) and achieved a rate of compliance with such law of not less than 50 percent.

(3) **THIRD-YEAR GRANTS.**—A State is eligible for a grant under this section in a fiscal year succeeding the second fiscal year in which a State receives a grant under this section only if the State in the preceding fiscal year—

(A) had in effect at all times a State law described in subsection (a)(1) and achieved a rate of compliance with such law of not less than 85 percent; and

(B) had in effect at all times a State law described in subsection (a)(2) and achieved a rate of compliance with such law of not less than 70 percent.

(g) **MEASUREMENTS OF RATES OF COMPLIANCE.**—For the purposes of subsections (f)(2) and (f)(3), a State shall measure compliance with State laws described in subsection (a) using methods which conform to guidelines issued by the Secretary ensuring that such measurements are accurate and representative.

(h) **PENALTY.**—

(1) **FISCAL YEAR 1994.**—If, at any time in fiscal year 1994, a State does not have in effect a law described in subsection (a)(2), the Secretary shall transfer 1½ percent of the funds apportioned to the State for fiscal year 1995 under each of subsections (b)(1), (b)(2), and (b)(3) of section 104 of this title to the apportionment of the State under section 402 of this title.

(2) **THEREAFTER.**—If, at any time in a fiscal year beginning after September 30, 1994, a State does not have in effect a law described in subsection (a)(2), the Secretary shall transfer 3 percent of the funds apportioned to the State for the succeeding fiscal year under each of subsections (b)(1), (b)(2), and (b)(3) of section 104 of this title to the apportionment of the State under section 402 of this title.

(3) **FEDERAL SHARE.**—The Federal share of the cost of any project carried out under section 402 with funds transferred to the apportionment of section 402 shall be 100 percent.

(4) **TRANSFER OF OBLIGATION AUTHORITY.**—If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall allocate an amount of obligation authority distributed for such fiscal year to the State for Federal-aid highways and high-

way safety construction programs for carrying out only projects under section 402 which is determined by multiplying—

(A) the amount of funds transferred to the apportionment of section 402 of the State under section 402 for such fiscal year; by

(B) the ratio of the amount of obligation authority distributed for such fiscal year to the State for Federal-aid highways and highway safety construction programs to the total of the sums apportioned to the State for Federal-aid highways and highway safety construction (excluding sums not subject to any obligation limitation) for such fiscal year.

(5) **LIMITATION ON APPLICABILITY OF HIGHWAY SAFETY OBLIGATIONS.**—Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs carried out by the Federal Highway Administration under section 402 shall apply to funds transferred under this subsection to the apportionment of section 402.

(i) **DEFINITIONS.**—For the purposes of this section, the following definitions apply:

(1) **MOTORCYCLE.**—The term “motorcycle” means a motor vehicle which is designed to travel on not more than 3 wheels in contact with the surface.

(2) **MOTOR VEHICLE.**—The term “motor vehicle” has the meaning such term has under section 154<sup>1</sup> of this title.

(3) **PASSENGER VEHICLE.**—The term “passenger vehicle” means a motor vehicle which is designed for transporting 10 individuals or less, including the driver, except that such term does not include a vehicle which is constructed on a truck chassis, a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under a Federal motor vehicle safety standard to be equipped with a belt system.

(4) **SAFETY BELT.**—The term “safety belt” means—

(A) with respect to open-body passenger vehicles, including convertibles, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt; and

(B) with respect to other passenger vehicles, an occupant restraint system consisting of integrated lap shoulder belts.

(j) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$17,000,000 for fiscal year 1992. From sums made available to carry out section 402 of this title, the Secretary shall make available \$17,000,000 for fiscal year 1992 and \$24,000,000 for each of fiscal years 1993 and 1994 to carry out this section.

(k) **APPLICABILITY OF CHAPTER 1 PROVISIONS.**—All provisions of this chapter that are applicable to National Highway System funds, other than provisions relating to the apportionment formula and provisions limiting the expenditures of such funds to Federal-aid systems, shall apply to funds authorized to be appropriated to carry out this section, except as determined by the

Secretary to be inconsistent with this section and except that sums authorized by this section shall remain available until expended.

(Added Pub. L. 102-240, title I, §1031(a)(1), Dec. 18, 1991, 105 Stat. 1970; amended Pub. L. 104-59, title II, §205(e), Nov. 28, 1995, 109 Stat. 577.)

#### REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (c) and (i)(3), is the date of enactment of Pub. L. 102-240, which was approved Dec. 18, 1991.

Section 154 of this title, referred to in subsec. (i)(2), was repealed by Pub. L. 104-59, title II, §205(d)(1)(B), Nov. 28, 1995, 109 Stat. 577.

#### PRIOR PROVISIONS

A prior section 153, added Pub. L. 93-87, title II, §210(a), Aug. 13, 1973, 87 Stat. 287; amended Pub. L. 94-280, title I, §131, May 5, 1976, 90 Stat. 441, related to a program for the elimination of roadside obstacles, prior to repeal by Pub. L. 95-599, title I, §168(b), Nov. 6, 1978, 92 Stat. 2723.

#### AMENDMENTS

1995—Subsec. (h)(1), (2). Pub. L. 104-59 struck out “a law described in subsection (a)(1) and” after “have in effect”.

#### EFFECTIVE DATE OF 1995 AMENDMENT

Section 205(e) of Pub. L. 104-59 provided that the amendment made by that section is effective Sept. 30, 1995.

#### EFFECTIVE DATE

Section effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as an Effective Date of 1991 Amendment note under section 104 of this title.

#### STUDY OF BENEFITS OF SAFETY BELTS AND MOTORCYCLE HELMETS TO INDIVIDUALS INVOLVED IN CRASHES

Section 1031(b) of Pub. L. 102-240 provided that:

“(1) **IN GENERAL.**—The Secretary shall conduct a study or studies to determine the benefits of safety belt use and motorcycle helmet use for individuals involved in motor vehicle crashes and motorcycle crashes, collecting and analyzing data from regional trauma systems regarding differences in the following: the severity of injuries; acute, rehabilitative and long-term medical costs, including the sources of reimbursement and the extent to which these sources cover actual costs; government, employer, and other costs; and mortality and morbidity outcomes. The study shall cover a representative period after January 1, 1990.

“(2) **REPORT.**—The Secretary shall make public a proposed report on the results of the study or studies conducted under this subsection, provide a period of 90 days for public comment on such report, consider such comments, and transmit to Congress a report on the results of such study or studies, together with a summary of such comments, not later than 40 months after the funds for such study are made available by the Secretary.

“(3) **FUNDING.**—Of the amounts authorized to be appropriated for fiscal year 1992 or 1993 (or both) to carry out section 153 of title 23, United States Code, the Secretary shall make available \$5,000,000 in the aggregate in such fiscal years to carry out this subsection. Such funds shall remain available until expended.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 31104.

<sup>1</sup> See References in Text note below.



### § 154. Open container requirements

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

(1) ALCOHOLIC BEVERAGE.—The term “alcoholic beverage” has the meaning given the term in section 158(c).

(2) MOTOR VEHICLE.—The term “motor vehicle” means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated exclusively on a rail or rails.

(3) OPEN ALCOHOLIC BEVERAGE CONTAINER.—The term “open alcoholic beverage container” means any bottle, can, or other receptacle—

(A) that contains any amount of alcoholic beverage; and

(B)(i) that is open or has a broken seal; or  
(ii) the contents of which are partially removed.

(4) PASSENGER AREA.—The term “passenger area” shall have the meaning given the term by the Secretary by regulation.

(b) OPEN CONTAINER LAWS.—

(1) IN GENERAL.—For the purposes of this section, each State shall have in effect a law that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

(2) MOTOR VEHICLES DESIGNED TO TRANSPORT MANY PASSENGERS.—For the purposes of this section, if a State has in effect a law that makes unlawful the possession of any open alcoholic beverage container by the driver (but not by a passenger)—

(A) in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; or

(B) in the living quarters of a house coach or house trailer,

the State shall be deemed to have in effect a law described in this subsection with respect to such a motor vehicle for each fiscal year during which the law is in effect.

(c) TRANSFER OF FUNDS.—

(1) FISCAL YEARS 2001 AND 2002.—On October 1, 2000, and October 1, 2001, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402—

(A) to be used for alcohol-impaired driving countermeasures; or

(B) to be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving coun-

termeasures, dedicated to enforcement of the laws (including regulations).

(2) FISCAL YEAR 2003 AND FISCAL YEARS THEREAFTER.—On October 1, 2002, and each October 1 thereafter, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).

(3) USE FOR HAZARD ELIMINATION PROGRAM.—A State may elect to use all or a portion of the funds transferred under paragraph (1) or (2) for activities eligible under section 152.

(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out with funds transferred under paragraph (1) or (2), or used under paragraph (3), shall be 100 percent.

(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.—The amount to be transferred under paragraph (1) or (2) may be derived from one or more of the following:

(A) The apportionment of the State under section 104(b)(1).

(B) The apportionment of the State under section 104(b)(3).

(C) The apportionment of the State under section 104(b)(4).

(6) TRANSFER OF OBLIGATION AUTHORITY.—

(A) IN GENERAL.—If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall transfer an amount, determined under subparagraph (B), of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under section 402.

(B) AMOUNT.—The amount of obligation authority referred to in subparagraph (A) shall be determined by multiplying—

(i) the amount of funds transferred under subparagraph (A) to the apportionment of the State under section 402 for the fiscal year, by

(ii) the ratio that—

(I) the amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs, bears to

(II) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(7) LIMITATION ON APPLICABILITY OF OBLIGATION LIMITATION.—Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs under section 402 shall apply to funds transferred under this subsection to the apportionment of a State under such section.

(Added Pub. L. 105-178, title I, §1405(a), as added Pub. L. 105-206, title IX, §9005(a), July 22, 1998, 112 Stat. 843.)

## PRIOR PROVISIONS

A prior section 154, added Pub. L. 93-643, §114(a), Jan. 4, 1975, 88 Stat. 2286; amended Pub. L. 95-599, title II, §205, Nov. 6, 1978, 92 Stat. 2729; Pub. L. 97-35, title XI, §1108, Aug. 13, 1981, 95 Stat. 626; Pub. L. 100-17, title I, §174, Apr. 2, 1987, 101 Stat. 218; Pub. L. 102-240, title I, §1029(a), (b), (e), (g), Dec. 18, 1991, 105 Stat. 1968-1970, established the national maximum speed limit, prior to repeal by Pub. L. 104-59, title II, §205(d)(1)(B), (3), Nov. 28, 1995, 109 Stat. 577, applicable to State on 10th day following Nov. 28, 1995, except that if legislature was not in session on such date and chief executive officer declared before such date that legislature was not in session and that State preferred applicability date that was after date on which legislature would convene, applicable to State on 60th day following date on which legislature would next convene.

## EFFECTIVE DATE

Section effective simultaneously with enactment of Pub. L. 105-178 and to be treated as included in Pub. L. 105-178 at time of enactment, see section 9016 of Pub. L. 105-206, set out as an Effective Date of 1998 Amendment note under section 101 of this title.

### § 155. Access highways to public recreation areas on certain lakes

(a) The Secretary is authorized to construct or reconstruct access highways to public recreation areas on lakes in order to accommodate present and projected traffic density. The Secretary shall develop guidelines and standards for the designation of routes and the allocation of funds for the purpose of this section which shall include the following criteria:

(1) No portion of any access highway constructed or reconstructed under this section shall exceed thirty-five miles in length nor shall any portion of such highway be located more than thirty-five miles from the nearest part of such recreation area.

(2) Routes shall be designated by the Secretary on the recommendation of the State and responsible local officials, after consultation with the head of the Federal agency (if any) having jurisdiction over the public recreation area involved.

(b) The Federal share payable on account of any project authorized pursuant to this section shall not exceed 75 per centum of the cost of construction or reconstruction of such project.

(c) All of the provisions of this title applicable to highways on the Federal-aid system (other than the Interstate System) determined appropriate by the Secretary, except those provisions which the Secretary determines are inconsistent with this section, shall apply to any highway designated under this section which is not a part of the Federal-aid system when so designated.

(d) For the purpose of this section the term "lake" means any lake, reservoir, pool, or other body of water resulting from the construction of any lock, dam, or similar structure by the Corps of Engineers, Department of the Army, or the Bureau of Reclamation, Department of the Interior, or the Tennessee Valley Authority, and any multipurpose lake resulting from construction assistance of the Soil Conservation Service, Department of Agriculture. This section shall apply to lakes heretofore or hereafter constructed or authorized for construction.

(e) There is authorized to be appropriated not to exceed \$25,000,000 for the fiscal year 1976 to

carry out this section. Amounts authorized by this subsection for a fiscal year shall be available for that fiscal year and for the two succeeding fiscal years.

(Added Pub. L. 93-643, §115(a), Jan. 4, 1975, 88 Stat. 2287; amended Pub. L. 95-599, title I, §129(e), Nov. 6, 1978, 92 Stat. 2708.)

## AMENDMENTS

1978—Subsec. (b). Pub. L. 95-599 substituted "75 per centum" for "70 per centum".

## EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-599 effective with respect to obligations incurred after Nov. 6, 1978, see section 129(h) of Pub. L. 95-599, set out as a note under section 120 of this title.

## APPROPRIATIONS; RESCISSION OF APPROPRIATIONS AUTHORIZATION

Pub. L. 94-134, title I, §101, Nov. 24, 1975, 89 Stat. 703, appropriated in part: "For necessary expenses not otherwise provided, to carry out the provisions of section 115(a), 'Federal-Aid Highway Amendments of 1974 [this section]'; \$10,000,000, to remain available until September 30 1978: Provided, That any authority to incur obligations granted by section 115 of the Federal-Aid Highway Amendments of 1974 [subsec. (e) of this section] is hereby rescinded."

### § 156. Proceeds from the sale or lease of real property

(a) MINIMUM CHARGE.—Subject to section 142(f), a State shall charge, at a minimum, fair market value for the sale, use, lease, or lease renewal (other than for utility use and occupancy or for a transportation project eligible for assistance under this title) of real property acquired with Federal assistance made available from the Highway Trust Fund (other than the Mass Transit Account).

(b) EXCEPTIONS.—The Secretary may grant an exception to the requirement of subsection (a) for a social, environmental, or economic purpose.

(c) USE OF FEDERAL SHARE OF INCOME.—The Federal share of net income from the revenues obtained by a State under subsection (a) shall be used by the State for projects eligible under this title.

(Added Pub. L. 100-17, title I, §126(a), Apr. 2, 1987, 101 Stat. 167; amended Pub. L. 102-240, title I, §1027(f), Dec. 18, 1991, 105 Stat. 1967; Pub. L. 105-178, title I, §1303(a), June 9, 1998, 112 Stat. 227.)

## PRIOR PROVISIONS

A prior section 156, added Pub. L. 94-280, title I, §132(a), May 5, 1976, 90 Stat. 441, authorized the Secretary to construct or reconstruct any public highway or highway bridge across any Federal public works project, specified conditions under which such work may be done, and authorized appropriations for such work of \$100,000,000 to be available in the fiscal year in which appropriated and for the two succeeding fiscal years, prior to repeal by Pub. L. 100-17, title I, §126(a), Apr. 2, 1987, 101 Stat. 167.

## AMENDMENTS

1998—Pub. L. 105-178 amended section catchline and text generally. Prior to amendment, text read as follows: "Subject to section 142(f), States shall charge, as a minimum, fair market value, with exceptions granted

at the discretion of the Secretary for social, environmental, and economic mitigation purposes, for the sale, use, lease, or lease renewals (other than for utility use and occupancy or for transportation projects eligible for assistance under this title) of right-of-way airspace acquired as a result of a project funded in whole or in part with Federal assistance made available from the Highway Trust Fund (other than the Mass Transit Account). This section applies to new airspace usage proposals, renewals of prior agreements, arrangements, or leases entered into by the State after the date of the enactment of the Federal-Aid Highway Act of 1987. The Federal share of net income from the revenues obtained by the State for sales, uses, or leases (including lease renewals) under this section shall be used by the State for projects eligible under this title."

1991—Pub. L. 102-240 substituted "Subject to section 142(f), States shall" for "States shall".

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

**§ 157. Safety incentive grants for use of seat belts**

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

(1) MOTOR VEHICLE.—The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line.

(2) MULTIPURPOSE PASSENGER MOTOR VEHICLE.—The term "multipurpose passenger motor vehicle" means a motor vehicle with motive power (except a trailer), designed to carry not more than 10 individuals, that is constructed on a truck chassis or is constructed with special features for occasional off-road operation.

(3) NATIONAL AVERAGE SEAT BELT USE RATE.—The term "national average seat belt use rate" means, in the case of each of calendar years 1996 through 2001, the national average seat belt use rate for that year, as determined by the Secretary.

(4) PASSENGER CAR.—The term "passenger car" means a motor vehicle with motive power (except a multipurpose passenger motor vehicle, motorcycle, or trailer) designed to carry not more than 10 individuals.

(5) PASSENGER MOTOR VEHICLE.—The term "passenger motor vehicle" means a passenger car or a multipurpose passenger motor vehicle.

(6) SAVINGS TO THE FEDERAL GOVERNMENT.—The term "savings to the Federal Government" means the amount of Federal budget savings relating to Federal medical costs (including savings under the medicare and medic-aid programs under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq.)), as determined by the Secretary.

(7) SEAT BELT.—The term "seat belt" means—

(A) with respect to an open-body passenger motor vehicle, including a convertible, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt; and

(B) with respect to any other passenger motor vehicle, an occupant restraint system consisting of integrated lap and shoulder belts.

(8) STATE SEAT BELT USE RATE.—The term "State seat belt use rate" means the rate of use of seat belts in passenger motor vehicles in a State, as measured and submitted to the Secretary—

(A) for each of calendar years 1996 and 1997, by the State, as weighted by the Secretary to ensure national consistency in methods of measurement (as determined by the Secretary); and

(B) for each of calendar years 1998 through 2001, by the State in a manner consistent with the criteria established by the Secretary under subsection (e).

(b) DETERMINATIONS BY THE SECRETARY.—Not later than September 1, 1998, and September 1 of each calendar year thereafter through September 1, 2002, the Secretary shall determine—

(1)(A) which States had, for each of the previous calendar years (in this subsection referred to as the "previous calendar year") and the year preceding the previous calendar year, a State seat belt use rate greater than the national average seat belt use rate for that year; and

(B) in the case of each State described in subparagraph (A), the amount that is equal to the savings to the Federal Government due to the amount by which the State seat belt use rate for the previous calendar year exceeds the national average seat belt use rate for that year; and

(2) in the case of each State that is not a State described in paragraph (1)(A)—

(A) the base seat belt use rate of the State, which shall be equal to the highest State seat belt use rate for the State for any calendar year during the period of 1996 through the calendar year preceding the previous calendar year; and

(B) the amount that is equal to the savings to the Federal Government due to any increase in the State seat belt use rate for the previous calendar year over the base seat belt use rate determined under subparagraph (A).

(c) ALLOCATIONS.—

(1) STATES WITH GREATER THAN THE NATIONAL AVERAGE SEAT BELT USE RATE.—Not later than October 1, 1998, and each October 1 thereafter through October 1, 2002, the Secretary shall allocate to each State described in subsection (b)(1)(A) an amount equal to the amount determined for the State under subsection (b)(1)(B).

(2) OTHER STATES.—Not later than October 1, 1998, and each October 1 thereafter through October 1, 2002, the Secretary shall allocate to each State described in subsection (b)(2) an amount equal to the amount determined for the State under subsection (b)(2)(B).

(d) USE OF AMOUNTS.—For each fiscal year, each State that is allocated an amount under this section shall use the amount for projects eligible for assistance under this title.

(e) **CRITERIA.**—Not later than 180 days after the date of enactment of this section, the Secretary shall establish criteria for the measurement of State seat belt use rates by States to ensure that the measurements are accurate and representative.

(f) **INNOVATIVE SEAT BELT PROJECT ALLOCATIONS.**—

(1) **IN GENERAL.**—The Secretary shall use amounts made available under subsection (g)(3) to make allocations to States to carry out innovative projects to promote increased seat belt use rates.

(2) **DETERMINATION OF ELIGIBILITY.**—To be eligible to receive an allocation under this subsection for a fiscal year, a State shall—

(A) develop a plan for innovative projects described in paragraph (1); and

(B) submit the plan to the Secretary not later than March 1 of the fiscal year.

(3) **PLAN SELECTION.**—

(A) **CRITERIA.**—Not later than December 1, 1998, the Secretary shall establish criteria for the selection of State plans for allocations under this subsection.

(B) **SELECTION.**—The Secretary shall select State plans for allocations under this subsection in accordance with the criteria established under subparagraph (A).

(C) **STATES.**—In carrying out this paragraph, the Secretary shall ensure, to the maximum extent practicable, demographic and geographic diversity and a diversity of seat belt use rates among the States selected for allocations.

(4) **ALLOCATION.**—Not later than October 1, 1999, and each October 1 thereafter through October 1, 2002, the Secretary shall allocate funds to the States whose plans were selected under paragraph (3).

(5) **AMOUNT OF ALLOCATIONS.**—Subject to the availability of unallocated amounts under subsection (g)(3), the amount of each allocation to a State under this subsection shall be not less than \$100,000 for each fiscal year that is covered by a State plan.

(6) **USE OF ALLOCATIONS.**—An allocation to a State under this subsection shall be used to carry out the innovative seat belt projects described in the State plan for which the allocation is awarded.

(7) **FEDERAL SHARE.**—The Federal share of the cost of an innovative seat belt project under this section shall be 100 percent.

(8) **PERIOD OF AVAILABILITY.**—Amounts allocated to a State under this subsection shall remain available for obligation in the State for a period of 3 years after the last day of the fiscal year for which the amounts are allocated.

(g) **FUNDING.**—

(1) **IN GENERAL.**—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$82,000,000 for fiscal year 1999, \$92,000,000 for fiscal year 2000, \$102,000,000 for fiscal year 2001, \$112,000,000 for fiscal year 2002, and \$112,000,000 for fiscal year 2003.

(2) **PROPORTIONATE ADJUSTMENT.**—If the total amounts to be allocated under subsection (c) for any fiscal year would exceed the amounts

authorized for the fiscal year under paragraph (1), the allocation to each State under subsection (c) shall be reduced proportionately.

(3) **USE OF UNALLOCATED FUNDS.**—

(A) **FISCAL YEAR 1999.**—To the extent that the amounts made available for fiscal year 1999 under paragraph (1) exceed the total amounts to be allocated under subsection (c) for fiscal year 1999, the excess amounts—

(i) shall be apportioned in accordance with section 104(b)(3);

(ii) shall be considered to be sums made available for expenditure on the surface transportation program, except that the amounts shall not be subject to section 133(d); and

(iii) shall be available for any purpose eligible for funding under section 133.

(B) **FISCAL YEARS 2000 THROUGH 2003.**—To the extent that the amounts made available for any of fiscal years 2000 through 2003 under paragraph (1) exceed the total amounts to be allocated under subsection (c) for the fiscal year, the excess amounts shall be used to make allocations under subsection (f).

(Added Pub. L. 105-178, title I, §1403(a), June 9, 1998, 112 Stat. 237.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(6), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The date of enactment of this section, referred to in subsec. (e), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

#### PRIOR PROVISIONS

A prior section 157, added Pub. L. 97-424, title I, §150(a), Jan. 6, 1983, 96 Stat. 2131; amended Pub. L. 99-272, title IV, §4102(f), Apr. 7, 1986, 100 Stat. 113; Pub. L. 100-17, title I, §§105(h), 124, Apr. 2, 1987, 101 Stat. 144, 164; Pub. L. 102-240, title I, §§1002(h), 1013(a), (b), Dec. 18, 1991, 105 Stat. 1918, 1940; Pub. L. 103-272, §5(f)(3), July 5, 1994, 108 Stat. 1374, related to minimum allocations to States, prior to repeal by Pub. L. 105-178, title I, §1403(a), June 9, 1998, 112 Stat. 237.

#### SAVINGS CLAUSE

Pub. L. 105-178, title I, §1403(c), June 9, 1998, 112 Stat. 240, provided that: "The amendment made by subsection (a) [enacting this section and repealing former section 157 of this title] shall not affect any funds apportioned or allocated before the date of enactment of this Act [June 9, 1998]."

### § 158. National minimum drinking age

(a) **WITHHOLDING OF FUNDS FOR NONCOMPLIANCE.**—

(1) **IN GENERAL.**—The Secretary shall withhold 10 per centum of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(4) of this title on the first day of each fiscal year after the second fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

(2) STATE GRANDFATHER LAW AS COMPLYING.—If, before the later of (A) October 1, 1986, or (B) the tenth day following the last day of the first session the legislature of a State convenes after the date of the enactment of this paragraph, such State has in effect a law which makes unlawful the purchase and public possession in such State of any alcoholic beverage by a person who is less than 21 years of age (other than any person who is 18 years of age or older on the day preceding the effective date of such law and at such time could lawfully purchase or publicly possess any alcoholic beverage in such State), such State shall be deemed to be in compliance with paragraph (1) in each fiscal year in which such law is in effect.

(b) EFFECT OF WITHHOLDING OF FUNDS.—No funds withheld under this section from apportionment to any State after September 30, 1988, shall be available for apportionment to that State.

(c) ALCOHOLIC BEVERAGE DEFINED.—As used in this section, the term “alcoholic beverage” means—

(1) beer as defined in section 5052(a) of the Internal Revenue Code of 1986,

(2) wine of not less than one-half of 1 per centum of alcohol by volume, or

(3) distilled spirits as defined in section 5002(a)(8) of such Code.

(Added Pub. L. 98-363, §6(a), July 17, 1984, 98 Stat. 437; amended Pub. L. 99-272, title IV, §4104, Apr. 7, 1986, 100 Stat. 114; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 105-178, title I, §1103(l)(2), June 9, 1998, 112 Stat. 125.)

#### REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (a)(2), is the date of enactment of Pub. L. 99-272, which was approved Apr. 7, 1986.

The Internal Revenue Code of 1986, referred to in subsec. (c), is set out in Title 26, Internal Revenue Code.

#### AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-178, §1103(l)(2)(A)(i)-(iii), redesignated par. (2) as (1), substituted “In general” for “After the first year” in heading and “104(b)(3), and 104(b)(4)” for “104(b)(2), 104(b)(5), and 104(b)(6)” in text, and struck out former par. (1) which read as follows:

“(1) FIRST YEAR.—The Secretary shall withhold 5 per centum of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of this title on the first day of the fiscal year succeeding the first fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.”

Subsec. (a)(2), (3). Pub. L. 105-178, §1103(l)(2)(A)(ii), (iv), redesignated par. (3) as (2) and substituted “paragraph (1)” for “paragraphs (1) and (2) of this subsection”. Former par. (2) redesignated (1).

Subsec. (b). Pub. L. 105-178, §1103(l)(2)(B), added subsec. (b) and struck out heading and text of former subsec. (b) which related to period of availability for apportionment to State of funds withheld by the Secretary pending State enactment of federally-prescribed minimum drinking age.

1986—Subsec. (a). Pub. L. 99-272, §4104(d)(1), added subsection heading.

Subsec. (a)(1). Pub. L. 99-272, §4104(d)(2)-(4), added paragraph heading, aligned margins, and inserted “first” before “fiscal year beginning”.

Subsec. (a)(2). Pub. L. 99-272, §4104(a), (d)(3), (5), added paragraph heading, realigned margins, and substituted “each fiscal year after” for “the fiscal year succeeding”.

Subsec. (a)(3). Pub. L. 99-272, §4104(b), added par. (3).

Subsec. (b). Pub. L. 99-272, §4104(c), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The Secretary shall promptly apportion to a State any funds which have been withheld from apportionment under subsection (a) of this section in fiscal year if in any succeeding fiscal year such State makes unlawful the purchase or public possession of any alcoholic beverage by a person who is less than twenty-one years of age.”

Subsec. (c). Pub. L. 99-272, §4104(d)(6), added subsection heading.

Subsec. (c)(1). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 154, 410 of this title; title 49 section 31301.

### § 159. Revocation or suspension of drivers' licenses of individuals convicted of drug offenses

(a) WITHHOLDING OF APPORTIONMENTS FOR NON-COMPLIANCE.—

(1) BEGINNING IN FISCAL YEAR 1994.—For each fiscal year the Secretary shall withhold 5 per cent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of section 104(b) on the first day of each fiscal year which begins after the second calendar year following the effective date of this section if the State does not meet the requirements of paragraph (3) on such date.

(2) BEGINNING IN FISCAL YEAR 1996.—The Secretary shall withhold 10 percent (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of section 104(b) on the first day of each fiscal year which begins after the fourth calendar year following the effective date of this section if the State does not meet the requirements of paragraph (3) on the first day of such fiscal year.

(3) REQUIREMENTS.—A State meets the requirements of this paragraph if—

(A) the State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception—

(i) the revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of—

(I) any violation of the Controlled Substances Act, or

(II) any drug offense; and

(ii) a delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or

the driver's license of the individual is suspended, at the time the individual is so convicted; or

(B) the Governor of the State—

(i) submits to the Secretary no earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after the effective date of this section a written certification stating that the Governor is opposed to the enactment or enforcement in the State of a law described in subparagraph (A), relating to the revocation, suspension, issuance, or reinstatement of drivers' licenses to convicted drug offenders; and

(ii) submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law described in clause (i).

(b) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—

(A) FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 1995.—Any funds withheld under subsection (a) from apportionment to any State on or before September 30, 1995, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under section 104(b)(5)(A) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) but for this section, such funds shall remain available until the end of the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under section 104(b)(5)(B) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) but for this section, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(iii) If such funds would have been apportioned under paragraph (1), (3), or (5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of section 104(b) but for this section, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(B) FUNDS WITHHELD AFTER SEPTEMBER 30, 1995.—No funds withheld under this section from apportionment to any State after September 30, 1995, shall be available for apportionment to such State.

(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under subsection (a) from apportionment are to remain available for apportionment to a State under paragraph (1), the State meets the requirements of subsection (a)(3), the Secretary shall, on the first day on which the State meets the

requirements of subsection (a)(3), apportion to the State the funds withheld under subsection (a) that remain available for apportionment to the State.

(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure as follows:

(A) Funds which would have been originally apportioned under section 104(b)(5)(A) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) shall remain available until the end of the fiscal year succeeding the fiscal year in which such funds are apportioned under paragraph (2).

(B) Funds which would have been originally apportioned under paragraph (1), (3), or (5)(B) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of section 104(b) shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century), shall lapse and be made available by the Secretary for projects in accordance with section 118(b).

(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under subsection (a) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century), such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b).

(c) DEFINITIONS.—For purposes of this section—

(1) DRIVER'S LICENSE.—The term "driver's license" means a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.

(2) DRUG OFFENSE.—The term "drug offense" means any criminal offense which proscribes—

(A) the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act; or

(B) the operation of a motor vehicle under the influence of such a substance.

(3) CONVICTED.—The term "convicted" includes adjudicated under juvenile proceedings.

(Added Pub. L. 102-143, title III, §333(a), Oct. 28, 1991, 105 Stat. 944; amended Pub. L. 102-388, title III, §327(a), Oct. 6, 1992, 106 Stat. 1547; Pub. L. 105-178, title I, §1103(l)(3)(E), June 9, 1998, 112 Stat. 126.)

#### REFERENCES IN TEXT

The date of enactment of the Transportation Equity Act for the 21st Century, referred to in subsecs. (a)(1),

(2) and (b)(1)(A), (3), (4), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

The effective date of this section, referred to in subsec. (a)(1), (2), (3)(B)(i), is Nov. 5, 1990. See section 333(e) of Pub. L. 102-143, set out as a note below.

The Controlled Substances Act, referred to in subsecs. (a)(3)(A)(i)(I) and (c)(2)(A), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

AMENDMENTS

1998—Subsec. (a)(1), (2). Pub. L. 105-178, §1103(l)(3)(E)(i), substituted “(5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of” for “(5) of” before “section 104(b)”.

Subsec. (b)(1)(A)(i). Pub. L. 105-178, §1103(l)(3)(E)(ii)(I), substituted “section 104(b)(5)(A) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century)” for “section 104(b)(5)(A)”.

Subsec. (b)(1)(A)(ii). Pub. L. 105-178, §1103(l)(3)(E)(ii)(II), substituted “section 104(b)(5)(B) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century)” for “section 104(b)(5)(B)”.

Subsec. (b)(1)(A)(iii). Pub. L. 105-178, §1103(l)(3)(E)(i), substituted “(5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of” for “(5) of” before “section 104(b)”.

Subsec. (b)(3). Pub. L. 105-178, §1103(l)(3)(E)(ii)(IV), substituted “section 104(b)(5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century)” for “section 104(b)(5)” in concluding provisions.

Subsec. (b)(3)(A). Pub. L. 105-178, §1103(l)(3)(E)(ii)(I), substituted “section 104(b)(5)(A) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century)” for “section 104(b)(5)(A)”.

Subsec. (b)(3)(B). Pub. L. 105-178, §1103(l)(3)(E)(ii)(III), substituted “(5)(B) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century)” for “(5)(B)”.

Subsec. (b)(4). Pub. L. 105-178, §1103(l)(3)(E)(ii)(IV), substituted “section 104(b)(5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century)” for “section 104(b)(5)”.

1992—Pub. L. 102-388 amended section generally, substituting “Beginning in fiscal year 1994” for “After second calendar year” as subsec. (a)(1) heading, “paragraphs (1), (3), and (5)” for “paragraphs (1), (2), (5), and (6)” in subsec. (a)(1) and (2), “Beginning in fiscal year 1996” for “After fourth calendar year” as subsec. (a)(2) heading, “paragraph (1), (3), or (5)” for “paragraph (1), (2), or (6)” in subsec. (b)(1)(A)(iii), and “paragraph (1), (3), or (5)(B)” for “paragraph (1), (2), (5)(B), or (6)” in subsec. (b)(3)(B).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 327(b) of Pub. L. 102-388 provided that: “The amendments made by subsection (a) of this section [amending this section] shall take effect November 5, 1990.”

EFFECTIVE DATE

Section 333(e) of Pub. L. 102-143 provided that: “The amendments made by subsection (a) of this section [enacting this section] shall take effect November 5, 1990.”

STUDY ON STATE COMPLIANCE WITH REQUIREMENTS FOR REVOCATION AND SUSPENSION OF DRIVERS’ LICENSES

Pub. L. 102-240, title I, §1094, Dec. 18, 1991, 105 Stat. 2025, provided that:

“(a) STUDY.—The Secretary shall conduct a study of State efforts to comply with the provisions of section

333 of the Department of Transportation and Related Agencies Appropriations Acts, 1991 and 1992 [section 333 of Pub. L. 102-143 (1992 Act) enacted this section and provisions set out as a note above and repealed section 333 of Pub. L. 101-516 (1991 Act) which amended section 104 of this title and enacted provisions set out as a note thereunder], relating to revocation and suspension of drivers’ licenses.

“(b) REPORT.—Not later than December 31, 1992, the Secretary shall transmit to Congress a report on the results of the study conducted under this section.”

§ 160. Reimbursement for segments of the Interstate System constructed without Federal assistance

(a) GENERAL AUTHORITY.—The Secretary shall allocate to the States in each of fiscal years 1996 and 1997 amounts determined under subsection (b) for reimbursement of their original contributions to construction of segments of the Interstate System which were constructed without Federal financial assistance.

(b) DETERMINATION OF REIMBURSEMENT AMOUNT.—The amount to be reimbursed to a State in each of fiscal years 1996 and 1997 under this section shall be determined by multiplying the amount made available for carrying out this section for such fiscal year by the reimbursement percentage set forth in the table contained in subsection (c).

(c) REIMBURSEMENT TABLE.—For purposes of carrying out this section, the reimbursement percentage, the original cost for constructing the Interstate System, and the total reimbursable amount for each State is set forth in the following table:

States	Original cost in millions	Reimbursement percentage	Reimbursable amount in millions
Alabama .....	\$9	0.50	\$147
Alaska .....		0.50	147
Arizona .....	20	0.50	147
Arkansas .....	6	0.50	147
California .....	298	5.42	1,591
Colorado .....	23	0.50	147
Connecticut .....	314	5.71	1,676
Delaware .....	39	0.71	209
Florida .....	31	0.56	164
Georgia .....	46	0.84	246
Hawaii .....		0.50	147
Idaho .....	5	0.50	147
Illinois .....	475	8.62	2,533
Indiana .....	167	3.03	892
Iowa .....	5	0.50	147
Kansas .....	101	1.84	540
Kentucky .....	32	0.57	169
Louisiana .....	22	0.50	147
Maine .....	38	0.69	204
Maryland .....	154	2.79	820
Massachusetts .....	283	5.14	1,511
Michigan .....	228	4.14	1,218
Minnesota .....	16	0.50	147
Mississippi .....	6	0.50	147
Missouri .....	74	1.35	396
Montana .....	5	0.50	147
Nebraska .....	1	0.50	147
Nevada .....	2	0.50	147
New Hampshire .....	8	0.50	147
New Jersey .....	353	6.41	1,882
New Mexico .....	8	0.50	147
New York .....	929	16.88	4,960
North Carolina .....	36	0.65	191
North Dakota .....	3	0.50	147
Ohio .....	257	4.68	1,374

States	Original cost in millions	Reimbursement percentage	Reimbursable amount in millions
Oklahoma .....	91	1.66	486
Oregon .....	78	1.42	417
Pennsylvania .....	354	6.43	1,888
Rhode Island .....	12	0.50	147
South Carolina .....	4	0.50	147
South Dakota .....	5	0.50	147
Tennessee .....	7	0.50	147
Texas .....	200	3.64	1,069
Utah .....	6	0.50	147
Vermont .....	1	0.50	147
Virginia .....	111	2.01	591
Washington .....	73	1.32	389
West Virginia .....	5	0.50	147
Wisconsin .....	8	0.50	147
Wyoming .....	9	0.50	147
D.C. ....	9	0.50	147
<b>TOTALS .....</b>	<b>\$4,967</b>	<b>100.00</b>	<b>\$29,384</b>

(d) TRANSFER OF REIMBURSABLE AMOUNTS TO STP APPORTIONMENT.—Subject to subsection (e) of this section, the Secretary shall transfer amounts allocated to a State pursuant to this section to the apportionment of such State under section 104(b)(3) for the surface transportation program.

(e) LIMITATION ON APPLICABILITY OF CERTAIN REQUIREMENTS OF STP PROGRAM.—The following provisions of section 133 of this title shall not apply to ½ of the amounts transferred under subsection (d) to the apportionment of the State for the surface transportation program:

- (1) Subsection (d)(1).
- (2) Subsection (d)(2).
- (3) Subsection (d)(3).

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, out of the Highway Trust Fund (other than the Mass Transit Account), \$2,000,000,000 per fiscal year for each of fiscal years 1996 and 1997 to carryout this section.

(Added Pub. L. 102-240, title I, §1014(a), Dec. 18, 1991, 105 Stat. 1941.)

EFFECTIVE DATE

Section effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as an Effective Date of 1991 Amendment note under section 104 of this title.

**§ 161. Operation of motor vehicles by intoxicated minors**

(a) WITHHOLDING OF APPORTIONMENTS FOR NON-COMPLIANCE.—

(1) FISCAL YEAR 1999.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 1998, if the State does not meet the requirement of paragraph (3) on that date.

(2) THEREAFTER.—The Secretary shall withhold 10 percent (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 1999, and on October 1 of

each fiscal year thereafter, if the State does not meet the requirement of paragraph (3) on that date.

(3) REQUIREMENT.—A State meets the requirement of this paragraph if the State has enacted and is enforcing a law that considers an individual under the age of 21 who has a blood alcohol concentration of 0.02 percent or greater while operating a motor vehicle in the State to be driving while intoxicated or driving under the influence of alcohol.

(b) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—

(A) FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 2000.—Any funds withheld under subsection (a) from apportionment to any State on or before September 30, 2000, shall remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(B) FUNDS WITHHELD AFTER SEPTEMBER 30, 2000.—No funds withheld under this section from apportionment to any State after September 30, 2000, shall be available for apportionment to the State.

(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under subsection (a) from apportionment are to remain available for apportionment to a State under paragraph (1), the State meets the requirement of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirement, apportion to the State the funds withheld under subsection (a) that remain available for apportionment to the State.

(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are so apportioned. Sums not obligated at the end of that period shall lapse.

(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under subsection (a) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirement of subsection (a)(3), the funds shall lapse.

(Added Pub. L. 104-59, title III, §320(a), Nov. 28, 1995, 109 Stat. 589; amended Pub. L. 105-178, title I, §1103(l)(3)(F), June 9, 1998, 112 Stat. 126.)

AMENDMENTS

1998—Subsec. (a)(1), (2). Pub. L. 105-178 substituted “paragraphs (1), (3), and (4) of section 104(b)” for “paragraphs (1), (3), and (5)(B) of section 104(b)”.

**§ 162. National scenic byways program**

(a) DESIGNATION OF ROADS.—

(1) IN GENERAL.—The Secretary shall carry out a national scenic byways program that recognizes roads having outstanding scenic, historic, cultural, natural, recreational, and archaeological qualities by designating the roads as National Scenic Byways or All-American Roads.

(2) CRITERIA.—The Secretary shall designate roads to be recognized under the national sce-



nic byways program in accordance with criteria developed by the Secretary.

(3) **NOMINATION.**—To be considered for the designation, a road must be nominated by a State or a Federal land management agency and must first be designated as a State scenic byway or, in the case of a road on Federal land, as a Federal land management agency byway.

(b) **GRANTS AND TECHNICAL ASSISTANCE.**—

(1) **IN GENERAL.**—The Secretary shall make grants and provide technical assistance to States to—

(A) implement projects on highways designated as National Scenic Byways or All-American Roads, or as State scenic byways; and

(B) plan, design, and develop a State scenic byway program.

(2) **PRIORITIES.**—In making grants, the Secretary shall give priority to—

(A) each eligible project that is associated with a highway that has been designated as a National Scenic Byway or All-American Road and that is consistent with the corridor management plan for the byway;

(B) each eligible project along a State-designated scenic byway that is consistent with the corridor management plan for the byway, or is intended to foster the development of such a plan, and is carried out to make the byway eligible for designation as a National Scenic Byway or All-American Road; and

(C) each eligible project that is associated with the development of a State scenic byway program.

(c) **ELIGIBLE PROJECTS.**—The following are projects that are eligible for Federal assistance under this section:

(1) An activity related to the planning, design, or development of a State scenic byway program.

(2) Development and implementation of a corridor management plan to maintain the scenic, historical, recreational, cultural, natural, and archaeological characteristics of a byway corridor while providing for accommodation of increased tourism and development of related amenities.

(3) Safety improvements to a State scenic byway, National Scenic Byway, or All-American Road to the extent that the improvements are necessary to accommodate increased traffic and changes in the types of vehicles using the highway as a result of the designation as a State scenic byway, National Scenic Byway, or All-American Road.

(4) Construction along a scenic byway of a facility for pedestrians and bicyclists, rest area, turnout, highway shoulder improvement, passing lane, overlook, or interpretive facility.

(5) An improvement to a scenic byway that will enhance access to an area for the purpose of recreation, including water-related recreation.

(6) Protection of scenic, historical, recreational, cultural, natural, and archaeological resources in an area adjacent to a scenic byway.

(7) Development and provision of tourist information to the public, including interpretive information about a scenic byway.

(8) Development and implementation of a scenic byway marketing program.

(d) **LIMITATION.**—The Secretary shall not make a grant under this section for any project that would not protect the scenic, historical, recreational, cultural, natural, and archaeological integrity of a highway and adjacent areas.

(e) **SAVINGS CLAUSE.**—The Secretary shall not withhold any grant or impose any requirement on a State as a condition of providing a grant or technical assistance for any scenic byway unless the requirement is consistent with the authority provided in this chapter.

(f) **FEDERAL SHARE.**—The Federal share of the cost of carrying out a project under this section shall be 80 percent, except that, in the case of any scenic byway project along a public road that provides access to or within Federal or Indian land, a Federal land management agency may use funds authorized for use by the agency as the non-Federal share.

(Added Pub. L. 105-178, title I, §1219(a), June 9, 1998, 112 Stat. 219.)

### § 163. Safety incentives to prevent operation of motor vehicles by intoxicated persons

(a) **GENERAL AUTHORITY.**—The Secretary shall make a grant, in accordance with this section, to any State that has enacted and is enforcing a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a per se offense of driving while intoxicated (or an equivalent per se offense).

(b) **GRANTS.**—For each fiscal year, funds authorized to carry out this section shall be apportioned to each State that has enacted and is enforcing a law meeting the requirements of subsection (a) in an amount determined by multiplying—

(1) the amount authorized to carry out this section for the fiscal year; by

(2) the ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(c) **USE OF GRANTS.**—A State may obligate funds apportioned under subsection (b) for any project eligible for assistance under this title.

(d) **FEDERAL SHARE.**—The Federal share of the cost of a project funded under this section shall be 100 percent.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$55,000,000 for fiscal year 1998, \$65,000,000 for fiscal year 1999, \$80,000,000 for fiscal year 2000, \$90,000,000 for fiscal year 2001, \$100,000,000 for fiscal year 2002, and \$110,000,000 for fiscal year 2003.

(2) **AVAILABILITY OF FUNDS.**—Notwithstanding section 118(b)(2), the funds authorized by this subsection shall remain available until expended.

(Added Pub. L. 105-178, title I, §1404(a), June 9, 1998, 112 Stat. 240.)

**§ 164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence**

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

(1) ALCOHOL CONCENTRATION.—The term “alcohol concentration” means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) DRIVING WHILE INTOXICATED; DRIVING UNDER THE INFLUENCE.—The terms “driving while intoxicated” and “driving under the influence” mean driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State.

(3) LICENSE SUSPENSION.—The term “license suspension” means the suspension of all driving privileges.

(4) MOTOR VEHICLE.—The term “motor vehicle” means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.

(5) REPEAT INTOXICATED DRIVER LAW.—The term “repeat intoxicated driver law” means a State law that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall—

(A) receive a driver’s license suspension for not less than 1 year;

(B) be subject to the impoundment or immobilization of each of the individual’s motor vehicles or the installation of an ignition interlock system on each of the motor vehicles;

(C) receive an assessment of the individual’s degree of abuse of alcohol and treatment as appropriate; and

(D) receive—

(i) in the case of the second offense—

(I) an assignment of not less than 30 days of community service; or

(II) not less than 5 days of imprisonment; and

(ii) in the case of the third or subsequent offense—

(I) an assignment of not less than 60 days of community service; or

(II) not less than 10 days of imprisonment.

(b) TRANSFER OF FUNDS.—

(1) FISCAL YEARS 2001 AND 2002.—On October 1, 2000, and October 1, 2001, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402—

(A) to be used for alcohol-impaired driving countermeasures; or

(B) to be directed to State and local law enforcement agencies for enforcement of

laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

(2) FISCAL YEAR 2003 AND FISCAL YEARS THEREAFTER.—On October 1, 2002, and each October 1 thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).

(3) USE FOR HAZARD ELIMINATION PROGRAM.—A State may elect to use all or a portion of the funds transferred under paragraph (1) or (2) for activities eligible under section 152.

(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out with funds transferred under paragraph (1) or (2), or used under paragraph (3), shall be 100 percent.

(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.—The amount to be transferred under paragraph (1) or (2) may be derived from one or more of the following:

(A) The apportionment of the State under section 104(b)(1).

(B) The apportionment of the State under section 104(b)(3).

(C) The apportionment of the State under section 104(b)(4).

(6) TRANSFER OF OBLIGATION AUTHORITY.—

(A) IN GENERAL.—If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall transfer an amount, determined under subparagraph (B), of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under section 402.

(B) AMOUNT.—The amount of obligation authority referred to in subparagraph (A) shall be determined by multiplying—

(i) the amount of funds transferred under subparagraph (A) to the apportionment of the State under section 402 for the fiscal year, by

(ii) the ratio that—

(I) the amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs, bears to

(II) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(7) LIMITATION ON APPLICABILITY OF OBLIGATION LIMITATION.—Notwithstanding any other provision of law, no limitation on the total of

obligations for highway safety programs under section 402 shall apply to funds transferred under this subsection to the apportionment of a State under such section.

(Added Pub. L. 105-178, title I, §1406(a), as added Pub. L. 105-206, title IX, §9005(a), July 22, 1998, 112 Stat. 845.)

#### EFFECTIVE DATE

Section effective simultaneously with enactment of Pub. L. 105-178 and to be treated as included in Pub. L. 105-178 at time of enactment, see section 9016 of Pub. L. 105-206, set out as an Effective Date of 1998 Amendment note under section 101 of this title.

### SUBCHAPTER II—INFRASTRUCTURE FINANCE

#### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 49 section 5323.

### § 181. Definitions

In this subchapter, the following definitions apply:

(1) **ELIGIBLE PROJECT COSTS.**—The term “eligible project costs” means amounts substantially all of which are paid by, or for the account of, an obligor in connection with a project, including the cost of—

(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

(B) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

(C) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

(2) **FEDERAL CREDIT INSTRUMENT.**—The term “Federal credit instrument” means a secured loan, loan guarantee, or line of credit authorized to be made available under this subchapter with respect to a project.

(3) **INVESTMENT-GRADE RATING.**—The term “investment-grade rating” means a rating category of BBB minus, Baa3, or higher assigned by a rating agency to project obligations offered into the capital markets.

(4) **LENDER.**—The term “lender” means any non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)), including—

(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) that is a qualified institutional buyer.

(5) **LINE OF CREDIT.**—The term “line of credit” means an agreement entered into by the

Secretary with an obligor under section 184 to provide a direct loan at a future date upon the occurrence of certain events.

(6) **LOAN GUARANTEE.**—The term “loan guarantee” means any guarantee or other pledge by the Secretary to pay all or part of the principal of and interest on a loan or other debt obligation issued by an obligor and funded by a lender.

(7) **LOCAL SERVICER.**—The term “local servicer” means—

(A) a State infrastructure bank established under this title; or

(B) a State or local government or any agency of a State or local government that is responsible for servicing a Federal credit instrument on behalf of the Secretary.

(8) **OBLIGOR.**—The term “obligor” means a party primarily liable for payment of the principal of or interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

(9) **PROJECT.**—The term “project” means—

(A) any surface transportation project eligible for Federal assistance under this title or chapter 53 of title 49;

(B) a project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible.<sup>1</sup>

(C) a project for intercity passenger bus or rail facilities and vehicles, including facilities and vehicles owned by the National Railroad Passenger Corporation and components of magnetic levitation transportation systems; and

(D) a project for publicly owned intermodal surface freight transfer facilities, other than seaports and airports, if the facilities are located on or adjacent to National Highway System routes or connections to the National Highway System.

(10) **PROJECT OBLIGATION.**—The term “project obligation” means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of a project, other than a Federal credit instrument.

(11) **RATING AGENCY.**—The term “rating agency” means a bond rating agency identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization.

(12) **SECURED LOAN.**—The term “secured loan” means a direct loan or other debt obligation issued by an obligor and funded by the Secretary in connection with the financing of a project under section 183.

(13) **STATE.**—The term “State” has the meaning given the term in section 101.

(14) **SUBSIDY AMOUNT.**—The term “subsidy amount” means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the provi-

<sup>1</sup> So in original. The period probably should be a semicolon.

sions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(15) SUBSTANTIAL COMPLETION.—The term ‘substantial completion’ means the opening of a project to vehicular or passenger traffic.

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 241.)

#### REFERENCES IN TEXT

The Securities Act of 1933, referred to in par. (4), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Internal Revenue Code of 1986, referred to in par. (4), is set out in Title 26, Internal Revenue Code.

The Federal Credit Reform Act of 1990, referred to in par. (14), is title V of Pub. L. 93-344, as added by Pub. L. 101-508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388-609, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

#### CONGRESSIONAL FINDINGS

Pub. L. 105-178, title I, §1502, June 9, 1998, 112 Stat. 241, provided that: ‘‘Congress finds that—

‘‘(1) a well-developed system of transportation infrastructure is critical to the economic well-being, health, and welfare of the people of the United States;

‘‘(2) traditional public funding techniques such as grant programs are unable to keep pace with the infrastructure investment needs of the United States because of budgetary constraints at the Federal, State, and local levels of government;

‘‘(3) major transportation infrastructure facilities that address critical national needs, such as intermodal facilities, border crossings, and multistate trade corridors, are of a scale that exceeds the capacity of Federal and State assistance programs in effect on the date of enactment of this Act [June 9, 1998];

‘‘(4) new investment capital can be attracted to infrastructure projects that are capable of generating their own revenue streams through user charges or other dedicated funding sources; and

‘‘(5) a Federal credit program for projects of national significance can complement existing funding resources by filling market gaps, thereby leveraging substantial private co-investment.’’

#### STATE INFRASTRUCTURE BANK PILOT PROGRAM

Pub. L. 105-178, title I, §1511, June 9, 1998, 112 Stat. 251, provided that:

‘‘(a) DEFINITIONS.—In this section:

‘‘(1) OTHER ASSISTANCE.—The term ‘other assistance’ includes any use of funds in an infrastructure bank—

‘‘(A) to provide credit enhancements;

‘‘(B) to serve as a capital reserve for bond or debt instrument financing;

‘‘(C) to subsidize interest rates;

‘‘(D) to ensure the issuance of letters of credit and credit instruments;

‘‘(E) to finance purchase and lease agreements with respect to transit projects;

‘‘(F) to provide bond or debt financing instrument security; and

‘‘(G) to provide other forms of debt financing and methods of leveraging funds that are approved by the Secretary and that relate to the project with respect to which the assistance is being provided.

‘‘(2) STATE.—The term ‘State’ has the meaning given the term under section 401 of title 23, United States Code.

‘‘(b) COOPERATIVE AGREEMENTS.—

‘‘(1) IN GENERAL.—

‘‘(A) PURPOSE OF AGREEMENTS.—Subject to this section, the Secretary may enter into cooperative agreements with the States of California, Florida, Missouri, and Rhode Island for the establishment of State infrastructure banks and multistate infrastructure banks for making loans and providing other assistance to public and private entities carrying out or proposing to carry out projects eligible for assistance under this section.

‘‘(B) CONTENTS OF AGREEMENTS.—Each cooperative agreement shall specify procedures and guidelines for establishing, operating, and providing assistance from the infrastructure bank.

‘‘(2) INTERSTATE COMPACTS.—If 2 or more States enter into a cooperative agreement under paragraph (1) with the Secretary for the establishment of a multistate infrastructure bank, Congress grants consent to those States to enter into an interstate compact establishing the bank in accordance with this section.

‘‘(c) FUNDING.—

‘‘(1) CONTRIBUTION.—Notwithstanding any other provision of law, the Secretary may allow, subject to subsection (h)(1), a State that enters into a cooperative agreement under this section to contribute to the infrastructure bank established by the State not to exceed—

‘‘(A)(i) the total amount of funds apportioned to the State under each of paragraphs (1), (3), and (4) of section 104(b) and section 144 of title 23, United States Code, excluding funds set aside under paragraphs (1) and (2) of section 133(d) of such title; and

‘‘(ii) the total amount of funds allocated to the State under section 105 of such title;

‘‘(B) the total amount of funds made available to the State or other Federal transit grant recipient for capital projects (as defined in section 5302 of title 49, United States Code) under sections 5307, 5309, and 5311 of such title; and

‘‘(C) the total amount of funds made available to the State under subtitle V of title 49, United States Code.

‘‘(2) CAPITALIZATION GRANT.—For the purposes of this section, Federal funds contributed to the infrastructure bank under this subsection shall constitute a capitalization grant for the infrastructure bank.

‘‘(3) SPECIAL RULE FOR URBANIZED AREAS OF OVER 200,000.—Funds that are apportioned or allocated to a State under section 104(b)(3) of title 23, United States Code, and attributed to urbanized areas of a State with a population of over 200,000 individuals under section 133(d)(2) of such title may be used to provide assistance from an infrastructure bank under this section with respect to a project only if the metropolitan planning organization designated for the area concurs, in writing, with the provision of the assistance.

‘‘(d) FORMS OF ASSISTANCE FROM INFRASTRUCTURE BANKS.—

‘‘(1) IN GENERAL.—An infrastructure bank established under this section may make loans or provide other assistance to a public or private entity in an amount equal to all or part of the cost of carrying out a project eligible for assistance under this section.

‘‘(2) SUBORDINATION OF LOANS.—The amount of any loan or other assistance provided for the project may be subordinated to any other debt financing for the project.

‘‘(3) INITIAL ASSISTANCE.—Initial assistance provided with respect to a project from Federal funds contributed to an infrastructure bank under this section shall not be made in the form of a grant.

‘‘(e) QUALIFYING PROJECTS.—

‘‘(1) IN GENERAL.—Subject to paragraph (2), funds in an infrastructure bank established under this section may be used only to provide assistance with respect to projects eligible for assistance under title 23, United States Code, for capital projects (as defined in

section 5302 of title 49, United States Code), or for any other project related to surface transportation that the Secretary determines to be appropriate.

“(2) INTERSTATE FUNDS.—Funds contributed to an infrastructure bank from funds apportioned to a State under section 104(b)(4) of title 23, United States Code, may be used only to provide assistance with respect to projects eligible for assistance under such paragraph.

“(3) RAIL PROGRAM FUNDS.—Funds contributed to an infrastructure bank from funds made available to a State under subtitle V of title 49, United States Code, shall be used in a manner consistent with any project description specified under the law making the funds available to the State.

“(f) INFRASTRUCTURE BANK REQUIREMENTS.—

“(1) IN GENERAL.—Subject to paragraph (2), in order to establish an infrastructure bank under this section, each State establishing such a bank shall—

“(A) contribute, at a minimum, to the bank from non-Federal sources an amount equal to 25 percent of the amount of each capitalization grant made to the State and contributed to the bank under subsection (c), except that if the State has a higher Federal share payable under section 120(b) of title 23, United States Code, the State shall be required to contribute only an amount commensurate with the higher Federal share;

“(B) ensure that the bank maintains on a continuing basis an investment grade rating on its debt issuances and its ability to pay claims under credit enhancement programs of the bank;

“(C) ensure that investment income generated by funds contributed to the bank will be—

“(i) credited to the bank;

“(ii) available for use in providing loans and other assistance to projects eligible for assistance from the bank; and

“(iii) invested in United States Treasury securities, bank deposits, or such other financing instruments as the Secretary may approve to earn interest to enhance the leveraging of projects assisted by the bank;

“(D) ensure that any loan from the bank will bear interest at or below market rates, as determined by the State, to make the project that is the subject of the loan feasible;

“(E) ensure that repayment of the loan from the bank will commence not later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later;

“(F) ensure that the term for repaying any loan will not exceed the lesser of—

“(i) 35 years after the date of the first payment on the loan under subparagraph (E); or

“(ii) the useful life of the investment; and

“(G) require the bank to make a biennial report to the Secretary and to make such other reports as the Secretary may require in guidelines.

“(2) WAIVERS BY THE SECRETARY.—The Secretary may waive a requirement of any of subparagraphs (C) through (G) of paragraph (1) with respect to an infrastructure bank if the Secretary determines that the waiver is consistent with the objectives of this section.

“(g) LIMITATION ON REPAYMENTS.—Notwithstanding any other provision of law, the repayment of a loan or other assistance provided from an infrastructure bank under this section may not be credited toward the non-Federal share of the cost of any project.

“(h) SECRETARIAL REQUIREMENTS.—In administering this section, the Secretary shall—

“(1) ensure that Federal disbursements shall be at an annual rate of not more than 20 percent of the amount designated by the State for State infrastructure bank capitalization under subsection (c)(1), except that the Secretary may disburse funds to a State in an amount needed to finance a specific project; and

“(2) revise cooperative agreements entered into with States under section 350 of the National High-

way System Designation Act of 1995 (Public Law 104-59 [set out below]) to comply with this section.

“(i) APPLICABILITY OF FEDERAL LAW.—

“(1) IN GENERAL.—The requirements of titles 23 and 49, United States Code, that would otherwise apply to funds made available under such title and projects assisted with those funds shall apply to—

“(A) funds made available under such title and contributed to an infrastructure bank established under this section, including the non-Federal contribution required under subsection (f); and

“(B) projects assisted by the bank through the use of the funds;

except to the extent that the Secretary determines that any requirement of such title (other than sections 113 and 114 of title 23 and section 5333 of title 49), is not consistent with the objectives of this section.

“(2) REPAYMENTS.—The requirements of titles 23 and 49, United States Code, shall apply to repayments from non-Federal sources to an infrastructure bank from projects assisted by the bank. Such a repayment shall be considered to be Federal funds.

“(j) UNITED STATES NOT OBLIGATED.—

“(1) IN GENERAL.—The contribution of Federal funds to an infrastructure bank established under this section shall not be construed as a commitment, guarantee, or obligation on the part of the United States to any third party. No third party shall have any right against the United States for payment solely by virtue of the contribution.

“(2) STATEMENT.—Any security or debt financing instrument issued by the infrastructure bank shall expressly state that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

“(k) MANAGEMENT OF FEDERAL FUNDS.—Sections 3335 and 6503 of title 31, United States Code, shall not apply to funds contributed under this section.

“(l) PROGRAM ADMINISTRATION.—

“(1) IN GENERAL.—A State may expend not to exceed 2 percent of the Federal funds contributed to an infrastructure bank established by the State under this section to pay the reasonable costs of administering the bank.

“(2) NON-FEDERAL FUNDS.—The limitation described in paragraph (1) shall not apply to non-Federal funds.”

#### STATE INFRASTRUCTURE BANK PILOT PROGRAM

Pub. L. 104-59, title III, §350, Nov. 28, 1995, 109 Stat. 618, provided that:

“(a) IN GENERAL.—

“(1) COOPERATIVE AGREEMENTS.—Subject to the provisions of this section, the Secretary [of Transportation] may enter into cooperative agreements with not to exceed 10 States for the establishment of State infrastructure banks and multistate infrastructure banks for making loans and providing other assistance to public and private entities carrying out or proposing to carry out projects eligible for assistance under this section.

“(2) INTERSTATE COMPACTS.—Congress grants consent to 2 or more of the States, entering into a cooperative agreement under paragraph (1) with the Secretary for the establishment of a multistate infrastructure bank, to enter into an interstate compact establishing such bank in accordance with this section.

“(b) FUNDING.—

“(1) SEPARATE ACCOUNTS.—An infrastructure bank established under this section shall maintain a separate highway account for Federal funds contributed to the bank under paragraph (2) and a separate transit account for Federal funds contributed to the bank under paragraph (3). No Federal funds contributed or credited to an account of an infrastructure bank established under this section may be commingled with Federal funds contributed or credited to any other account of such bank.

“(2) HIGHWAY ACCOUNT.—Notwithstanding any other provision of law, the Secretary may allow, subject to subsection (g)(1), a State entering into a cooperative agreement under this section to contribute not to exceed—

“(A) 10 percent of the funds apportioned to the State for each of fiscal years 1996 and 1997 under each of sections 104(b)(1), 104(b)(3), 104(b)(5)(B), 144, and 160 of title 23, United States Code, and section 1015 of the Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. 102-240, 23 U.S.C. 104 note]; and

“(B) 10 percent of the funds allocated to the State for each of such fiscal years under each of section 157 of such title and section 1013(c) of such Act [formerly 23 U.S.C. 157 note];

into the highway account of the infrastructure bank established by the State. Federal funds contributed to such account under this paragraph shall constitute for purposes of this section a capitalization grant for the highway account of the infrastructure bank.

“(3) TRANSIT ACCOUNT.—Notwithstanding any other provision of law, the Secretary may allow, subject to subsection (g)(1), a State entering into a cooperative agreement under this section, and any other Federal transit grant recipient, to contribute not to exceed 10 percent of the funds made available to the State or other Federal transit grant recipient in each of fiscal years 1996 and 1997 for capital projects under sections 5307, 5309, and 5311 of title 49, United States Code, into the transit account of the infrastructure bank established by the State. Federal funds contributed to such account under this paragraph shall constitute for purposes of this section a capitalization grant for the transit account of the infrastructure bank.

“(4) SPECIAL RULE FOR URBANIZED AREAS OF OVER 200,000.—Funds that are apportioned or allocated to a State under section 104(b)(3) or 160 of title 23, United States Code, or under section 1013(c) or 1015 of the Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. 102-240, 23 U.S.C. 104 note, formerly 157 note] and attributed to urbanized areas of a State with an urbanized population of over 200,000 under section 133(d)(3) of such title may be used to provide assistance with respect to a project only if the metropolitan planning organization designated for such area concurs, in writing, with the provision of such assistance.

“(c) FORMS OF ASSISTANCE FROM INFRASTRUCTURE BANKS.—An infrastructure bank established under this section may make loans or provide other assistance to a public or private entity in an amount equal to all or part of the cost of carrying out a project eligible for assistance under this section. The amount of any loan or other assistance provided for such project may be subordinated to any other debt financing for the project. Initial assistance provided with respect to a project from Federal funds contributed to an infrastructure bank under this section may not be made in the form of a grant.

“(d) QUALIFYING PROJECTS.—Federal funds in the highway account of an infrastructure bank established under this section may be used only to provide assistance with respect to construction of Federal-aid highways. Federal funds in the transit account of such bank may be used only to provide assistance with respect to capital projects.

“(e) INFRASTRUCTURE BANK REQUIREMENTS.—In order to establish an infrastructure bank under this section, each State establishing the bank shall—

“(1) contribute, at a minimum, in each account of the bank from non-Federal sources an amount equal to 25 percent of the amount of each capitalization grant made to the State and contributed to the bank; except that if the contribution is into the highway account of the bank and the State has a lower non-Federal share under section 120(b) of title 23, United States Code, such percentage shall be adjusted by the Secretary to correspond with such lower non-Federal share;

“(2) ensure that the bank maintains on a continuing basis an investment grade rating on its debt issuances or has a sufficient level of bond or debt financing instrument insurance to maintain the viability of the bank;

“(3) ensure that investment income generated by funds contributed to an account of the bank will be—

“(A) credited to the account;

“(B) available for use in providing loans and other assistance to projects eligible for assistance from the account; and

“(C) invested in United States Treasury securities, bank deposits, or such other financing instruments as the Secretary may approve to earn interest to enhance the leveraging of projects assisted by the bank;

“(4) provide that the repayment of a loan or other assistance from an account of the bank under this section shall be consistent with the repayment provisions of section 129(a)(7) of title 23, United States Code, except to the extent the Secretary determines that such provisions are not consistent with this section;

“(5) ensure that any loan from the bank will bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible;

“(6) ensure that repayment of any loan from the bank will commence not later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later;

“(7) ensure that the term for repaying any loan will not exceed 30 years after the date of the first payment on the loan under paragraph (6); and

“(8) require the bank to make an annual report to the Secretary on its status no later than September 30, 1996, and September 30, 1997, and to make such other reports as the Secretary may require by guidelines.

“(f) LIMITATION ON REPAYMENTS.—Notwithstanding any other provision of law, the repayment of a loan or other assistance provided from an infrastructure bank under this section may not be credited towards the non-Federal share of the cost of any project.

“(g) SECRETARIAL REQUIREMENTS.—In administering this section, the Secretary shall—

“(1) ensure that Federal disbursements shall be at a rate consistent with historic rates for the Federal-aid highway program and the Federal transit program, respectively;

“(2) issue guidelines to ensure that all requirements of title 23, United States Code, or title 49, United States Code, that would otherwise apply to funds made available under such title and projects assisted with such funds apply to—

“(A) funds made available under such title and contributed to an infrastructure bank established under this section; and

“(B) projects assisted by the bank through the use of such funds;

except to the extent that the Secretary determines that any requirement of such title is not consistent with the objectives of this section; and

“(3) specify procedures and guidelines for establishing, operating, and providing assistance from the bank.

“(h) UNITED STATES NOT OBLIGATED.—The contribution of Federal funds into an infrastructure bank established under this section shall not be construed as a commitment, guarantee, or obligation on the part of the United States to any third party, nor shall any third party have any right against the United States for payment solely by virtue of the contribution. Any security or debt financing instrument issued by the infrastructure bank shall expressly state that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

“(i) MANAGEMENT OF FEDERAL FUNDS.—Sections 3335 and 6503 of title 31, United States Code, shall not apply to funds contributed under this section.

“(j) PROGRAM ADMINISTRATION.—For each of fiscal years 1996 and 1997, a State may expend not to exceed 2 percent of the Federal funds contributed to an infrastructure bank established by the State under this section to pay the reasonable costs of administering the bank.

“(k) SECRETARIAL REVIEW.—The Secretary shall review the financial condition of each infrastructure bank established under this section and transmit to Congress a report on the results of such review not later than March 1, 1997. In addition, the report shall contain—

“(1) an evaluation of the pilot program conducted under this section and the ability of such program to increase public investment and attract non-Federal capital; and

“(2) recommendations of the Secretary as to whether the program should be expanded or made a part of the Federal-aid highway and transit programs.

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

“(1) CAPITAL PROJECT.—The term ‘capital project’ has the meaning such term has under section 5302 of title 49, United States Code.

“(2) CONSTRUCTION; FEDERAL-AID HIGHWAY.—The terms ‘construction’ and ‘Federal-aid highway’ have the meanings such terms have under section 101 of title 23, United States Code.

“(3) OTHER ASSISTANCE.—The term ‘other assistance’ includes any use of funds in an infrastructure bank—

“(A) to provide credit enhancements;

“(B) to serve as a capital reserve for bond or debt instrument financing;

“(C) to subsidize interest rates;

“(D) to ensure the issuance of letters of credit and credit instruments;

“(E) to finance purchase and lease agreements with respect to transit projects;

“(F) to provide bond or debt financing instrument security; and

“(G) to provide other forms of debt financing and methods of leveraging funds that are approved by the Secretary and that relate to the project with respect to which such assistance is being provided.

“(4) STATE.—The term ‘State’ has the meaning such term has under section 101 of title 23, United States Code.”

### § 182. Determination of eligibility and project selection

(a) ELIGIBILITY.—To be eligible to receive financial assistance under this subchapter, a project shall meet the following criteria:

(1) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—The project—

(A) shall be included in the State transportation plan required under section 135; and

(B) at such time as an agreement to make available a Federal credit instrument is entered into under this subchapter, shall be included in the approved State transportation improvement program required under section 134.

(2) APPLICATION.—A State, a local servicer identified under section 185(a), or the entity undertaking the project shall submit a project application to the Secretary.

(3) ELIGIBLE PROJECT COSTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), to be eligible for assistance under this subchapter, a project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of—

(i) \$100,000,000; or

(ii) 50 percent of the amount of Federal highway assistance funds apportioned for the most recently completed fiscal year to the State in which the project is located.

(B) INTELLIGENT TRANSPORTATION SYSTEM PROJECTS.—In the case of a project principally involving the installation of an intelligent transportation system, eligible project costs shall be reasonably anticipated to equal or exceed \$30,000,000.

(4) DEDICATED REVENUE SOURCES.—Project financing shall be repayable, in whole or in part, from tolls, user fees, or other dedicated revenue sources.

(5) PUBLIC SPONSORSHIP OF PRIVATE ENTITIES.—In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be publicly sponsored as provided in paragraphs (1) and (2).

(b) SELECTION AMONG ELIGIBLE PROJECTS.—

(1) ESTABLISHMENT.—The Secretary shall establish criteria for selecting among projects that meet the eligibility criteria specified in subsection (a).

(2) SELECTION CRITERIA.—

(A) IN GENERAL.—The selection criteria shall include the following:

(i) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system.

(ii) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment.

(iii) The extent to which assistance under this subchapter would foster innovative public-private partnerships and attract private debt or equity investment.

(iv) The likelihood that assistance under this subchapter would enable the project to proceed at an earlier date than the project would otherwise be able to proceed.

(v) The extent to which the project uses new technologies, including intelligent transportation systems, that enhance the efficiency of the project.

(vi) The amount of budget authority required to fund the Federal credit instrument made available under this subchapter.

(vii) The extent to which the project helps maintain or protect the environment.

(viii) The extent to which assistance under this chapter would reduce the contribution of Federal grant assistance to the project.

(B) PRELIMINARY RATING OPINION LETTER.—For purposes of subparagraph (A)(ii), the Secretary shall require each project applicant to provide a preliminary rating opinion letter from at least 1 rating agency indicat-

ing that the project's senior obligations have the potential to achieve an investment-grade rating.

(c) **FEDERAL REQUIREMENTS.**—In addition to the requirements of this title for highway projects, chapter 53 of title 49 for transit projects, and section 5333(a) of title 49 for rail projects, the following provisions of law shall apply to funds made available under this subchapter and projects assisted with the funds:

(1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(2) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 243.)

#### REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (c)(1), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 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 2000a of Title 42 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (c)(2), 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.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (c)(3), is act Jan. 2, 1971, Pub. L. 91-646, 84 Stat. 1894, as amended, and which is classified principally to chapter 61 (§4601 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 4601 of Title 42 and Tables.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 183, 184 of this title.

### § 183. Secured loans

(a) **IN GENERAL.**—

(1) **AGREEMENTS.**—Subject to paragraphs (2) through (4), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—

(A) to finance eligible project costs; or

(B) to refinance interim construction financing of eligible project costs;

of any project selected under section 182.

(2) **LIMITATION ON REFINANCING OF INTERIM CONSTRUCTION FINANCING.**—A loan under paragraph (1) shall not refinance interim construction financing under paragraph (1)(B) later than 1 year after the date of substantial completion of the project.

(3) **RISK ASSESSMENT.**—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 182(b)(2)(B), shall determine an appropriate capital reserve

subsidy amount for each secured loan, taking into account such letter.

(4) **INVESTMENT-GRADE RATING REQUIREMENT.**—The funding of a secured loan under this section shall be contingent on the project's senior obligations receiving an investment-grade rating, except that—

(A) the Secretary may fund an amount of the secured loan not to exceed the capital reserve subsidy amount determined under paragraph (3) prior to the obligations receiving an investment-grade rating; and

(B) the Secretary may fund the remaining portion of the secured loan only after the obligations have received an investment-grade rating by at least 1 rating agency.

(b) **TERMS AND LIMITATIONS.**—

(1) **IN GENERAL.**—A secured loan under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.

(2) **MAXIMUM AMOUNT.**—The amount of the secured loan shall not exceed 33 percent of the reasonably anticipated eligible project costs.

(3) **PAYMENT.**—The secured loan—

(A) shall—

(i) be payable, in whole or in part, from tolls, user fees, or other dedicated revenue sources; and

(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

(B) may have a lien on revenues described in subparagraph (A) subject to any lien securing project obligations.

(4) **INTEREST RATE.**—The interest rate on the secured loan shall be not less than the yield on marketable United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

(5) **MATURITY DATE.**—The final maturity date of the secured loan shall be not later than 35 years after the date of substantial completion of the project.

(6) **NONSUBORDINATION.**—The secured loan shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

(7) **FEES.**—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.

(8) **NON-FEDERAL SHARE.**—The proceeds of a secured loan under this subchapter may be used for any non-Federal share of project costs required under this title or chapter 53 of title 49, if the loan is repayable from non-Federal funds.

(c) **REPAYMENT.**—

(1) **SCHEDULE.**—The Secretary shall establish a repayment schedule for each secured loan under this section based on the projected cash flow from project revenues and other repayment sources.

(2) **COMMENCEMENT.**—Scheduled loan repayments of principal or interest on a secured



loan under this section shall commence not later than 5 years after the date of substantial completion of the project.

(3) SOURCES OF REPAYMENT FUNDS.—The sources of funds for scheduled loan repayments under this section shall include tolls, user fees, or other dedicated revenue sources.

(4) DEFERRED PAYMENTS.—

(A) AUTHORIZATION.—If, at any time during the 10 years after the date of substantial completion of the project, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Secretary may, subject to subparagraph (C), allow the obligor to add unpaid principal and interest to the outstanding balance of the secured loan.

(B) INTEREST.—Any payment deferred under subparagraph (A) shall—

(i) continue to accrue interest in accordance with subsection (b)(4) until fully repaid; and

(ii) be scheduled to be amortized over the remaining term of the loan beginning not later than 10 years after the date of substantial completion of the project in accordance with paragraph (1).

(C) CRITERIA.—

(i) IN GENERAL.—Any payment deferral under subparagraph (A) shall be contingent on the project meeting criteria established by the Secretary.

(ii) REPAYMENT STANDARDS.—The criteria established under clause (i) shall include standards for reasonable assurance of repayment.

(5) PREPAYMENT.—

(A) USE OF EXCESS REVENUES.—Any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay the secured loan without penalty.

(B) USE OF PROCEEDS OF REFINANCING.—The secured loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

(d) SALE OF SECURED LOANS.—

(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable after substantial completion of a project and after notifying the obligor, the Secretary may sell to another entity or reoffer into the capital markets a secured loan for the project if the Secretary determines that the sale or reoffering can be made on favorable terms.

(2) CONSENT OF OBLIGOR.—In making a sale or reoffering under paragraph (1), the Secretary may not change the original terms and conditions of the secured loan without the written consent of the obligor.

(e) LOAN GUARANTEES.—

(1) IN GENERAL.—The Secretary may provide a loan guarantee to a lender in lieu of making a secured loan if the Secretary determines

that the budgetary cost of the loan guarantee is substantially the same as that of a secured loan.

(2) TERMS.—The terms of a guaranteed loan shall be consistent with the terms set forth in this section for a secured loan, except that the rate on the guaranteed loan and any prepayment features shall be negotiated between the obligor and the lender, with the consent of the Secretary.

(Added Pub. L. 105-178, title I, § 1503(a), June 9, 1998, 112 Stat. 245.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 181, 184 of this title.

### § 184. Lines of credit

(a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements to make available lines of credit to 1 or more obligors in the form of direct loans to be made by the Secretary at future dates on the occurrence of certain events for any project selected under section 182.

(2) USE OF PROCEEDS.—The proceeds of a line of credit made available under this section shall be available to pay debt service on project obligations issued to finance eligible project costs, extraordinary repair and replacement costs, operation and maintenance expenses, and costs associated with unexpected Federal or State environmental restrictions.

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 182(b)(2)(B), shall determine an appropriate capital reserve subsidy amount for each line of credit, taking into account such letter.

(4) INVESTMENT-GRADE RATING REQUIREMENT.—The funding of a line of credit under this section shall be contingent on the project's senior obligations receiving an investment-grade rating from at least 1 rating agency.

(b) TERMS AND LIMITATIONS.—

(1) IN GENERAL.—A line of credit under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.

(2) MAXIMUM AMOUNTS.—

(A) TOTAL AMOUNT.—The total amount of the line of credit shall not exceed 33 percent of the reasonably anticipated eligible project costs.

(B) 1-YEAR DRAWS.—The amount drawn in any 1 year shall not exceed 20 percent of the total amount of the line of credit.

(3) DRAWS.—Any draw on the line of credit shall represent a direct loan and shall be made only if net revenues from the project (including capitalized interest, any debt service reserve fund, and any other available reserve)

are insufficient to pay the costs specified in subsection (a)(2).

(4) **INTEREST RATE.**—The interest rate on a direct loan resulting from a draw on the line of credit shall be not less than the yield on 30-year marketable United States Treasury securities as of the date on which the line of credit is obligated.

(5) **SECURITY.**—The line of credit—

(A) shall—

(i) be payable, in whole or in part, from tolls, user fees, or other dedicated revenue sources; and

(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

(B) may have a lien on revenues described in subparagraph (A) subject to any lien securing project obligations.

(6) **PERIOD OF AVAILABILITY.**—The line of credit shall be available during the period beginning on the date of substantial completion of the project and ending not later than 10 years after that date.

(7) **RIGHTS OF THIRD-PARTY CREDITORS.**—

(A) **AGAINST FEDERAL GOVERNMENT.**—A third-party creditor of the obligor shall not have any right against the Federal Government with respect to any draw on the line of credit.

(B) **ASSIGNMENT.**—An obligor may assign the line of credit to 1 or more lenders or to a trustee on the lenders' behalf.

(8) **NONSUBORDINATION.**—A direct loan under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

(9) **FEES.**—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of providing a line of credit under this section.

(10) **RELATIONSHIP TO OTHER CREDIT INSTRUMENTS.**—A project that receives a line of credit under this section also shall not receive a secured loan or loan guarantee under section 183 of an amount that, combined with the amount of the line of credit, exceeds 33 percent of eligible project costs.

(c) **REPAYMENT.**—

(1) **TERMS AND CONDITIONS.**—The Secretary shall establish repayment terms and conditions for each direct loan under this section based on the projected cash flow from project revenues and other repayment sources.

(2) **TIMING.**—All scheduled repayments of principal or interest on a direct loan under this section shall commence not later than 5 years after the end of the period of availability specified in subsection (b)(6) and be fully repaid, with interest, by the date that is 25 years after the end of the period of availability specified in subsection (b)(6).

(3) **SOURCES OF REPAYMENT FUNDS.**—The sources of funds for scheduled loan repayments under this section shall include tolls, user fees, or other dedicated revenue sources.

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 247.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 181 of this title.

### § 185. Project servicing

(a) **REQUIREMENT.**—The State in which a project that receives financial assistance under this subchapter is located may identify a local servicer to assist the Secretary in servicing the Federal credit instrument made available under this subchapter.

(b) **AGENCY; FEES.**—If a State identifies a local servicer under subsection (a), the local servicer—

(1) shall act as the agent for the Secretary; and

(2) may receive a servicing fee, subject to approval by the Secretary.

(c) **LIABILITY.**—A local servicer identified under subsection (a) shall not be liable for the obligations of the obligor to the Secretary or any lender.

(d) **ASSISTANCE FROM EXPERT FIRMS.**—The Secretary may retain the services of expert firms in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 249.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 182 of this title.

### § 186. State and local permits

The provision of financial assistance under this subchapter with respect to a project shall not—

(1) relieve any recipient of the assistance of any obligation to obtain any required State or local permit or approval with respect to the project;

(2) limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project; or

(3) otherwise supersede any State or local law (including any regulation) applicable to the construction or operation of the project.

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 249.)

### § 187. Regulations

The Secretary may issue such regulations as the Secretary determines appropriate to carry out this subchapter.

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 249.)

### § 188. Funding

(a) **FUNDING.**—

(1) **IN GENERAL.**—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subchapter—

(A) \$80,000,000 for fiscal year 1999;

(B) \$90,000,000 for fiscal year 2000;

(C) \$110,000,000 for fiscal year 2001;

(D) \$120,000,000 for fiscal year 2002; and

(E) \$130,000,000 for fiscal year 2003.

(2) ADMINISTRATIVE COSTS.—From funds made available under paragraph (1), the Secretary may use, for the administration of this subchapter, not more than \$2,000,000 for each of fiscal years 1999 through 2003.

(3) AVAILABILITY.—Amounts made available under paragraph (1) shall remain available until expended.

(b) CONTRACT AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, approval by the Secretary of a Federal credit instrument that uses funds made available under this subchapter shall be deemed to be acceptance by the United States of a contractual obligation to fund the Federal credit instrument.

(2) AVAILABILITY.—Amounts authorized under this section for a fiscal year shall be available for obligation on October 1 of the fiscal year.

(c) LIMITATIONS ON CREDIT AMOUNTS.—For each of fiscal years 1999 through 2003, principal amounts of Federal credit instruments made available under this subchapter shall be limited to the amounts specified in the following table:

Fiscal year:	Maximum amount of credit:
1999 .....	\$1,600,000,000
2000 .....	\$1,800,000,000
2001 .....	\$2,200,000,000
2002 .....	\$2,400,000,000
2003 .....	\$2,600,000,000.

(Added and amended Pub. L. 105-178, title I, §1503(a), (c), June 9, 1998, 112 Stat. 249; Pub. L. 105-206, title IX, §9007(a), July 22, 1998, 112 Stat. 849.)

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105-178, §1503(c)(1), as added by Pub. L. 105-206, §9007(a), substituted “1999” for “1998”.

Subsec. (c). Pub. L. 105-178, §1503(c)(2), as added by Pub. L. 105-206, §9007(a), substituted “1999” for “1998” in introductory provisions, and substituted table for former table which read as follows:

“Fiscal year:	Maximum amount of credit:
1998 .....	\$1,200,000,000
1999 .....	\$1,200,000,000
2000 .....	\$1,800,000,000
2001 .....	\$1,800,000,000
2002 .....	\$2,300,000,000
2003 .....	\$2,300,000,000.”

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 this title.

§ 189. Report to Congress

Not later than 4 years after the date of enactment of this subchapter, the Secretary shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance under this subchapter, including a recommendation as to

whether the objectives of this subchapter are best served—

(1) by continuing the program under the authority of the Secretary;

(2) by establishing a Government corporation or Government-sponsored enterprise to administer the program; or

(3) by phasing out the program and relying on the capital markets to fund the types of infrastructure investments assisted by this subchapter without Federal participation.

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 250.)

REFERENCES IN TEXT

The date of enactment of this subchapter, referred to in text, is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

CHAPTER 2—OTHER HIGHWAYS

Sec.	
201.	Authorizations.
202.	Allocations.
203.	Availability of funds.
204.	Federal lands highways program. <sup>1</sup>
205.	Forest development roads and trails.
206.	Recreational trails program.
207.	Repealed.
208.	Repealed.
209.	Repealed.
210.	Defense access roads.
[211.	Repealed.]
212.	Inter-American Highway.
[213.	Repealed.]
214.	Public lands development roads and trails.
215.	Territories highway development program. <sup>1</sup>
216.	Darien Gap Highway.
217.	Bicycle transportation and pedestrian walkways.
218.	Alaska Highway.
[219.	Repealed.]

AMENDMENTS

1998—Pub. L. 105-178, title I, §1112(b), June 9, 1998, 112 Stat. 151, substituted “Recreational trails program” for “Repealed” in item 206.

1987—Pub. L. 100-17, title I, §133(e)(1), Apr. 2, 1987, 101 Stat. 173, struck out items 211 “Timber access road hearings”, 213 “Rama Road”, and 219 “Safer of off-system roads”.

1983—Pub. L. 97-424, title I, §126(e)(1), Jan. 6, 1983, 96 Stat. 2115, substituted “Allocations” for “Apportionment for allocation” in item 202.

Pub. L. 97-424, title I, §126(e)(2), Jan. 6, 1983, 96 Stat. 2115, substituted “Federal lands highways programs” for “Forest highways” in item 204.

Pub. L. 97-424, title I, §126(e)(3), Jan. 6, 1983, 96 Stat. 2116, substituted “Repealed” in items 206 through 209 which read “Park roads and trails”, “Parkways”, “Indian reservation roads”, “Public lands highways”, respectively.

1976—Pub. L. 94-280, title I, §135(b), May 5, 1976, 90 Stat. 442, substituted item 219 “Safer of off-system roads” for “Off-system roads”.

1975—Pub. L. 93-643, §122(b), Jan. 4, 1975, 88 Stat. 2290, added item 219.

1973—Pub. L. 93-87, title I, §§124(b), 127(a)(2), Aug. 13, 1973, 87 Stat. 262, 264, added items 217 and 218.

1970—Pub. L. 91-605, title I, §112(b), 113(b), Dec. 31, 1970, 84 Stat. 1721, 1722, added items 215 and 216.

1962—Pub. L. 87-866, §6(c), Oct. 23, 1962, 76 Stat. 1147, added item 214.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 101, 104, 134, 135, 317 of this title; title 49 sections 5303, 5304.

<sup>1</sup> So in original. Does not conform to section catchline.

**§ 201. Authorizations**

The provision of this title shall apply to all unappropriated authorizations contained in prior Acts, and also to all unexpended appropriations heretofore made, providing for the expenditure of Federal funds on the following classes of highways: Forest highways, forest development roads and trails, park road, parkways, Indian reservation roads, refuge roads, public lands highways, and defense access roads. All such authorizations and appropriations shall continue in full force and effect, but hereafter obligations entered into and expenditures made pursuant thereto shall be subject to the provisions of this title.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 906; Pub. L. 97-424, title I, §126(f), Jan. 6, 1983, 96 Stat. 2116; Pub. L. 105-178, title I, §1115(e)(1), June 9, 1998, 112 Stat. 158.)

**AMENDMENTS**

1998—Pub. L. 105-178 inserted “refuge roads,” after “Indian reservation roads.”

1983—Pub. L. 97-424 substituted “park road” for “park roads and trails” after “forest development roads and trails.”

**§ 202. Allocations**

(a) On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for forest development roads and trails according to the relative needs of the various national forests. Such allocation shall be consistent with the renewable resource and land use planning for the various national forests.

(b) On October 1 of each fiscal year, the Secretary shall allocate 34 percent of the sums authorized to be appropriated for such fiscal year for public lands highways among those States having unappropriated or unreserved public lands, nontaxable Indian lands or other Federal reservations, on the basis of need in such States, respectively, as determined by the Secretary upon application of the State transportation departments of the respective States. The Secretary shall give preference to those projects which are significantly impacted by Federal land and resource management activities which are proposed by a State which contains at least 3 percent of the total public lands in the Nation. The Secretary shall allocate 66 percent of the remainder of the authorization for public lands highways for each fiscal year as is provided in section 134 of the Federal-Aid Highway Act of 1987, and with respect to these allocations the Secretary shall give equal consideration to projects that provide access to and within the National Forest System, as identified by the Secretary of Agriculture through renewable resources and land use planning and the impact of such planning on existing transportation facilities.

(c) On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for park roads and parkways each according to the relative needs of the various elements of the national park system, taking into consideration the need for access as identified through land use plan-

ning and the impact of such planning on existing transportation facilities.

**(d) INDIAN RESERVATION ROADS.—**

(1) FOR FISCAL YEARS ENDING BEFORE OCTOBER 1, 1999.—On October 1 of each fiscal year ending before October 1, 1999, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for Indian reservation roads according to the relative needs of the various reservations as jointly identified by the Secretary and the Secretary of the Interior.

**(2) FISCAL YEAR 2000 AND THEREAFTER.—**

(A) IN GENERAL.—All funds authorized to be appropriated for Indian reservation roads shall be allocated among Indian tribes for fiscal year 2000 and each subsequent fiscal year in accordance with a formula established by the Secretary of the Interior under a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5.

(B) REGULATIONS.—Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary of the Interior shall issue regulations governing the Indian reservation roads program, and establishing the funding formula for fiscal year 2000 and each subsequent fiscal year under this paragraph, in accordance with a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5. The regulations shall be issued in final form not later than April 1, 1999, and shall take effect not later than October 1, 1999.

(C) NEGOTIATED RULEMAKING COMMITTEE.—In establishing a negotiated rulemaking committee to carry out subparagraph (B), the Secretary of the Interior shall—

(i) apply the procedures under subchapter III of chapter 5 of title 5 in a manner that reflects the unique government-to-government relationship between the Indian tribes and the United States; and

(ii) ensure that the membership of the committee includes only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes.

(D) BASIS FOR FUNDING FORMULA.—The funding formula established for fiscal year 2000 and each subsequent fiscal year under this paragraph shall be based on factors that reflect—

(i) the relative needs of the Indian tribes, and reservation or tribal communities, for transportation assistance; and

(ii) the relative administrative capacities of, and challenges faced by, various Indian tribes, including the cost of road construction in each Bureau of Indian Affairs area, geographic isolation and difficulty in maintaining all-weather access to employment, commerce, health, safety, and educational resources.

**(3) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.—**

(A) IN GENERAL.—Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available under this title for Indian reservation roads

and for highway bridges located on Indian reservation roads to pay for the costs of programs, services, functions, and activities, or portions thereof, that are specifically or functionally related to the cost of planning, research, engineering, and construction of any highway, road, bridge, parkway, or transit facility that provides access to or is located within the reservation or community of an Indian tribe shall be made available, upon request of the Indian tribal government, to the Indian tribal government for contracts and agreements for such planning, research, engineering, and construction in accordance with the Indian Self-Determination and Education Assistance Act.

(B) EXCLUSION OF AGENCY PARTICIPATION.—Funds for programs, functions, services, or activities, or portions thereof, including supportive administrative functions that are otherwise contractible to which subparagraph (A) applies, shall be paid in accordance with subparagraph (A) without regard to the organizational level at which the Department of the Interior that has previously carried out such programs, functions, services, or activities.

(4) RESERVATION OF FUNDS.—

(A) NATIONWIDE PRIORITY PROGRAM.—The Secretary shall establish a nationwide priority program for improving deficient Indian reservation road bridges.

(B) RESERVATION.—Of the amounts authorized to be appropriated for Indian reservation roads for each fiscal year, the Secretary, in cooperation with the Secretary of the Interior, shall reserve not less than \$13,000,000 for projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures for deficient Indian reservation road bridges, including multiple-pipe culverts.

(C) ELIGIBLE BRIDGES.—To be eligible to receive funding under this subsection, a bridge described in subparagraph (A) must—

- (i) have an opening of 20 feet or more;
- (ii) be on an Indian reservation road;
- (iii) be unsafe because of structural deficiencies, physical deterioration, or functional obsolescence; and
- (iv) be recorded in the national bridge inventory administered by the Secretary under subsection (b).

(D) APPROVAL REQUIREMENT.—Funds to carry out Indian reservation road bridge projects under this subsection shall be made available only on approval of plans, specifications, and estimates by the Secretary.

(e) REFUGE ROADS.—On October 1 of each fiscal year, the Secretary shall allocate the sums made available for that fiscal year for refuge roads according to the relative needs of the various refuges in the National Wildlife Refuge System, and taking into consideration—

- (1) the comprehensive conservation plan for each refuge;

- (2) the need for access as identified through land use planning; and

- (3) the impact of land use planning on existing transportation facilities.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 906; Pub. L. 94-280, title I, §133, May 5, 1976, 90 Stat. 441; Pub. L. 97-424, title I, §126(a), Jan. 6, 1983, 96 Stat. 2113; Pub. L. 102-240, title I, §1032(a), Dec. 18, 1991, 105 Stat. 1974; Pub. L. 105-178, title I, §§1115(b), (e)(2), (f)(2), 1212(a)(2)(A)(ii), June 9, 1998, 112 Stat. 154, 158, 193; Pub. L. 105-206, title IX, §9002(i), July 22, 1998, 112 Stat. 836.)

#### REFERENCES IN TEXT

Section 134 of the Federal-Aid Highway Act of 1987, referred to in subsec. (b), is section 134 of Pub. L. 100-17, which is set out below.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (d)(3)(A), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

#### AMENDMENTS

1998—Subsec. (b). Pub. L. 105-178, §1212(a)(2)(A)(ii), substituted “State transportation departments” for “State highway departments”.

Subsec. (d). Pub. L. 105-178, §1115(b), inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, realigned margins, inserted “ending before October 1, 1999” after “each fiscal year”, and added pars. (2) to (4).

Subsec. (d)(4)(B). Pub. L. 105-178, §1115(f)(2), as added by Pub. L. 105-206, §9002(i), substituted “, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions” for “to, apply sodium acetate/formate de-icer to.”

Subsec. (e). Pub. L. 105-178, §1115(e)(2), added subsec. (e).

1991—Subsec. (a). Pub. L. 102-240, §1032(a)(1), (2), redesignated subsec. (b) as (a) and struck out former subsec. (a) which read as follows: “On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for forest highways according to the relative needs of the various elements of the national forest system as determined by the Secretary, taking into consideration the need for access as identified by the Secretary of Agriculture through renewable resource and land use planning, and the impact of such planning on existing transportation facilities.”

Subsec. (b). Pub. L. 102-240, §1032(a)(2)-(4), redesignated subsec. (c) as (b), inserted “34 percent of” after “allocate”, and substituted for period at end “which are proposed by a State which contains at least 3 percent of the total public lands in the Nation. The Secretary shall allocate 66 percent of the remainder of the authorization for public lands highways for each fiscal year as is provided in section 134 of the Federal-Aid Highway Act of 1987, and with respect to these allocations the Secretary shall give equal consideration to projects that provide access to and within the National Forest System, as identified by the Secretary of Agriculture through renewable resources and land use planning and the impact of such planning on existing transportation facilities.” Former subsec. (b) redesignated (a).

Subsecs. (c) to (e). Pub. L. 102-240, §1032(a)(2), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (c) redesignated (b).

1983—Subsec. (a). Pub. L. 97-424 substituted provisions relating to allocation of sums authorized to be appropriated by the Secretary for provisions relating to apportionment of sums authorized to be appropriated by the Secretary.

Subsec. (b). Pub. L. 97-424 substituted provisions requiring allocation of sums on October 1 of each fiscal year to be consistent with renewable resource and land use planning for provisions requiring allocation of sums to take into consideration existing transportation facilities, value of resources served, fire danger, and road and trail construction difficulties.

Subsec. (c). Pub. L. 97-424 inserted provisions requiring allocation of sums on October 1 of each fiscal year, and substituted provisions requiring preferences to be given to projects impacted by Federal land and resource management for provisions requiring preferences to be given to projects located on a Federal-aid system.

Subsecs. (d), (e). Pub. L. 97-424 added subsecs. (d) and (e).

1976—Subsec. (a). Pub. L. 94-280 substituted introductory “On October 1 of each fiscal year” for “On or before January 1 next preceding the commencement of each fiscal year”.

#### 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 this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### ADDITIONAL AUTHORIZATION OF CONTRACT AUTHORITY FOR STATES WITH INDIAN RESERVATIONS

Pub. L. 105-178, title I, §1214(d), June 9, 1998, 112 Stat. 205, provided that:

“(1) AVAILABILITY TO STATES.—Not later than October 1 of each fiscal year, funds made available under paragraph (5) for the fiscal year shall be made available by the Secretary, in equal amounts, to each State that has within the boundaries of the State all or part of an Indian reservation having a land area of 10,000,000 acres or more.

“(2) AVAILABILITY TO ELIGIBLE COUNTIES.—

“(A) IN GENERAL.—Each fiscal year, each county that is located in a State to which funds are made available under paragraph (1), and that has in the county a public road described in subparagraph (B), shall be eligible to apply to the State for all or a portion of the funds made available to the State under this subsection to be used by the county to maintain such roads.

“(B) ROADS.—A public road referred to in subparagraph (A) is a public road that—

“(i) is within, adjacent to, or provides access to an Indian reservation described in paragraph (1);

“(ii) is used by a school bus to transport children to or from a school or Headstart program carried out under the Head Start Act (42 U.S.C. 9831 et seq.); and

“(iii) is maintained by the county in which the public road is located.

“(C) ALLOCATION AMONG ELIGIBLE COUNTIES.—

“(i) IN GENERAL.—Except as provided in clause (ii), each State that receives funds under paragraph (1) shall provide directly to each county that applies for funds the amount that the county requests in the application.

“(ii) ALLOCATION AMONG ELIGIBLE COUNTIES.—If the total amount of funds applied for under this subsection by eligible counties in a State exceeds

the amount of funds available to the State, the State shall equitably allocate the funds among the eligible counties that apply for funds.

“(3) SUPPLEMENTARY FUNDING.—For each fiscal year, the Secretary shall ensure that funding made available under this subsection supplements (and does not supplant)—

“(A) any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations; and

“(B) any funding provided by a State to a county for road maintenance programs in the county.

“(4) USE OF UNALLOCATED FUNDS.—Any portion of the funds made available to a State under this subsection that is not made available to counties within 1 year after the funds are made available to the State shall be apportioned among the States in accordance with section 104(b) of title 23, United States Code.

“(5) FUNDING.—

“(A) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection \$1,500,000 for each of fiscal years 1998 through 2003.

“(B) CONTRACT AUTHORITY.—Funds authorized by this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.”

#### INDIAN RESERVATION ROADS

Section 1032(d) of Pub. L. 102-240 provided that: “Notwithstanding any other provision of law, funds allocated for Indian reservation roads may be used for the purpose of funding road projects on roads of tribally controlled postsecondary vocational institutions.”

Pub. L. 102-240, title I, §1042, Dec. 18, 1991, 105 Stat. 1993, directed Secretary of Transportation to conduct a study on funding needs for Indian reservation roads and to report to Congress on results of the study not later than one year after Dec. 18, 1991, prior to repeal by Pub. L. 105-362, title XV, §1501(c), Nov. 10, 1998, 112 Stat. 3294.

#### STUDY AND REPORT ON METHOD OF ALLOCATING FUNDS

Section 1032(e) of Pub. L. 102-240 provided that: “The Secretary shall undertake a study to determine if the method for allocating funds authorized for Federal lands highways is adequate to meet the relative transportation needs of the Federal lands served. The report shall be submitted within 2 years of the date of the enactment of this Act [Dec. 18, 1991].”

#### FOREST HIGHWAYS

Pub. L. 100-17, title I, §134, Apr. 2, 1987, 101 Stat. 173, as amended by Pub. L. 100-202, §101(7) [title III, §348(a)], Dec. 22, 1987, 101 Stat. 1329-358, 1329-388, provided that: “Notwithstanding section 202(a) of title 23, United States Code, the Secretary shall, after making the transfer provided by section 204(g) of such title, as soon as practicable after the date of the enactment of this Act [Apr. 2, 1987] in fiscal year 1987 and on October 1 of each of fiscal years 1988, 1989, 1990, and 1991, allocate 66 percent of the remainder of the authorization for forest highways provided for such fiscal year by this Act [see Short Title of 1987 Amendment note set out under section 101 of this title] in the same percentage as the amounts allocated for expenditure in each State and the Commonwealth of Puerto Rico from funds authorized for forest highways for the fiscal year ending June 30, 1958, adjusted (1) to eliminate the 0.003243547 percent for the State of Iowa to the State by deed executed May 26, 1964, and (2) to redistribute the percentage formerly apportioned to the State of Iowa to other participating States on a proportional basis. The remaining funds authorized to be appropriated for forest highways for such fiscal year shall be allocated pursuant to section 202(a) of such title.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 134 of this title; title 49 section 5303.

**§ 203. Availability of funds**

Funds authorized for forest development roads and trails, public lands development roads and trails, park road, parkways, refuge roads, Indian reservation roads, and public lands highways shall be available for contract upon apportionment, or on October 1 of the fiscal year for which authorized if no apportionment is required. Any amount remaining unexpended for a period of three years after the close of the fiscal year for which authorized shall lapse. The Secretary of the Department charged with the administration of such funds is granted authority to incur obligations, approve projects, and enter into contracts under such authorizations and his action in doing so shall be deemed a contractual obligation of the United States for the payment of the cost thereof and such funds shall be deemed to have been expended when so obligated. Any funds heretofore or hereafter authorized for any fiscal year for forest development roads and trails, public lands development roads and trails, park road, parkways, refuge roads, Indian roads and public lands highways shall be deemed to have been expended if a sum equal to the total of the sums authorized for such fiscal year and previous fiscal years since and including the fiscal year ending June 30, 1955, shall have been obligated. Any of such funds released by payment of final voucher or modification of project authorizations shall be credited to the balance of unobligated authorizations and be immediately available for expenditure. Notwithstanding any other provision of law, the authorization by the Secretary of engineering and related work for a Federal lands highways program project, or the approval by the Secretary of plans, specifications, and estimates for construction of a Federal lands highways program project, shall be deemed to constitute a contractual obligation of the Federal Government to pay the Federal share of the cost of the project.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 906; Pub. L. 86-657, §8(b), July 14, 1960, 74 Stat. 524; Pub. L. 87-866, §7, Oct. 23, 1962, 76 Stat. 1147; Pub. L. 94-280, title I, §117(b), May 5, 1976, 90 Stat. 437; Pub. L. 97-424, title I, §126(f), Jan. 6, 1983, 96 Stat. 2116; Pub. L. 102-240, title I, §1032(f), Dec. 18, 1991, 105 Stat. 1975; Pub. L. 105-178, title I, §1115(c), (e)(3), June 9, 1998, 112 Stat. 156, 158.)

**AMENDMENTS**

1998—Pub. L. 105-178 substituted “for forest development roads and trails” for “for, forest development roads and trails” in two places, inserted “refuge roads,” after “parkways,” in two places, and inserted at end “Notwithstanding any other provision of law, the authorization by the Secretary of engineering and related work for a Federal lands highways program project, or the approval by the Secretary of plans, specifications, and estimates for construction of a Federal lands highways program project, shall be deemed to constitute a contractual obligation of the Federal Government to pay the Federal share of the cost of the project.”

1991—Pub. L. 102-240 struck out “forest highways” before “, forest development roads” in two places.

1983—Pub. L. 97-424 substituted “park road” for “park roads and trails” wherever appearing.

1976—Pub. L. 94-280 substituted “or on October 1” for “or a date not earlier than one year preceding the beginning” in first sentence and “three years” for “two years” in second sentence.

1962—Pub. L. 87-866 inserted “public lands development roads and trails,” before “park roads and trails” in two places.

1960—Pub. L. 86-657 substituted “Funds authorized” for “Funds now authorized” in first sentence.

**EFFECTIVE DATE OF 1991 AMENDMENT**

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

**§ 204. Federal Lands Highways Program****(a) ESTABLISHMENT.—**

(1) **IN GENERAL.**—Recognizing the need for all Federal roads that are public roads to be treated under uniform policies similar to the policies that apply to Federal-aid highways, there is established a coordinated Federal lands highways program that shall apply to public lands highways, park roads and parkways, and Indian reservation roads and bridges.

(2) **TRANSPORTATION PLANNING PROCEDURES.**—In consultation with the Secretary of each appropriate Federal land management agency, the Secretary shall develop, by rule, transportation planning procedures that are consistent with the metropolitan and statewide planning processes required under sections 134 and 135.

(3) **APPROVAL OF TRANSPORTATION IMPROVEMENT PROGRAM.**—The transportation improvement program developed as a part of the transportation planning process under this section shall be approved by the Secretary.

(4) **INCLUSION IN OTHER PLANS.**—All regionally significant Federal lands highways program projects—

(A) shall be developed in cooperation with States and metropolitan planning organizations; and

(B) shall be included in appropriate Federal lands highways program, State, and metropolitan plans and transportation improvement programs.

(5) **INCLUSION IN STATE PROGRAMS.**—The approved Federal lands highways program transportation improvement program shall be included in appropriate State and metropolitan planning organization plans and programs without further action on the transportation improvement program.

(6) **DEVELOPMENT OF SYSTEMS.**—The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program.

(b) Funds available for public lands highways, park roads and parkways, and Indian reservation roads shall be used by the Secretary and the Secretary of the appropriate Federal land management agency to pay for the cost of transportation planning, research, engineering, and construction of the highways, roads, and parkways, or of transit facilities within public lands, national parks, and Indian reservations. In con-

nection with activities under the preceding sentence, the Secretary and the Secretary of the appropriate Federal land management agency may enter into construction contracts and other appropriate contracts with a State or civil subdivision of a State or Indian tribe. In the case of Indian reservation roads, Indian labor may be employed in such construction and improvement under such rules and regulations as may be prescribed by the Secretary of the Interior. No ceiling on Federal employment shall be applicable to construction or improvement of Indian reservation roads. Funds available for each class of Federal lands highways shall be available for any kind of transportation project eligible for assistance under this title that is within or adjacent to or provides access to the areas served by the particular class of Federal lands highways. The Secretary of Interior may reserve funds from the Bureau of Indian Affairs' administrative funds associated with the Indian reservation roads program to finance the Indian technical centers authorized under section 504(b).

(c) Before approving as a project on an Indian reservation road any project eligible for funds apportioned under section 104 or section 144 of this title in a State, the Secretary must determine that the obligation of funds for such project is supplementary to and not in lieu of the obligation, for projects on Indian reservation roads, of a fair and equitable share of funds apportioned to such State under section 104 of this title. Notwithstanding any other provision of this title, Indian reservation roads under the jurisdiction of the Bureau of Indian Affairs of the Department of the Interior shall be eligible to expend not more than 15 percent funds<sup>1</sup> apportioned for Indian reservation roads from the Highway Trust Fund for the purpose of road sealing projects. The Bureau of Indian Affairs shall continue to retain responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations.

(d) Cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement, and any funds received from a State, county, or local subdivision shall be credited to appropriations available for the class of Federal lands highways to which such funds were contributed.

(e) Construction of each project shall be performed by contract awarded by competitive bidding, unless the Secretary or the Secretary of the appropriate Federal land management agency shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest. Notwithstanding the foregoing, the provisions of section 23 of the "Buy Indian" Act of June 25, 1910 (36 Stat. 891), and the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (88 Stat. 2205) shall apply to all funds administered by the Secretary of the Interior which are appropriated for the construction and improvement of Indian reservation roads.

(f) All appropriations for the construction and improvement of each class of Federal lands highways shall be administered in conformity with regulations and agreements jointly ap-

proved by the Secretary and the Secretary of the appropriate Federal land managing agency.

(g) The Secretary shall transfer to the Secretary of Agriculture from appropriations for forest highways such amounts as may be needed to cover necessary administrative expenses of the Forest Service in connection with forest highways.

(h) ELIGIBLE PROJECTS.—Funds available for each class of Federal lands highways may be available for the following:

(1) Transportation planning for tourism and recreational travel including the National Forest Scenic Byways Program, Bureau of Land Management Back Country Byways Program, National Trail System Program, and other similar Federal programs that benefit recreational development.

(2) Adjacent vehicular parking areas.

(3) Interpretive signage.

(4) Acquisition of necessary scenic easements and scenic or historic sites.

(5) Provision for pedestrians and bicycles.

(6) Construction and reconstruction of roadside rest areas including sanitary and water facilities.

(7) Other appropriate public road facilities such as visitor centers as determined by the Secretary.

(8) A project to build a replacement of the federally owned bridge over the Hoover Dam in the Lake Mead National Recreation Area between Nevada and Arizona.

(i) TRANSFERS OF COSTS TO SECRETARIES OF FEDERAL LAND MANAGEMENT AGENCIES.—

(1) ADMINISTRATIVE COSTS.—The Secretary shall transfer to the appropriate Federal land management agency from amounts made available for public lands highways such amounts as are necessary to pay necessary administrative costs of the agency in connection with public lands highways.

(2) TRANSPORTATION PLANNING COSTS.—The Secretary shall transfer to the appropriate Federal land management agency from amounts made available for public lands highways such amounts as are necessary to pay the cost to the agency to conduct necessary transportation planning for Federal lands, if funding for the planning is not otherwise provided under this section.

(j) INDIAN RESERVATION ROADS PLANNING.—Up to 2 percent of funds made available for Indian reservation roads for each fiscal year shall be allocated to those Indian tribal governments applying for transportation planning pursuant to the provisions of the Indian Self-Determination and Education Assistance Act. The Indian tribal government, in cooperation with the Secretary of the Interior, and as appropriate, with a State, local government, or metropolitan planning organization, shall carry out a transportation planning process in accordance with subsection (a). Projects shall be selected by the Indian tribal government from the transportation improvement program and shall be subject to the approval of the Secretary of the Interior and the Secretary.

(k) REFUGE ROADS.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, funds made available

<sup>1</sup> So in original. Probably should be "of funds".



for refuge roads shall be used by the Secretary and the Secretary of the Interior only to pay the cost of—

(A) maintenance and improvements of refuge roads;

(B) maintenance and improvements of eligible projects described in paragraphs (2), (5), and (6) of subsection (h) that are located in or adjacent to wildlife refuges; and

(C) administrative costs associated with such maintenance and improvements.

(2) **CONTRACTS.**—In carrying out paragraph (1), the Secretary and the Secretary of the Interior, as appropriate, may enter into contracts with a State or civil subdivision of a State or Indian tribe as is determined advisable.

(3) **COMPLIANCE WITH OTHER LAW.**—Funds made available for refuge roads shall be used only for projects that are in compliance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 907; Pub. L. 97-424, title I, §126(b), Jan. 6, 1983, 96 Stat. 2114; Pub. L. 100-17, title I, §133(b)(13), (14), Apr. 2, 1987, 101 Stat. 172; Pub. L. 102-240, title I, §§1030, 1032(b), title VI, §6004(c), Dec. 18, 1991, 105 Stat. 1970, 1974, 2169; Pub. L. 105-178, title I, §1115(d), (e)(4), title V, §5119(a), June 9, 1998, 112 Stat. 156, 158, 452.)

#### REFERENCES IN TEXT

Section 23 of the “Buy Indian” Act of June 25, 1910 (36 Stat. 861), referred to in subsec. (e), is classified to section 47 of Title 25, Indians.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (j), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians. Section 7(b) of the Act is classified to section 450e(b) of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The National Wildlife Refuge System Administration Act of 1966, referred to in subsec. (k)(3), consists of sections 4 and 5 of Pub. L. 89-699, Oct. 15, 1966, 80 Stat. 927, as amended, and is classified to sections 668dd and 668ee of Title 16, Conservation. For further details, see Short Title note set out under section 668dd of Title 16.

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178, §1115(d)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “Recognizing the need for all Federal roads which are public roads to be treated under the same uniform policies as roads which are on the Federal-aid systems, there is established a coordinated Federal lands highways program which shall consist of the public lands highways, park roads, parkways, and Indian reservation roads as defined in section 101 of this title. The Secretary, in cooperation with the Secretary of the Interior and the Secretary of Agriculture, shall develop appropriate transportation planning procedures and safety, bridge, and pavement management systems for roads funded under the Federal Lands Highway Program. Notwithstanding any other provision of this title, no public lands highway project may be undertaken in any State pursuant to this section unless the State concurs in the selection and planning of the project.”

Subsec. (b). Pub. L. 105-178, §§1115(d)(2), 5119(a), substituted “Funds available for public lands highways, park roads and parkways, and Indian reservation roads shall be used by the Secretary and the Secretary of the appropriate Federal land management agency to pay

for the cost of transportation planning, research, engineering, and construction of the highways, roads, and parkways, or of transit facilities within public lands, national parks, and Indian reservations. In connection with activities under the preceding sentence, the Secretary and the Secretary of the appropriate Federal land management agency may enter into construction contracts and other appropriate contracts with a State or civil subdivision of a State or Indian tribe.” for “Funds available for public lands highways shall be used by the Secretary to pay for the cost of planning, research, engineering and construction thereof. Funds available for park roads, parkways, and Indian reservation roads shall be used by the Secretary or the Secretary of the Interior to pay for the cost of construction and improvement thereof. In connection therewith, the Secretary and the Secretary of the Interior, as appropriate, may enter into construction contracts and such other contracts with a State or civil subdivision thereof or Indian tribe as deemed advisable.” and “section 504(b)” for “section 326”.

Subsec. (e). Pub. L. 105-178, §1115(d)(3), substituted “Secretary of the appropriate Federal land management agency” for “Secretary of the Interior” in first sentence.

Subsec. (h)(8). Pub. L. 105-178, §1115(d)(4), added par. (8).

Subsec. (i). Pub. L. 105-178, §1115(d)(5), added subsec. (i) and struck out heading and text of former subsec. (i). Text read as follows: “The Secretary shall transfer to the Secretary of the Interior from the appropriation for public land highways amounts as may be needed to cover necessary administrative costs of the Bureau of Land Management in connection with public lands highways.”

Subsec. (j). Pub. L. 105-178, §1115(d)(6), substituted second sentence for former second sentence which read as follows: “The Indian tribal government, in cooperation with the Secretary of the Interior, and, as may be appropriate, with a State, local government, or metropolitan planning organization, shall develop a transportation improvement program, that includes all Indian reservation road projects proposed for funding.”

Subsec. (k). Pub. L. 105-178, §1115(e)(4), added subsec. (k).

1991—Subsec. (a). Pub. L. 102-240, §1032(b)(1), struck out “forest highways,” before “public lands highways” and inserted provisions requiring Secretary, in cooperation with Secretaries of the Interior and Agriculture, to develop transportation planning procedures and safety, bridge, and pavement management systems for roads funded under Federal Lands Highway Program, and provisions prohibiting public lands highway projects from being undertaken in any State pursuant to this section unless State concurs in selection and planning of project.

Subsec. (b). Pub. L. 102-240, §6004(c), inserted at end “The Secretary of Interior may reserve funds from the Bureau of Indian Affairs’ administrative funds associated with the Indian reservation roads program to finance the Indian technical centers authorized under section 326.”

Pub. L. 102-240, §1032(b)(2)(B), (C), struck out “forest highways and” before “public lands highways” and inserted at end “Funds available for each class of Federal lands highways shall be available for any kind of transportation project eligible for assistance under this title that is within or adjacent to or provides access to the areas served by the particular class of Federal lands highways.”

Pub. L. 102-240, §1032(b)(2)(A), substituted “planning, research, engineering and construction thereof” for “construction and improvements thereof” and was executed by making the substitution for the first reference to “construction and improvement thereof” to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 102-240, §§1030, 1032(b)(3), substituted “eligible for funds apportioned under section 104 or section 144 of this title” for “on a Federal-aid system” and inserted at end “Notwithstanding any

other provision of this title, Indian reservation roads under the jurisdiction of the Bureau of Indian Affairs of the Department of the Interior shall be eligible to expend not more than 15 percent funds apportioned for Indian reservation roads from the Highway Trust Fund for the purpose of road sealing projects. The Bureau of Indian Affairs shall continue to retain responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations."

Subsecs. (h) to (j). Pub. L. 102-240, §1032(b)(4), added subsecs. (h) to (j) and struck out former subsec. (h) which read as follows: "Funds available for each class of Federal lands highways shall be available for adjacent vehicular parking areas and scenic easements."

1987—Subsec. (b). Pub. L. 100-17, §133(b)(13), inserted "the Secretary or" after "used by" in second sentence.

Subsec. (e). Pub. L. 100-17, §133(b)(14), struck out "of 1975" after "Education Assistance Act".

1983—Pub. L. 97-424 substituted "Federal Lands Highways Program" for "Forest highways" in section catchline.

Subsecs. (a), (b). Pub. L. 97-424 added subsec. (a), redesignated former subsec. (a) as (b), inserted reference to public lands highways, inserted "and improvement" after "construction", inserted reference to reservations, Indian tribes, and the Secretary of the Interior, and inserted provision that funds available for park roads, parkways, and Indian reservation roads shall be used by the Secretary of the Interior to pay for the cost of construction and improvement thereof. Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 97-424 added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 97-424 redesignated former subsec. (b) as (d) and substituted provision that cooperation may be accepted in construction and improvement, and that any funds received from a State, county, or local subdivision be credited to appropriations available for the class of Federal lands highways to which such funds were contributed, for provision that cooperation may be accepted but may not be required by the Secretary. Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 97-424 redesignated former subsec. (c) as (e) and substituted provisions relating to competitive bidding and preference for Indians for provisions that construction estimated to cost \$5,000 or more per mile, exclusive of bridges, was to be advertised and let to contract, that if such estimated cost was less than \$5,000 per mile or if, after proper advertising, no acceptable bid was received or the bids deemed excessive, the work might be done by the Secretary on his own account, and that for such purpose, the Secretary might purchase, lease, hire, rent, or otherwise obtain all necessary supplies, materials, tools, equipment, and facilities required to perform the work, and might pay wages, salaries, and other expenses for help employed in connection with such work. Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 97-424 redesignated former subsec. (d) as (f), inserted reference to each class of Federal lands highways and to agreements, and substituted reference to the Secretary of the appropriate Federal land management agency for reference to the Secretary of Agriculture. Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 97-424 redesignated former subsec. (e) as (g) and substituted "forest highways" for "forest-highway program".

Subsec. (h). Pub. L. 97-424 redesignated former subsec. (f) as (h), substituted reference to each class of Federal lands highways for reference to forest highways, and reference to scenic easements for reference to sanitary, water, and fire control facilities.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by sections 1030 and 1032 of Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 120, 138, 315 of this title; title 16 section 46077-14; title 41 section 252; title 49 section 303.

### § 205. Forest development roads and trails

(a) Funds available for forest development roads and trails shall be used by the Secretary of Agriculture to pay for the costs of construction and maintenance thereof, including roads and trails on experimental and other areas under Forest Service administration. In connection therewith, the Secretary of Agriculture may enter into contracts with a State or civil subdivision thereof, and issue such regulations as he deems advisable.

(b) Cooperation of States, counties, or other local subdivisions may be accepted but shall not be required by the Secretary of Agriculture.

(c) Construction estimated to cost \$50,000 or more per mile or \$50,000 or more per project for projects with a length of less than one mile, exclusive of bridges and engineering, shall be advertised and let to contract. If such estimated cost is less than \$50,000 per mile or \$50,000 per project for projects with a length of less than one mile or if, after proper advertising, no acceptable bid is received or the bids are deemed excessive, the work may be done by the Secretary of Agriculture on his own account.

(d) Funds available for forest development roads and trails shall be available for adjacent vehicular parking areas and for sanitary, water, and fire control facilities.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 907; Pub. L. 86-657, §8(c), July 14, 1960, 74 Stat. 524; Pub. L. 88-423, §4(d), Aug. 13, 1964, 78 Stat. 398; Pub. L. 90-495, §9, Aug. 23, 1968, 82 Stat. 820; Pub. L. 102-240, title I, §1032(c), Dec. 18, 1991, 105 Stat. 1975.)

#### AMENDMENTS

1991—Subsec. (c). Pub. L. 102-240 substituted "\$50,000" for "\$15,000" wherever appearing.

1968—Subsec. (c). Pub. L. 90-495 increased from \$10,000 to \$15,000 the cost limitation on construction per mile, or per project for projects of less than a mile, which the Forest Service may construct on its own account and struck out provisions spelling out the functions which the Secretary of Agriculture is authorized to perform in carrying out such construction.

1964—Subsec. (a). Pub. L. 88-423 inserted "and other" after "experimental".

1960—Subsec. (a). Pub. L. 86-657 substituted "may enter into contracts" for "may enter into construction contracts".

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 315 of this title.

### § 206. Recreational trails program

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

(1) MOTORIZED RECREATION.—The term “motorized recreation” means off-road recreation using any motor-powered vehicle, except for a motorized wheelchair.

(2) RECREATIONAL TRAIL.—The term “recreational trail” means a thoroughfare or track across land or snow, used for recreational purposes such as—

(A) pedestrian activities, including wheelchair use;

(B) skating or skateboarding;

(C) equestrian activities, including carriage driving;

(D) nonmotorized snow trail activities, including skiing;

(E) bicycling or use of other human-powered vehicles;

(F) aquatic or water activities; and

(G) motorized vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

(b) PROGRAM.—In accordance with this section, the Secretary, in consultation with the Secretary of the Interior and the Secretary of Agriculture, shall carry out a program to provide and maintain recreational trails.

(c) STATE RESPONSIBILITIES.—To be eligible for apportionments under this section—

(1) the Governor of the State shall designate the State agency or agencies that will be responsible for administering apportionments made to the State under this section; and

(2) the State shall establish a State recreational trail advisory committee that represents both motorized and nonmotorized recreational trail users, which shall meet not less often than once per fiscal year.

(d) USE OF APPORTIONED FUNDS.—

(1) IN GENERAL.—Funds apportioned to a State to carry out this section shall be obligated for recreational trails and related projects that—

(A) have been planned and developed under the laws, policies, and administrative procedures of the State; and

(B) are identified in, or further a specific goal of, a recreational trail plan, or a statewide comprehensive outdoor recreation plan required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–4 et seq.), that is in effect.

(2) PERMISSIBLE USES.—Permissible uses of funds apportioned to a State for a fiscal year to carry out this section include—

(A) maintenance and restoration of existing recreational trails;

(B) development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails;

(C) purchase and lease of recreational trail construction and maintenance equipment;

(D) construction of new recreational trails, except that, in the case of new recreational trails crossing Federal lands, construction of the trails shall be—

(i) permissible under other law;

(ii) necessary and required by a statewide comprehensive outdoor recreation plan that is required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–4 et seq.) and that is in effect;

(iii) approved by the administering agency of the State designated under subsection (c)(1); and

(iv) approved by each Federal agency having jurisdiction over the affected lands under such terms and conditions as the head of the Federal agency determines to be appropriate, except that the approval shall be contingent on compliance by the Federal agency with all applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);

(E) acquisition of easements and fee simple title to property for recreational trails or recreational trail corridors;

(F) payment of costs to the State incurred in administering the program, but in an amount not to exceed 7 percent of the apportionment made to the State for the fiscal year to carry out this section; and

(G) operation of educational programs to promote safety and environmental protection as those objectives relate to the use of recreational trails, but in an amount not to exceed 5 percent of the apportionment made to the State for the fiscal year.

(3) USE OF APPORTIONMENTS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B), (C), and (D), of the apportionments made to a State for a fiscal year to carry out this section—

(i) 40 percent shall be used for recreational trail or related projects that facilitate diverse recreational trail use within a recreational trail corridor, trailside, or trailhead, regardless of whether the project is for diverse motorized use, for diverse nonmotorized use, or to accommodate both motorized and nonmotorized recreational trail use;

(ii) 30 percent shall be used for uses relating to motorized recreation; and

(iii) 30 percent shall be used for uses relating to nonmotorized recreation.

(B) SMALL STATE EXCLUSION.—Any State with a total land area of less than 3,500,000 acres shall be exempt from the requirements of clauses (ii) and (iii) of subparagraph (A).

(C) WAIVER AUTHORITY.—A State recreational trail advisory committee established under subsection (c)(2) may waive, in whole or in part, the requirements of clauses (ii) and (iii) of subparagraph (A) if the State recreational trail advisory committee determines and notifies the Secretary that the State does not have sufficient projects to meet the requirements of clauses (ii) and (iii) of subparagraph (A).

(D) STATE ADMINISTRATIVE COSTS.—State administrative costs eligible for funding

under paragraph (2)(F) shall be exempt from the requirements of subparagraph (A).

(4) GRANTS.—

(A) IN GENERAL.—A State may use funds apportioned to the State to carry out this section to make grants to private organizations, municipal, county, State, and Federal Government entities, and other government entities as approved by the State after considering guidance from the State recreational trail advisory committee established under subsection (c)(2), for uses consistent with this section.

(B) COMPLIANCE.—A State that makes grants under subparagraph (A) shall establish measures to verify that recipients of the grants comply with the conditions of the program for the use of grant funds.

(e) ENVIRONMENTAL BENEFIT OR MITIGATION.—To the extent practicable and consistent with the other requirements of this section, a State should give consideration to project proposals that provide for the redesign, reconstruction, nonroutine maintenance, or relocation of recreational trails to benefit the natural environment or to mitigate and minimize the impact to the natural environment.

(f) FEDERAL SHARE.—

(1) IN GENERAL.—Subject to the other provisions of this subsection, the Federal share of the cost of a project under this section shall not exceed 80 percent.

(2) FEDERAL AGENCY PROJECT SPONSOR.—Notwithstanding any other provision of law, a Federal agency that sponsors a project under this section may contribute additional Federal funds toward the cost of a project, except that—

(A) the share attributable to the Secretary of Transportation may not exceed 80 percent of the cost of a project under this section; and

(B) the share attributable to the Secretary and the Federal agency may not exceed 95 percent of the cost of a project under this section.

(3) USE OF FUNDS FROM FEDERAL PROGRAMS TO PROVIDE NON-FEDERAL SHARE.—Notwithstanding any other provision of law, the non-Federal share of the cost of the project may include amounts made available by the Federal Government under any Federal program that are—

(A) expended in accordance with the requirements of the Federal program relating to activities funded and populations served; and

(B) expended on a project that is eligible for assistance under this section.

(4) PROGRAMMATIC NON-FEDERAL SHARE.—A State may allow adjustments to the non-Federal share of an individual project for a fiscal year under this section if the Federal share of the cost of all projects carried out by the State under the program (excluding projects funded under paragraph (2) or (3)) using funds apportioned to the State for the fiscal year does not exceed 80 percent.

(5) STATE ADMINISTRATIVE COSTS.—The Federal share of the administrative costs of a

State under this subsection shall be determined in accordance with section 120(b).

(g) USES NOT PERMITTED.—A State may not obligate funds apportioned to carry out this section for—

(1) condemnation of any kind of interest in property;

(2) construction of any recreational trail on National Forest System land for any motorized use unless—

(A) the land has been designated for uses other than wilderness by an approved forest land and resource management plan or has been released to uses other than wilderness by an Act of Congress; and

(B) the construction is otherwise consistent with the management direction in the approved forest land and resource management plan;

(3) construction of any recreational trail on Bureau of Land Management land for any motorized use unless the land—

(A) has been designated for uses other than wilderness by an approved Bureau of Land Management resource management plan or has been released to uses other than wilderness by an Act of Congress; and

(B) the construction is otherwise consistent with the management direction in the approved management plan; or

(4) upgrading, expanding, or otherwise facilitating motorized use or access to recreational trails predominantly used by nonmotorized recreational trail users and on which, as of May 1, 1991, motorized use was prohibited or had not occurred.

(h) PROJECT ADMINISTRATION.—

(1) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, SERVICES, OR NEW RIGHT-OF-WAY.—

(A) IN GENERAL.—Nothing in this title or other law shall prevent a project sponsor from offering to donate funds, materials, services, or a new right-of-way for the purposes of a project eligible for assistance under this section. Any funds, or the fair market value of any materials, services, or new right-of-way, may be donated by any project sponsor and shall be credited to the non-Federal share in accordance with subsection (f).

(B) FEDERAL PROJECT SPONSORS.—Any funds or the fair market value of any materials or services may be provided by a Federal project sponsor and shall be credited to the Federal agency's share in accordance with subsection (f).

(2) RECREATIONAL PURPOSE.—A project funded under this section is intended to enhance recreational opportunity and is not subject to section 138 of this title or section 303 of title 49.

(3) CONTINUING RECREATIONAL USE.—At the option of each State, funds apportioned to the State to carry out this section may be treated as Land and Water Conservation Fund apportionments for the purposes of section 6(f)(3) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l-8(f)(3)).

(4) COOPERATION BY PRIVATE PERSONS.—

(A) WRITTEN ASSURANCES.—As a condition of making available apportionments for work on recreational trails that would affect privately owned land, a State shall obtain written assurances that the owner of the land will cooperate with the State and participate as necessary in the activities to be conducted.

(B) PUBLIC ACCESS.—Any use of the apportionments to a State to carry out this section on privately owned land must be accompanied by an easement or other legally binding agreement that ensures public access to the recreational trail improvements funded by the apportionments.

(i) CONTRACT AUTHORITY.—Funds authorized to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1, except that the Federal share of the cost of a project under this section shall be determined in accordance with this section.

(Added Pub. L. 105-178, title I, §1112(a), June 9, 1998, 112 Stat. 146.)

#### REFERENCES IN TEXT

The Land and Water Conservation Fund Act of 1965, referred to in subsec. (d)(1)(B), (2)(D)(ii), is Pub. L. 88-578, Sept. 3, 1964, 78 Stat. 897, as amended, which is classified generally to part B (§4601-4 et seq.) of subchapter LXIX of chapter 1 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 4601-4 of Title 16 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (d)(2)(D)(iv), 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.

The Forest and Rangeland Renewable Resources Planning Act of 1974, referred to in subsec. (d)(2)(D)(iv), is Pub. L. 93-378, Aug. 17, 1974, 88 Stat. 476, as amended, which is classified generally to subchapter I (§1600 et seq.) of chapter 36 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1600 of Title 16 and Tables.

The Federal Land Policy and Management Act of 1976, referred to in subsec. (d)(2)(D)(iv), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, which is classified principally to chapter 35 (§1701 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

#### PRIOR PROVISIONS

A prior section 206, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 908, provided for use of funds for construction and improvement of park roads and trails and for administration of such funds according to regulations jointly approved by the Secretary and the Secretary of the Interior, prior to repeal by Pub. L. 97-424, title I, §126(d), Jan. 6, 1983, 96 Stat. 2115.

#### ENCOURAGEMENT OF USE OF YOUTH CONSERVATION OR SERVICE CORPS

Pub. L. 105-178, title I, §1112(e), June 9, 1998, 112 Stat. 151, provided that: "The Secretary shall encourage the States to enter into contracts and cooperative agreements with qualified youth conservation or service corps to perform construction and maintenance of recreational trails under section 206 of title 23, United States Code."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 104 of this title.

#### [§§ 207 to 209. Repealed. Pub. L. 97-424, title I, § 126(d), Jan. 6, 1983, 96 Stat. 2115]

Section 207, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 908; Pub. L. 93-87, title I, §150, Aug. 13, 1973, 87 Stat. 275, provided for use of funds for construction and improvement of parkways, including acquisition of rights-of-way and related scenic easements, administration of such funds according to regulations jointly approved by the Secretary and the Secretary of the Interior, and that parkway projects on a Federal-aid system be subject to all requirements of this title and of any other law applicable to highways on such system.

Section 208, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 908; Pub. L. 87-282, Sept. 22, 1961, 75 Stat. 584; Pub. L. 93-643, §102(c), Jan. 4, 1975, 88 Stat. 2281, provided for use of funds for construction and improvement of Indian reservation roads and bridges, supervision of such projects by the Secretary, that such funds be only supplementary to funds apportioned under section 104 of this title, for use of Indian labor in such projects, and for cooperation with States and localities.

Section 209, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 908; Pub. L. 88-423, §4(b), Aug. 13, 1964, 78 Stat. 397, provided for use of funds for construction and maintenance of public lands highways, cooperation with State agencies, the application of section 112 of this title to public lands highways, and for use of such funds for adjacent ancillary facilities and services.

#### § 210. Defense access roads

(a) The Secretary is authorized, out of the funds appropriated for defense access roads, to provide for the construction and maintenance of defense access roads (including bridges, tubes, and tunnels thereon) to military reservations, to defense industries and defense industry sites, and to the sources of raw material when such roads are certified to the Secretary as important to the national defense by the Secretary of Defense or such other official as the President may designate, and for replacing existing highways and highway connections that are shut off from the general public use by necessary closures or restrictions at military reservations and defense industry sites.

(b) Funds appropriated for the purposes of this section shall be available, without regard to apportionment among the several States, for paying all or any part of the cost of the construction and maintenance of defense access roads.

(c) Funds appropriated for defense maneuvers and exercises, may be used by the Secretary in areas certified to him by the Secretary of Defense as maneuver areas for such construction, maintenance, and repair work as may be necessary to keep the highways therein, which have been or may be used for training of the Armed Forces, in suitable condition for such training purposes and for repairing the damage caused to such highways by the operations of men and equipment in such training.

(d) Whenever any project for the construction of a circumferential highway around a city or of a radial intracity route thereto submitted by any State is certified by the Secretary of Defense, or such other official as the President may designate, as being important for civilian or military defense, such project may be constructed out of the funds heretofore or hereafter authorized to be appropriated for defense access roads.

(e) If the Secretary shall determine that the State transportation department of any State is unable to obtain possession and the right to enter upon and use the required rights-of-way, lands, or interest in lands, improved or unimproved, required for any project authorized by this section with sufficient promptness, the Secretary is authorized to acquire, enter upon, take possession thereof, and expend funds for projects thereon, prior to approval of title by the Attorney General, in the name of the United States, such rights-of-way, lands, or interest in lands as may be required in such State for such projects by purchase, donation, condemnation, or otherwise in accordance with the laws of the United States (including the Act of February 26, 1931; 46 Stat. 1421). The cost incurred by the Secretary in acquiring any such rights-of-way, lands, or interest in lands may include the cost of examination and abstract of title, certificate of title, advertising, and any fees incidental to such acquisition; and shall be payable out of the funds available for paying the cost or the Federal share of the cost of the project for which such rights-of-way, lands, or interests in lands are acquired. The Secretary is further authorized and directed by proper deed executed in the name of the United States to convey any lands or interests in lands acquired in any State under the provisions of prior Acts or of this section to the State transportation department of such State or to such political subdivision thereof as its laws may provide, upon such terms and conditions as may be agreed upon by the Secretary and the State transportation department, or political subdivisions to which the conveyance is to be made.

(f) The provisions of section 112 of this title are applicable to defense access roads.

(g) If the Secretary shall determine that it is necessary for the expeditious completion of any defense access road project he may advance to any State out of funds appropriated for defense access roads transferred and available to the Department of Transportation the Federal share of the cost of construction thereof to enable the State transportation department to make prompt payments for acquisition of rights-of-way, and for the construction as it progresses. The sums so advanced shall be deposited in a special fund by the State official authorized by State law to receive such funds, to be disbursed solely upon vouchers approved by the State transportation department for rights-of-way which have been or are being acquired and for construction which has been actually performed under this section. Upon determination by the Secretary that funds advanced to any State under the provisions of this subsection are no longer required, the amount of the advance which is determined to be in excess of requirements for the project shall be repaid upon his demand, and such repayments shall be returned to the credit of the appropriation from which the funds were advanced.

(h) Funds appropriated for the purposes of this section shall be available to pay the cost of repairing damage caused to highways by the operation of vehicles and equipment in the construction of classified military installations and facilities for ballistic missiles if the Secretary

shall determine that the State transportation department of any State is, or has been, unable to prevent such damage by restrictions upon the use of such highways without interference with, or delay in, the completion of a contract for the construction of such military reservations or installations. This subsection shall apply notwithstanding any provision of contract holding a party thereto responsible for such damage, if the Secretary of Defense or his designee shall determine, in fact, that construction estimates and the bid of such party did not include allowance for repairing such damage. This subsection shall apply to damage caused by construction work commenced prior to June 1, 1961, and still in progress on that date and construction work which is commenced or for which a contract is awarded on or after June 1, 1961.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 908; Pub. L. 86-657, §8(d), July 14, 1960, 74 Stat. 524; Pub. L. 87-61, title I, §105, June 29, 1961, 75 Stat. 123; Pub. L. 97-424, title I, §155, Jan. 6, 1983, 96 Stat. 2134; Pub. L. 100-17, title I, §133(b)(15), Apr. 2, 1987, 101 Stat. 172; Pub. L. 105-178, title I, §1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193.)

#### REFERENCES IN TEXT

Act of February 26, 1931, referred to in subsec. (e), is act Feb. 26, 1931, ch. 307, 46 Stat. 1421, as amended, known as the Declaration of Taking Act, which enacted sections 258a to 258e of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Tables.

#### AMENDMENTS

1998—Subsecs. (e), (g), (h). Pub. L. 105-178 substituted “State transportation department” for “State highway department” wherever appearing.

1987—Subsec. (g). Pub. L. 100-17 substituted “Transportation” for “Commerce”.

1983—Subsec. (c). Pub. L. 97-424 substituted “Funds appropriated for defense maneuvers and exercises” for “Not exceeding \$5,000,000 of any funds appropriated under the Act approved October 16, 1951 (65 Stat. 422)”.

1961—Subsec. (h). Pub. L. 87-61 added subsec. (h).

1960—Subsec. (g). Pub. L. 86-657 added subsec. (g).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 sections 114, 2661.

**[§ 211. Repealed. Pub. L. 100-17, title I, § 133(e)(1), Apr. 2, 1987, 101 Stat. 173]**

Section, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 909, related to timber access road hearings.

#### § 212. Inter-American Highway

(a) Funds appropriated for the Inter-American Highway shall be used to enable the United States to cooperate with the Governments of the American Republics situated in Central America—that is, with the Governments of the Republic of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama—in the survey and construction of the Inter-American Highway within the borders of the aforesaid Republics, respectively. Not to exceed one-third of the appropriation authorized for each fiscal year may be expended without requiring the country or countries in which such funds may be expended to match any part thereof, if the Secretary of State shall find that the cost of constructing said highway in such country or coun-

tries will be beyond their reasonable capacity to bear. The remainder of such authorized appropriations shall be available for expenditure only when matched to the extent required by this section by the country in which such expenditure may be made. Expenditures from the funds available on a matching basis shall not be made for the survey and construction of any portion of said highway within the borders of any country named herein unless such country shall provide and make available for expenditure in conjunction therewith a sum equal to at least one-third of the expenditures that may be incurred by that Government and the United States on such portion of the highway. All expenditures by the United States under the provisions of this section for material, equipment, and supplies shall, whenever practicable, be made for products of the United States or of the country in which such survey or construction work is being carried on. Construction work to be performed under contract shall be advertised for a reasonable period by the Minister of Public Works, or other similar official, of the government concerned in each of the participating countries and contracts shall be awarded pursuant to such advertisements with the approval of the Secretary. No part of the appropriations authorized shall be available for obligation or expenditure for work on said highway in any cooperating country unless the government of said country shall have assented to the provisions of this section; shall have furnished satisfactory assurances that it has an organization adequately qualified to administer the functions required of such country under the provisions hereof; and then only as such country may submit requests, from time to time, for the construction of any portion of the highway to standards adequate to meet present and future traffic needs. No part of said appropriations shall be available for obligation or expenditure in any such country until the government of that country shall have entered into an agreement with the United States which shall provide, in part, that said country—

(1) will provide, without participation of funds authorized, all necessary rights-of-way for the construction of said highway, which rights-of-way shall be of a minimum width where practicable of one hundred meters in rural areas and fifty meters in municipalities and shall forever be held inviolate as a part of the highway for public use;

(2) will not impose any highway toll, or permit any such toll to be charged, for use by vehicles or persons of any portion of said highway constructed under the provisions of this section;

(3) will not levy or assess, directly or indirectly, any fee, tax, or other charge for the use of said highway by vehicles or persons from the United States that does not apply equally to vehicles or persons of such country;

(4) will continue to grant reciprocal recognition of vehicle registration and drivers' licenses in accordance with the provisions of the Convention for the Regulation of Inter-American Automotive Traffic, which was opened for signature at the Pan American Union in Washington on December 15, 1943, and to which such country and the United States

are parties, or of any other treaty or international convention establishing similar reciprocal recognition; and

(5) will provide for the maintenance of said highway after its completion in condition adequately to serve the needs of present and future traffic.

(b) The survey and construction work authorized by this section shall be under the administration of the Secretary, who shall consult with the appropriate officials of the Department of State with respect to matters involving the foreign relations of this Government, and such negotiations with the Governments of the American Republics named in subsection (a) of this section as may be required to carry out the purposes of this section shall be conducted through, or as authorized by, the Department of State.

(c) The provisions of this section shall not create nor authorize the creation of any obligations on the part of the Government of the United States with respect to any expenditures of highway construction or survey heretofore or hereafter undertaken in any of the countries enumerated in subsection (a) of this section, other than the expenditures authorized by the provisions of this section.

(d) Appropriations made pursuant to any authorizations heretofore, or hereafter enacted for the Inter-American Highway shall be considered available for expenditure by the Secretary for necessary administrative and engineering expenses in connection with the Inter-American Highway program.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 909.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 216 of this title.

**§ 213. Repealed. Pub. L. 100-17, title I, § 133(e)(1), Apr. 2, 1987, 101 Stat. 173]**

Section, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 911, related to construction of Rama Road in Republic of Nicaragua.

#### § 214. Public lands development roads and trails

(a) Funds available for public lands development roads and trails shall be used to pay the cost of construction and improvement of such roads and trails.

(b) Funds available for public lands development roads and trails shall be available for adjacent vehicular parking areas and for sanitary, water, and fire control facilities.

(Added Pub. L. 87-866, § 6(b), Oct. 23, 1962, 76 Stat. 1147; amended Pub. L. 97-424, title I, § 126(d), Jan. 6, 1983, 96 Stat. 2115.)

#### AMENDMENTS

1983—Subsec. (c). Pub. L. 97-424 struck out subsec. (c) which provided for prior approval by the Secretary of all projects for public lands development roads and trails and for general supervision by the Secretary of their construction.

#### § 215. Territorial highway program

(a) Recognizing the mutual benefits that will accrue to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and to the United States from

the improvement of highways in such territories of the United States, the Secretary is authorized to assist each such territorial government in a program for the construction and improvement of a system of arterial highways, and necessary interisland connectors designated by the Governor of such territory and approved by the Secretary. Federal financial assistance shall be granted under this subsection to such territories upon the basis of a Federal contribution of 100 per centum of the cost of any project.

(b) In order to establish a long-range highway development program, the Secretary is authorized to provide technical assistance for the establishment of an appropriate agency to administer on a continuing basis highway planning, design, construction and maintenance operations, the development of a system of arterial and collector highways, including necessary interisland connectors, and the establishment of advance acquisition of right-of-way and relocation assistance programs.

(c) No part of the appropriations authorized under this section shall be available for obligation or expenditure with respect to any territory until the Governor enters into an agreement with the Secretary providing that the government of such territory (1) will design and construct a system of arterial and collector highways, including necessary interisland connectors, built in accordance with standards approved by the Secretary; (2) will not impose any toll, or permit any such toll to be charged, for use by vehicles or persons of any portion of the facilities constructed or operated under the provisions of this section; (3) will provide for the maintenance of such facilities in a condition to adequately serve the needs of present and future traffic; (4) will implement standards for traffic operations and uniform traffic control devices which are approved by the Secretary.

(d)(1) Three per centum of the sums authorized to be appropriated for each fiscal year for carrying out subsection (a) of this section shall be available for expenditure only for engineering and economic surveys and investigations, for the planning of future highway programs and the financing thereof, for studies of the economy, safety, and convenience of highway usage and the desirable regulation and equitable taxation thereof, and for research and development, necessary in connection with the planning, design, and maintenance of the highway system, and the regulation and taxation of their use.

(2) In addition to the percentage provided in paragraph (1) of the subsection, not to exceed 2 per centum of sums authorized to be appropriated for each fiscal year for carrying out subsection (a) of this section may be expended upon request of the Governor and with the approval of the Secretary for the purposes enumerated in paragraph (1) of this subsection.

(e) None of the funds authorized to be appropriated for carrying out this section shall be obligated or expended for maintenance of the highway system.

(f) The provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditure of such funds to the Federal-aid

systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section.

(Added Pub. L. 91-605, title I, §112(a), Dec. 31, 1970, 84 Stat. 1720; amended Pub. L. 95-599, title I, §129(f), Nov. 6, 1978, 92 Stat. 2708; Pub. L. 96-106, §9, Nov. 9, 1979, 93 Stat. 798; Pub. L. 100-17, title I, §133(b)(16), Apr. 2, 1987, 101 Stat. 172.)

#### AMENDMENTS

1987—Subsec. (a). Pub. L. 100-17 inserted reference in first sentence to Commonwealth of the Northern Mariana Islands.

1979—Subsec. (f). Pub. L. 96-106 substituted "chapter 1" for "chapters 1 and 5".

1978—Subsec. (a). Pub. L. 95-599 substituted "100 per centum" for "70 per centum".

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-599 effective with respect to obligations incurred after Nov. 6, 1978, see section 129(h) of Pub. L. 95-599, set out as a note under section 120 of this title.

#### AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS ENDING SEPTEMBER 30, 1979, 1980, AND 1982

Pub. L. 95-599, title I, §104(a)(12), Nov. 6, 1978, 92 Stat. 2691, provided that: "For carrying out section 215(a) of title 23, United States Code—

"(A) for the Virgin Islands, not to exceed \$5,000,000 per fiscal year for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982.

"(B) for Guam, not to exceed \$5,000,000 per fiscal year for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982.

"(C) for American Samoa, not to exceed \$1,000,000 per fiscal year for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982.

"Sums authorized by this paragraph shall be available for obligation at the beginning of the period for which authorized in the same manner and to the same extent as if such sums were apportioned under chapter 1 of title 23, United States Code."

#### AUTHORIZATION OF APPROPRIATIONS, THREE-MONTH PERIOD ENDING SEPTEMBER 30, 1976, AND FISCAL YEARS ENDING SEPTEMBER 30, 1977, AND 1978

Pub. L. 94-280, title I, §105(a)(12), May 5, 1976, 90 Stat. 427, authorized the appropriation of not to exceed \$1,250,000 for the Virgin Islands and Guam and not to exceed \$250,000 for American Samoa for the three-month period ending Sept. 30, 1976, and not to exceed \$5,000,000 for the Virgin Islands and Guam and not to exceed \$1,000,000 for American Samoa for the fiscal years ending Sept. 30, 1977, and 1978, such sums to be available for obligation at the beginning of the fiscal year for which authorized.

#### AUTHORIZATION OF APPROPRIATIONS, FISCAL YEARS ENDING JUNE 30, 1974, 1975, AND 1976

Pub. L. 93-87, title I, §104(a)(12), Aug. 13, 1973, 87 Stat. 252, authorized the appropriation for each of fiscal years ending June 30, 1974, 1975, and 1976 of not to exceed \$5,000,000 for the Virgin Islands, not to exceed \$2,000,000 for Guam, and not to exceed \$1,000,000 for American Samoa, such sums to be available for obligation at the beginning of the fiscal year for which authorized.

#### AUTHORIZATION OF APPROPRIATIONS, FISCAL YEARS ENDING JUNE 30, 1971, 1972, AND 1973

Section 112(c), (d) of Pub. L. 91-605 authorized the appropriation of not to exceed \$2,000,000 for each of fiscal



years ending June 30, 1971, 1972, and 1973, for the Virgin Islands and Guam, and \$500,000 for American Samoa, to carry out section 215(a) of this title; the sums appropriated for fiscal 1971 to be made available immediately and sums appropriated for fiscal 1972 and 1973 to be available at the beginning of the fiscal year for which authorized.

### § 216. Darien Gap Highway

(a) The United States shall cooperate with the Government of the Republic of Panama and with the Government of Colombia in the construction of approximately two hundred and fifty miles of highway in such countries in the location known as the "Darien Gap" to connect the Inter-American Highway authorized by section 212 of this title with the Pan American Highway System of South America. Such highway shall be known as the "Darien Gap Highway". Funds authorized by this section shall be obligated and expended subject to the same terms, conditions, and requirements with respect to the Darien Gap Highway as are funds authorized for the Inter-American Highway by subsection (a) of section 212 of this title.

(b) The construction authorized by this section shall be under the administration of the Secretary who shall consult with the appropriate officials of the Department of State with respect to matters involving the foreign relations of this Government, and such negotiations with the Governments of the Republic of Panama and Colombia as may be required to carry out the purposes of this section shall be conducted through, or authorized by, the Department of State.

(c) The provisions of this section shall not create nor authorize the creation of any obligations on the part of the Government of the United States with respect to any expenditures for highway survey or construction heretofore or hereafter undertaken in Panama or Colombia, other than the expenditures authorized by the provision of this section.

(d) Appropriations made pursuant to any authorization for the Darien Gap Highway shall be available for expenditure by the Secretary for necessary administrative and engineering expenses in connection with the Darien Gap Highway program.

(e) For the purposes of this section the term "construction" does not include any costs of rights-of-way, relocation assistance, or the elimination of hazards of railway grade crossings.

(Added Pub. L. 91-605, title I, §113(a), Dec. 31, 1970, 84 Stat. 1721.)

#### AUTHORIZATION OF APPROPRIATIONS

Section 113(c) of Pub. L. 91-605 provided that: "There is hereby authorized to be appropriated not to exceed \$100,000,000, to remain available until expended to enable the Secretary of Transportation to carry out section 216 of title 23, United States Code."

### § 217. Bicycle transportation and pedestrian walkways

(a) USE OF STP AND CONGESTION MITIGATION PROGRAM FUNDS.—Subject to project approval by the Secretary, a State may obligate funds apportioned to it under sections 104(b)(2) and

104(b)(3) of this title for construction of pedestrian walkways and bicycle transportation facilities and for carrying out nonconstruction projects related to safe bicycle use.

(b) USE OF NATIONAL HIGHWAY SYSTEM FUNDS.—Subject to project approval by the Secretary, a State may obligate funds apportioned to it under section 104(b)(1) of this title for construction of pedestrian walkways and bicycle transportation facilities on land adjacent to any highway on the National Highway System.

(c) USE OF FEDERAL LANDS HIGHWAY FUNDS.—Funds authorized for forest highways, forest development roads and trails, public lands development roads and trails, park roads, parkways, Indian reservation roads, and public lands highways shall be available, at the discretion of the department charged with the administration of such funds, for the construction of pedestrian walkways and bicycle transportation facilities in conjunction with such trails, roads, highways, and parkways.

(d) STATE BICYCLE AND PEDESTRIAN COORDINATORS.—Each State receiving an apportionment under sections 104(b)(2) and 104(b)(3) of this title shall use such amount of the apportionment as may be necessary to fund in the State department of transportation a position of bicycle and pedestrian coordinator for promoting and facilitating the increased use of nonmotorized modes of transportation, including developing facilities for the use of pedestrians and bicyclists and public education, promotional, and safety programs for using such facilities.

(e) BRIDGES.—In any case where a highway bridge deck being replaced or rehabilitated with Federal financial participation is located on a highway on which bicycles are permitted to operate at each end of such bridge, and the Secretary determines that the safe accommodation of bicycles can be provided at reasonable cost as part of such replacement or rehabilitation, then such bridge shall be so replaced or rehabilitated as to provide such safe accommodations.

(f) FEDERAL SHARE.—For all purposes of this title, construction of a pedestrian walkway and a bicycle transportation facility shall be deemed to be a highway project and the Federal share payable on account of such construction shall be determined in accordance with section 120(b).

(g) PLANNING AND DESIGN.—

(1) IN GENERAL.—Bicyclists and pedestrians shall be given due consideration in the comprehensive transportation plans developed by each metropolitan planning organization and State in accordance with sections 134 and 135, respectively. Bicycle transportation facilities and pedestrian walkways shall be considered, where appropriate, in conjunction with all new construction and reconstruction of transportation facilities, except where bicycle and pedestrian use are not permitted.

(2) SAFETY CONSIDERATIONS.—Transportation plans and projects shall provide due consideration for safety and contiguous routes for bicyclists and pedestrians. Safety considerations shall include the installation, where appropriate, and maintenance of audible traffic signals and audible signs at street crossings.

(h) USE OF MOTORIZED VEHICLES.—Motorized vehicles may not be permitted on trails and pe-

pedestrian walkways under this section, except for—

- (1) maintenance purposes;
- (2) when snow conditions and State or local regulations permit, snowmobiles;
- (3) motorized wheelchairs;
- (4) when State or local regulations permit, electric bicycles; and
- (5) such other circumstances as the Secretary deems appropriate.

(i) **TRANSPORTATION PURPOSE.**—No bicycle project may be carried out under this section unless the Secretary has determined that such bicycle project will be principally for transportation, rather than recreation, purposes.

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

(1) **BICYCLE TRANSPORTATION FACILITY.**—The term “bicycle transportation facility” means a new or improved lane, path, or shoulder for use by bicyclists and a traffic control device, shelter, or parking facility for bicycles.

(2) **ELECTRIC BICYCLE.**—The term “electric bicycle” means any bicycle or tricycle with a low-powered electric motor weighing under 100 pounds, with a top motor-powered speed not in excess of 20 miles per hour.

(3) **PEDESTRIAN.**—The term “pedestrian” means any person traveling by foot and any mobility-impaired person using a wheelchair.

(4) **WHEELCHAIR.**—The term “wheelchair” means a mobility aid, usable indoors, and designed for and used by individuals with mobility impairments, whether operated manually or motorized.

(Added Pub. L. 93–87, title I, §124(a), Aug. 13, 1973, 87 Stat. 262; amended Pub. L. 94–280, title I, §134, May 5, 1976, 90 Stat. 441; Pub. L. 95–599, title I, §141(h), Nov. 6, 1978, 92 Stat. 2712; Pub. L. 97–424, title I, §126A, formerly §126, Jan. 6, 1983, 96 Stat. 2116, renumbered §126A, Pub. L. 100–17, title I, §133(a)(2), Apr. 2, 1987, 101 Stat. 170; Pub. L. 100–17, title I, §127, Apr. 2, 1987, 101 Stat. 167; Pub. L. 102–240, title I, §1033, Dec. 18, 1991, 105 Stat. 1975; Pub. L. 104–59, title III, §310(b), Nov. 28, 1995, 109 Stat. 582; Pub. L. 105–178, title I, §1202(a), June 9, 1998, 112 Stat. 168.)

#### AMENDMENTS

1998—Subsec. (b). Pub. L. 105–178, §1202(a)(1), inserted “pedestrian walkways and” after “construction of” and struck out “(other than the Interstate System)” after “on the National Highway System”.

Subsec. (e). Pub. L. 105–178, §1202(a)(2), struck out “, other than a highway access to which is fully controlled,” after “located on a highway”.

Subsec. (g). Pub. L. 105–178, §1202(a)(3), added subsec. (g) and struck out heading and text of former subsec. (g). Text read as follows: “Pedestrian walkways and bicycle transportation facilities to be constructed under this section shall be located and designed pursuant to an overall plan to be developed by each metropolitan planning organization and State and incorporated into their comprehensive annual long-range plans in accordance with sections 134 and 135 of this title, respectively. Such plans shall provide due consideration for safety and contiguous routes.”

Subsec. (h). Pub. L. 105–178, §1202(a)(4), substituted “Motorized vehicles may not” for “No motorized vehicles shall” in introductory provisions.

Subsec. (h)(3). Pub. L. 105–178, §1202(a)(5), substituted “motorized wheelchairs;” for “when State and local regulations permit, motorized wheelchairs; and”.

Subsec. (h)(4), (5). Pub. L. 105–178, §1202(a)(6), added par. (4) and redesignated former par. (4) as (5).

Subsec. (j). Pub. L. 105–178, §1202(a)(7), added subsec. (j) and struck out heading and text of former subsec. (j). Text read as follows: “For purposes of this section, a ‘bicycle transportation facility’ means new or improved lanes, paths, or shoulders for use by bicyclists, traffic control devices, shelters, and parking facilities for bicycles.”

1995—Subsec. (f). Pub. L. 104–59 substituted “determined in accordance with section 120(b)” for “80 per cent”.

1991—Pub. L. 102–240 substituted “walkways” for “walkway” in section catchline and amended text generally, substituting present provisions for provisions authorizing States to construct pedestrian walkways and bicycle lanes, paths, etc., as Federal-aid highway projects, relating to safe accommodation of bicycles on bridge with deck replaced or rehabilitated with Federal participation, prohibiting bicycle project under this section unless principally for transportation purposes, deeming walkway and bicycle projects as highway projects and setting Federal share at 100 per centum, allowing use of funds authorized for forest highways, forest development roads and trails, etc., for construction of walkways and bicycle routes, prohibiting use of motor vehicles on trails and walkways, and relating to obligation of funds.

1987—Subsec. (b)(1). Pub. L. 100–17 inserted “and sums apportioned or allocated for highway substitute projects in accordance with section 103(e)(4) of this title” after “title” in second sentence.

1983—Subsec. (a). Pub. L. 97–424 designated as subsec. (a) that portion of former subsec. (a) relating to pedestrian walkways. Remainder of former subsec. (a) relating to bicycles was redesignated (b)(1).

Subsec. (b). Pub. L. 97–424 redesignated as par. (1) that portion of former subsec. (a) relating to bicycles and added pars. (2) and (3). Provisions of former subsec. (b) relating to pedestrian walkways and bicycles projects were redesignated (c) and (d), respectively.

Subsec. (c). Pub. L. 97–424 redesignated as subsec. (c) that portion of former subsec. (b) relating to pedestrian walkways. Provisions of former subsec. (c) relating to pedestrian walkways and to bicycle routes were redesignated (e) and (f), respectively.

Subsec. (d). Pub. L. 97–424 redesignated as subsec. (d) that portion of former subsec. (b) relating to bicycle projects. Former subsec. (d) redesignated (g).

Subsec. (e). Pub. L. 97–424 redesignated as subsec. (e) that portion of former subsec. (c) relating to pedestrian walkways. Former subsec. (e) redesignated (h) and amended.

Subsec. (f). Pub. L. 97–424 redesignated as subsec. (f) that portion of former subsec. (c) relating to bicycle routes.

Subsec. (g). Pub. L. 97–424 redesignated former subsec. (d) as (g).

Subsec. (h). Pub. L. 97–424 redesignated former subsec. (e) as (h), substituted reference to subsecs. (a), (b), (e), and (f) of this section for reference to former subsecs. (a) and (c), and substituted provision that no State shall obligate more than \$4,500,000 for such projects in any fiscal year, except that the Secretary may, upon application, waive this limitation for a State for any fiscal year for provision that no State was to obligate more than \$2,500,000 for such projects for any fiscal year.

1978—Subsec. (a). Pub. L. 95–599 inserted provision relating to energy conservation and struck out requirement that such construction be in conjunction with Federal-aid highways.

1976—Subsec. (e). Pub. L. 94–280 substituted “\$45,000,000” for “\$40,000,000” and “\$2,500,000” for “\$2,000,000”.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain

exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### DESIGN GUIDANCE

Pub. L. 105-178, title I, § 1202(b), June 9, 1998, 112 Stat. 169, provided that:

“(1) IN GENERAL.—In implementing section 217(g) of title 23, United States Code, the Secretary, in cooperation with the American Association of State Highway and Transportation Officials, the Institute of Transportation Engineers, and other interested organizations, shall develop guidance on the various approaches to accommodating bicycles and pedestrian travel.

“(2) ISSUES TO BE ADDRESSED.—The guidance shall address issues such as the level and nature of the demand, volume, and speed of motor vehicle traffic, safety, terrain, cost, and sight distance.

“(3) RECOMMENDATIONS.—The guidance shall include recommendations on amending and updating the policies of the American Association of State Highway and Transportation Officials relating to highway and street design standards to accommodate bicyclists and pedestrians.

“(4) TIME PERIOD FOR DEVELOPMENT.—The guidance shall be developed within 18 months after the date of enactment of this Act [June 9, 1998].”

#### ENERGY CONSERVATION BICYCLE TRANSPORTATION PROGRAM; REPORT

Pub. L. 95-619, title VI, § 682, Nov. 9, 1978, 92 Stat. 3287, set forth findings respecting an energy conservation bicycle transportation program and required a study and report not more than one year after Nov. 9, 1978, by the Secretary of Transportation for bicycle use potential, etc.

#### BIKEWAY CONSTRUCTION PROJECTS

Section 141(a)–(e), (i) of Pub. L. 95-599, related to establishment by Secretary of design and construction standards for bikeway construction projects and to grants to States for bikeway construction projects, prior to repeal by Pub. L. 100-17, title I, § 133(e)(2), Apr. 2, 1987, 101 Stat. 173.

#### BIKEWAY DEMONSTRATION PROGRAM

Pub. L. 93-643, § 119, Jan. 4, 1975, 88 Stat. 2288, authorized grants to States for demonstration projects for construction of bikeways, prior to repeal by Pub. L. 100-17, title I, § 133(e)(2), Apr. 2, 1987, 101 Stat. 173.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 133 of this title.

### § 218. Alaska Highway

(a) Recognizing the benefits that will accrue to the State of Alaska and to the United States from the reconstruction of the Alaska Highway from the Alaskan border to Haines Junction in Canada and the Haines Cutoff Highway from Haines Junction in Canada to Haines, the Secretary is authorized out of the funds appropriated for the purpose of this section to provide for necessary reconstruction of such highway. Such appropriations shall remain available until expended. Notwithstanding any other provision of law, in addition to such funds, upon agreement with the State of Alaska, the Secretary is authorized to expend on such highway or the Alaska Marine Highway System any Federal-aid highway funds apportioned to the State of Alaska under this title at a Federal share of 100 per centum. Notwithstanding any other provision of law, any obligation limitation enacted for fiscal

year 1983 or for any other fiscal year thereafter, including any portion of any other fiscal year thereafter, prior to the date of the enactment of the Transportation Equity Act for the 21st Century shall not apply to projects authorized by the preceding sentence. No expenditures shall be made for the construction of the portion of such highways that are in Canada until an agreement has been reached by the Government of Canada and the Government of the United States which shall provide, in part, that the Canadian Government—

(1) will provide, without participation of funds authorized under this title, all necessary right-of-way for the reconstruction of such highways;

(2) will not impose any highway toll, or permit any such toll to be charged for the use of such highways by vehicles or persons;

(3) will not levy or assess, directly or indirectly, any fee, tax, or other charge for the use of such highways by vehicles or persons from the United States that does not apply equally to vehicles or persons of Canada;

(4) will continue to grant reciprocal recognition of vehicle registration and drivers' licenses in accordance with agreements between the United States and Canada; and

(5) will maintain such highways after their completion in proper condition adequately to serve the needs of present and future traffic.

(b) The survey and construction work undertaken in Canada pursuant to this section shall be under the general supervision of the Secretary.

(Added Pub. L. 93-87, title I, § 127(a)(1), Aug. 13, 1973, 87 Stat. 264; amended Pub. L. 94-147, Dec. 12, 1975, 89 Stat. 803; Pub. L. 97-424, title I, § 158, Jan. 6, 1983, 96 Stat. 2135; Pub. L. 105-277, div. A, § 101(g) [title III, § 316], Oct. 21, 1998, 112 Stat. 2681-439, 2681-468.)

#### REFERENCES IN TEXT

The date of the enactment of the Transportation Equity Act for the 21st Century, referred to in subsec. (a), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-277, § 101(g) [title III, § 316(1)(A)], substituted “to Haines” for “to the south Alaskan border” in first sentence, substituted “such highway or the Alaska Marine Highway System” for “such highway” in third sentence, substituted “any other fiscal year thereafter, including any portion of any other fiscal year thereafter, prior to the date of the enactment of the Transportation Equity Act for the 21st Century” for “any other fiscal year thereafter” in fourth sentence, substituted “construction of the portion of such highways that are in Canada until an agreement” for “construction of such highways until an agreement” in fifth sentence.

Subsec. (b). Pub. L. 105-277, § 101(g) [title III, § 316(2)], inserted “in Canada” after “undertaken”.

1983—Subsec. (a). Pub. L. 97-424 inserted provision that notwithstanding any other provision of law, upon agreement with the State of Alaska, the Secretary is authorized to expend on the highway any Federal-aid highway funds apportioned to the State of Alaska under this title at a Federal share of 100 per centum, and that any obligation limitation enacted for fiscal year 1983 or for any other fiscal year thereafter shall not apply to such projects.

1975—Subsec. (a)(1). Pub. L. 94-147 struck out provision requiring that the right-of-way granted by the Canadian Government shall forever be held inviolate as part of such highways in public use.

ALASKAN ROADS STUDY; INVESTIGATION; REPORT TO CONGRESS

Pub. L. 94-280, title I, §151, May 5, 1976, 90 Stat. 448, provided that:

“(a) The Secretary of Transportation is authorized to undertake an investigation and study to determine the cost of, and the responsibility for, repairing the damage to Alaska highways that has been or will be caused by heavy truck traffic during construction of the trans-Alaska pipeline and to restore them to proper standards when construction is complete. The Secretary of Transportation shall report his initial findings to the Congress on or before September 30, 1976, and his final conclusions on rebuilding costs no later than three months after completion of pipeline construction.

“(b) There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to be available until expended, the sum of \$200,000 for the purpose of making the study authorized by subsection (a) of this section.”

APPROPRIATIONS AUTHORIZATION

Section 127(b) of Pub. L. 93-87 provided that: “For the purpose of completing necessary reconstruction of the Alaska Highway from the Alaskan border to Haines Junction in Canada and the Haines Cutoff Highway from Haines Junction in Canada to the south Alaskan border there is authorized to be appropriated the sum of \$58,670,000 to be expended in accordance with the provisions of section 218 of title 23 of the United States Code.”

**[§ 219. Repealed. Pub. L. 100-17, title I, § 133(e)(1), Apr. 2, 1987, 101 Stat. 173]**

Section, added Pub. L. 93-643, §122(a), Jan. 4, 1975, 88 Stat. 2289; amended Pub. L. 94-280, title I, §135(a), May 5, 1976, 90 Stat. 441; Pub. L. 95-599, title I, §168(d), Nov. 6, 1978, 92 Stat. 2723; Pub. L. 96-106, §10(a), Nov. 9, 1979, 93 Stat. 798, related to projects for safer off-system roads.

**CHAPTER 3—GENERAL PROVISIONS**

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Sec.	
[325.	Repealed.]
[326.	Repealed.]

AMENDMENTS

1998—Pub. L. 105-178, title I, §§1212(a)(2)(B)(i), 1218(b), 1301(d)(3), title V, §5119(c), June 9, 1998, 112 Stat. 193, 219, 226, 452, substituted “State transportation department” for “State highway department” in item 302, struck out items 307 “Research and planning” and 321 “National Highway Institute”, added item 322, substituted “Donations and credits” for “Donations” in item 323, and struck out items 325 “International highway transportation outreach program” and 326 “Education and training program”.

1991—Pub. L. 102-240, title I, §1034(b), title VI, §§6003(b), 6004(b), Dec. 18, 1991, 105 Stat. 1978, 2168, 2169, added items 303, 325, and 326.

1987—Pub. L. 100-17, title I, §133(e)(1), Apr. 2, 1987, 101 Stat. 173, struck out item 322 “Demonstration project—rail crossings”.

1983—Pub. L. 97-449, §5(d)(2), Jan. 12, 1983, 96 Stat. 2442, struck out item 303 “Bureau organization”.

1973—Pub. L. 93-87, title I, §§145(b), 162(b), Aug. 13, 1973, 87 Stat. 273, 280, added items 323 and 324.

1970—Pub. L. 91-605, title I, §115(b), title II, §205(b), Dec. 31, 1970, 84 Stat. 1723, 1743, added items 321 and 322.

1966—Pub. L. 89-564, title I, §102(b)(2), Sept. 9, 1966, 80 Stat. 735, struck out item 313 relating to Highway Safety Conference.

1965—Pub. L. 89-285, title III, §301(b), Oct. 22, 1965, 79 Stat. 1032, inserted “and scenic enhancement” after “Landscaping” in item 319.

**§ 301. Freedom from tolls**

Except as provided in section 129 of this title with respect to certain toll bridges and toll tunnels, all highways constructed under the provisions of this title shall be free from tolls of all kinds.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 912.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 129 of this title.

**§ 302. State transportation department**

(a) Any State desiring to avail itself of the provisions of this title shall have a State transportation department which shall have adequate powers, and be suitably equipped and organized to discharge to the satisfaction of the Secretary the duties required by this title. In meeting the provisions of this subsection, a State may engage, to the extent necessary or desirable, the services of private engineering firms.

(b) EFFECT OF COMPLIANCE.—Compliance with subsection (a) shall have no effect on the eligibility of costs.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 912; Pub. L. 89-574, §11, Sept. 13, 1966, 80 Stat. 770; Pub. L. 105-178, title I, §1212(a)(1), (2)(A)(i), (B)(ii), June 9, 1998, 112 Stat. 193.)

AMENDMENTS

1998—Pub. L. 105-178, §1212(a)(2)(B)(ii), substituted “State transportation department” for “State highway department” in section catchline.

Subsec. (a). Pub. L. 105-178, §1212(a)(1)(A), (2)(A)(i), substituted “State transportation department” for “State highway department” and struck out after first sentence “Among other things, the organization shall include a secondary road unit.”

Subsec. (b). Pub. L. 105-178, §1212(a)(1)(B), added subsec. (b) and struck out former subsec. (b) which read as

follows: "The State highway department may arrange with a county or group of counties for competent highway engineering personnel suitably organized and equipped to the satisfaction of the State highway department, to supervise construction and maintenance on a county-unit or group-unit basis, for the construction of projects on the Federal-aid secondary system, financed with secondary funds, and for the maintenance thereof."

### § 303. Management systems

(a) REGULATIONS.—Not later than 1 year after the date of the enactment of this section, the Secretary shall issue regulations for State development, establishment, and implementation of a system for managing each of the following:

- (1) Highway pavement of Federal-aid highways.
- (2) Bridges on and off Federal-aid highways.
- (3) Highway safety.
- (4) Traffic congestion.
- (5) Public transportation facilities and equipment.
- (6) Intermodal transportation facilities and systems.

In metropolitan areas, such systems shall be developed and implemented in cooperation with metropolitan planning organizations. Such regulations may include a compliance schedule for development, establishment, and implementation of each such system and minimum standards for each such system.

(b) TRAFFIC MONITORING.—Not later than 1 year after the date of the enactment of this section, the Secretary shall issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment.

(c) STATE ELECTION.—A State may elect, at any time, not to implement, in whole or in part, 1 or more of the management systems required under this section. The Secretary may not impose any sanction on, or withhold any benefit from, a State on the basis of such an election.

(d) PROCEDURAL REQUIREMENTS.—In developing and implementing a management system under this section, each State shall cooperate with metropolitan planning organizations for urbanized areas of the State and affected agencies receiving assistance under chapter 53 of title 49 and shall consider the results of the management systems in making project selection decisions under this title and under chapter 53.

(e) INTERMODAL REQUIREMENTS.—The management system required under this section for intermodal transportation facilities and systems shall provide for improvement and integration of all of a State's transportation systems and shall include methods of achieving the optimum yield from such systems, methods for increasing productivity in the State, methods for increasing use of advanced technologies, and methods to encourage the use of innovative marketing techniques, such as just-in-time deliveries.

(f) REPORTS.—

- (1) ANNUAL REPORTS.—Not later than January 1 of each calendar year beginning after December 31, 1992, the Secretary shall transmit to Congress a report on the progress being made by the Secretary and the States in carrying out this section.

(2) REPORT ON IMPLEMENTATION.—Not later than October 1, 1996, the Comptroller General, in consultation with States, shall transmit to Congress a report on the management systems under this section, including recommendations as to whether, to what extent, and how the management systems should be implemented.

(g) FUNDING.—Subject to project approval by the Secretary, a State may obligate funds apportioned after September 30, 1991, under subsections (b)(1), (b)(2), and (b)(3) of section 104 of this title for developing and establishing management systems required by this section and funds apportioned under section 144 of this title for developing and establishing the bridge management system required by this section.

(h) REVIEW OF REGULATIONS.—Not later than 10 days after the date of issuance of any regulation under this section, the Secretary shall transmit a copy of such regulation to Congress for review.

(Added Pub. L. 102-240, title I, §1034(a), Dec. 18, 1991, 105 Stat. 1977; amended Pub. L. 103-429, §3(8), (9), Oct. 31, 1994, 108 Stat. 4378; Pub. L. 104-59, title II, §205(a), Nov. 28, 1995, 109 Stat. 576.)

#### REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (a) and (b), is the date of enactment of Pub. L. 102-240, which was approved Dec. 18, 1991.

#### PRIOR PROVISIONS

A prior section 303, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 912; Pub. L. 87-392, §1, Oct. 4, 1961, 75 Stat. 822; Pub. L. 88-426, title III, §305(24), Aug. 14, 1964, 78 Stat. 425; Pub. L. 91-605, title I, §114(a), Dec. 31, 1970, 84 Stat. 1722; Pub. L. 93-87, title I, §152(4), Aug. 13, 1973, 87 Stat. 276, provided for administrative organization of the Federal Highway Administration, prior to repeal by Pub. L. 97-449, §7(b), Jan. 12, 1983, 96 Stat. 2445. See section 104 of Title 49, Transportation.

#### AMENDMENTS

1995—Subsec. (c). Pub. L. 104-59, §205(a)(1), added subsec. (c) and struck out former subsec. (c) which read as follows:

"(c) STATE REQUIREMENTS.—The Secretary may withhold up to 10 percent of the funds apportioned under this title and under chapter 53 of title 49 for any fiscal year beginning after September 30, 1995, to any State and any recipient of assistance under such Act in the State unless, in the preceding fiscal year, the State was implementing each of the management systems described in subsection (a) and, before January 1 of the preceding fiscal year, the State certified, in writing, to the Secretary, that the State was implementing each of such management systems in the preceding fiscal year."

Subsec. (f). Pub. L. 104-59, §205(a)(2), inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading and realigned margins, and added par. (2).

1994—Subsec. (c). Pub. L. 103-429, §3(8), substituted "chapter 53 of title 49" for "the Federal Transit Act".

Subsec. (d). Pub. L. 103-429, §3(9), substituted "chapter 53 of title 49" for "the Federal Transit Act" and "chapter 53" for "such Act".

#### EFFECTIVE DATE

Section effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set

out as an Effective Date of 1991 Amendment note under section 104 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 109, 133, 505 of this title.

### § 304. Participation by small business enterprises

It is declared to be in the national interest to encourage and develop the actual and potential capacity of small business and to utilize this important segment of our economy to the fullest practicable extent in construction of the Federal-aid highway systems, including the Interstate System. In order to carry out that intent and encourage full and free competition, the Secretary should assist, insofar as feasible, small business enterprises in obtaining contracts in connection with the prosecution of the highway program.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 913.)

### § 305. Archeological and paleontological salvage

Funds authorized to be appropriated to carry out this title to the extent approved as necessary by the highway department of any State, may be used for archeological and paleontological salvage in that State in compliance with the Act entitled "An Act for the preservation of American antiquities", approved June 8, 1906 (34 Stat. 225), and State laws where applicable,

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 913; Pub. L. 86-657, § 8(e), July 14, 1960, 74 Stat. 525.)

#### REFERENCES IN TEXT

An Act for the preservation of American antiquities, referred to in text, is act June 8, 1906, ch. 3060, 34 Stat. 225, popularly known as the Antiquities Act of 1906, which is classified generally to sections 431, 432, and 433 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 431 of Title 16 and Tables.

#### AMENDMENTS

1960—Pub. L. 86-657 substituted "appropriated to carry out this title to the extent approved" for "appropriated under the Federal-Aid Highway Act of 1956, to the extent approved".

### § 306. Mapping

(a) IN GENERAL.—In carrying out the provisions of this title, the Secretary may, wherever practicable, authorize the use of photogrammetric methods in mapping, and the utilization of commercial enterprise for such services.

(b) GUIDANCE.—The Secretary shall issue guidance to encourage States to utilize, to the maximum extent practicable, private sector sources for surveying and mapping services for projects under this title. In carrying out this subsection, the Secretary shall recommend appropriate roles for State and private mapping and surveying activities, including—

- (1) preparation of standards and specifications;
- (2) research in surveying and mapping instrumentation and procedures and technology transfer to the private sector;
- (3) providing technical guidance, coordination, and administration of State surveying and mapping activities; and

(4) recommending methods for increasing the use by the States of private sector sources for surveying and mapping activities.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 913; Pub. L. 104-59, title III, § 321, Nov. 28, 1995, 109 Stat. 590.)

#### AMENDMENTS

1995—Pub. L. 104-59 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

### [§ 307. Repealed. Pub. L. 105-178, title V, § 5119(b), June 9, 1998, 112 Stat. 452]

Section, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 913; Pub. L. 87-866, § 11, Oct. 23, 1962, 76 Stat. 1148; Pub. L. 88-157, § 6, Oct. 24, 1963, 77 Stat. 277; Pub. L. 89-564, title I, § 103, Sept. 9, 1966, 80 Stat. 735; Pub. L. 91-605, title I, § 115(c), 126, 136(c), Dec. 31, 1970, 84 Stat. 1723, 1729, 1735; Pub. L. 93-87, title I, § 151, Aug. 13, 1973, 87 Stat. 276; Pub. L. 96-470, title I, § 112(b)(2), Oct. 19, 1980, 94 Stat. 2239; Pub. L. 97-424, title I, §§ 156(a), (b), (d), 160(a), Jan. 6, 1983, 96 Stat. 2134, 2135; Pub. L. 100-17, title I, §§ 128, 129, 133(b)(17), Apr. 2, 1987, 101 Stat. 167, 169, 172; Pub. L. 102-240, title VI, §§ 6001, 6005, Dec. 18, 1991, 105 Stat. 2162, 2170; Pub. L. 103-429, § 3(10), Oct. 31, 1994, 108 Stat. 4378; Pub. L. 104-59, title III, § 325(d), Nov. 28, 1995, 109 Stat. 592, related to research and planning.

#### INTELLIGENT TRANSPORTATION SYSTEMS

Part B of title VI of Pub. L. 102-240, as amended by Pub. L. 102-388, title IV, § 404, Oct. 6, 1992, 106 Stat. 1564; Pub. L. 104-59, title III, § 338(a), (b), (c)(2), Nov. 28, 1995, 109 Stat. 603, 604; Pub. L. 105-130, § 5(d), Dec. 1, 1997, 111 Stat. 2557, related to Intelligent Transportation Systems Act of 1991, including provisions relating to establishment and scope of program, general authorities and requirements, strategic plan, implementation, and report to Congress, technical, planning, and operational testing project assistance, applications of technology, commercial motor vehicle safety technology, funding, and definitions, prior to repeal by Pub. L. 105-178, title V, § 5213, June 9, 1998, 112 Stat. 463. See Pub. L. 105-178, title V, §§ 5201-5213, June 9, 1998, 112 Stat. 452-463, set out as a note under section 502 of this title.

### § 308. Cooperation with Federal and State agencies and foreign countries

(a) The Secretary is authorized to perform by contract or otherwise, authorized engineering or other services in connection with the survey, construction, maintenance, or improvement of highways for other Government agencies, cooperating foreign countries, and State cooperating agencies, and reimbursement for such services, which may include depreciation on engineering and roadbuilding equipment used, shall be credited to the appropriation concerned.

(b) Appropriations for the work of the Federal Highway Administration shall be available for expenses of warehouse maintenance and the procurement, care, and handling of supplies, materials, and equipment for distribution of projects under the supervision of the Federal Highway Administration, or for sale or distribution to other Government agencies, cooperating foreign countries, and State cooperating agencies, and the cost of such supplies and materials or the value of such equipment, including the cost of transportation and handling, may be reimbursed to current applicable appropriations.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 914; Pub. L. 93-87, title I, § 152(5), Aug. 13, 1973, 87 Stat. 276.)

## AMENDMENTS

1973—Subsec. (b). Pub. L. 93-87 substituted “Federal Highway Administration” for “Bureau of Public Roads” in two places.

### § 309. Cooperation with other American Republics

The President is authorized to utilize the services of the Federal Highway Administration in fulfilling the obligations of the United States under the Convention on the Pan-American Highway Between the United States and Other American Republics (51 Stat. 152), cooperating with several governments, members of the Organization of American States, in connection with the survey and construction of the Inter-American Highway, and for performing engineering service in the other American Republics for and upon the request of any agency or governmental corporation of the United States. To the extent authorized in appropriation acts, administrative funds available in accordance with subsection (a) of section 104 of this title shall be available annually for the purpose of this section.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 914; Pub. L. 93-87, title I, §152(5), Aug. 13, 1973, 87 Stat. 276.)

## AMENDMENTS

1973—Pub. L. 93-87 substituted “Federal Highway Administration” for “Bureau of Public Roads”.

## PAN AMERICAN HIGHWAY STUDY

Pub. L. 104-59, title III, §359(a), Nov. 28, 1995, 109 Stat. 626, provided that:

“(1) STUDY.—The Secretary shall conduct a study on the adequacy of and the need for improvements to the Pan American Highway.

“(2) ELEMENTS.—The study shall include, at a minimum, the following elements:

“(A) Findings on the benefits of constructing a highway at Darien Gap, Panama and Colombia.

“(B) Recommendations for a self-financing arrangement for completion and maintenance of the Pan American Highway.

“(C) Recommendations for establishing a Pan American highway authority to monitor financing, construction, maintenance, and operations of the Pan American Highway.

“(D) Findings on the benefits to trade and prosperity of a more efficient Pan American Highway.

“(E) Findings on the benefits to United States industry resulting from the use of United States technology and equipment in construction of improvements to the Pan American Highway.

“(F) Findings on environmental considerations, including environmental considerations relating to Darien Gap.

“(3) REPORT.—Not later than 2 years after the date of the enactment of this Act [Nov. 28, 1995], the Secretary shall transmit to Congress a report on the results of the study.”

### § 310. Civil defense

In order to assure that adequate consideration is given to civil defense aspects in the planning and construction of highways constructed or reconstructed with the aid of Federal funds, the Secretary of Transportation is authorized and directed to consult, from time to time, with the Federal Civil Defense Administrator relative to the civil defense aspects of highways so constructed or reconstructed.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 914; Pub. L. 93-87, title I, §152(3), Aug. 13, 1973, 87 Stat. 276.)

## AMENDMENTS

1973—Pub. L. 93-87 substituted “Secretary of Transportation” for “Secretary of Commerce”.

## TRANSFER OF FUNCTIONS

Office of Federal Civil Defense Administrator, referred to in text, abolished and functions thereof transferred to President by Reorg. Plan No. 1 of 1958, set out as a note under section 5195 of Title 42, The Public Health and Welfare. The Plan also established a new agency in the Executive Office of the President, known as the Office of Defense and Civilian Mobilization to be headed by a Director. Office redesignated as the Office of Civil and Defense Mobilization by act Aug. 26, 1958 (72 Stat. 861; 42 U.S.C. 5195 note). Civil defense functions transferred to Secretary of Defense by Executive Order No. 10952 of July 20, 1961, formerly set out as a note under section 2271 of Title 50, Appendix, War and National Defense, and remaining functions redesignated Office of Emergency Planning by act Sept. 22, 1961 (75 Stat. 630; 42 U.S.C. 5195 note). Office redesignated Office of Emergency Preparedness by act Oct. 21, 1968 (82 Stat. 1194; 42 U.S.C. 5195 note). Office of Emergency Preparedness including office of Director abolished and functions thereof transferred to President by Reorg. Plan No. 1 of 1973, set out as a note under section 5195 of Title 42.

### § 311. Highway improvements strategically important to the national defense

Funds made available under subsection (a) of section 104 of this title may be used to pay the entire engineering costs of the surveys, plans, specifications, estimates, and supervision of construction of projects for such urgent improvements of highways strategically important from the standpoint of the national defense as may be undertaken on the order of the Secretary and as the result of request of the Secretary of Defense or such other official as the President may designate. With the consent of a State, funds made available under subsection (b) of section 104 of this title may be used to the extent deemed necessary and advisable by the Secretary to carry out the provisions of this section.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 915.)

## NATIONAL DEFENSE HIGHWAYS LOCATED OUTSIDE UNITED STATES

Pub. L. 102-240, title I, §1006(h), Dec. 18, 1991, 105 Stat. 1927, provided that:

“(1) RECONSTRUCTION PROJECTS.—If the Secretary determines, after consultation with the Secretary of Defense, that a highway, or portion of a highway, located outside the United States is important to the national defense, the Secretary may carry out a project for the reconstruction of such highway or portion of highway.

“(2) FUNDING.—The Secretary may make available, from funds appropriated to construct the National System of Interstate and Defense Highways, not to exceed \$20,000,000 per fiscal year for each of fiscal years 1993, 1994, 1995, and 1996 to carry out this subsection. Such sums shall remain available until expended.”

### § 312. Detail of Army, Navy, and Air Force officers

The Secretary of Defense, upon request of the Secretary, is authorized to make temporary details to the Federal Highway Administration of officers of the Army, the Navy, and the Air Force, without additional compensation, for technical advice and for consultation regarding highway needs for the national defense. Travel

and subsistence expenses of officers so detailed shall be paid from appropriations available to the Department of Transportation on the same basis as authorized by law and by regulations of the Department of Defense for such officers.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 915; Pub. L. 93-87, title I, § 152(5), (6), Aug. 13, 1973, 87 Stat. 276.)

#### AMENDMENTS

1973—Pub. L. 93-87 substituted “Federal Highway Administration” for “Bureau of Public Roads” and “Department of Transportation” for “Department of Commerce”.

### **[§ 313. Repealed. Pub. L. 89-564, title I, § 102(a), Sept. 9, 1966, 80 Stat. 734]**

Section, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 915, authorized the Secretary to cooperate with State highway departments and other agencies in the promotion of highway safety and authorized the expenditure of \$150,000 out of the administrative funds made available in accordance with section 104(a) of this title for the purposes of this section. See section 401 et seq. of this title.

#### INTERSTATE COMPACTS FOR HIGHWAY SAFETY

Pub. L. 85-684, Aug. 20, 1958, 72 Stat. 635, as amended by Pub. L. 88-466, Aug. 20 1964, 78 Stat. 564, provided: “That the consent of Congress is hereby given to any two or more of the several States, and one or more of the several States and the District of Columbia, to enter into agreements or compacts—

“(1) for cooperative effort and mutual assistance in the establishment and carrying out of traffic safety programs, including, but not limited to, the enactment of uniform traffic laws, driver education and training, coordination of traffic law enforcement, research into safe automobile and highway design, and research programs of the human factors affecting traffic safety, and

“(2) for the establishment of such agencies, joint or otherwise, as they deem desirable for the establishment and carrying out of such traffic safety programs.”

#### EXECUTIVE ORDER No. 10858

Ex. Ord. No. 10858, Jan. 13, 1960, 25 F.R. 373, as amended by Ex. Ord. No. 10968, Oct. 10, 1961, 26 F.R. 9667, which established the President's Committee for Traffic Safety, was revoked by section 16 of Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, formerly set out as a note under section 1652 of former Title 49, Appendix, Transportation.

#### EXECUTIVE ORDER No. 10898

Ex. Ord. No. 10898, Dec. 2, 1960, 25 F.R. 12429, as amended by Ex. Ord. No. 10986, Jan. 12, 1962, 27 F.R. 439; Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, which established the Interdepartmental Highway Safety Board, was revoked by Ex. Ord. No. 11515, Mar. 13, 1970, 35 F.R. 4543.

### **§ 314. Relief of employees in hazardous work**

The Secretary is authorized in an emergency to use appropriations to the Department of Transportation for carrying out the provisions of this title for medical supplies, services, and other assistance necessary for the immediate relief of employees of the Federal Highway Administration engaged in hazardous work.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 915; Pub. L. 93-87, title I, § 152(5), (6), Aug. 13, 1973, 87 Stat. 276.)

#### AMENDMENTS

1973—Pub. L. 93-87 substituted “Department of Transportation” for “Department of Commerce” and “Federal Highway Administration” for “Bureau of Public Roads”.

### **§ 315. Rules, regulations, and recommendations**

Except as provided in sections 204(f) and 205(a) of this title, the Secretary is authorized to prescribe and promulgate all needful rules and regulations for the carrying out of the provisions of this title. The Secretary may make such recommendations to the Congress and State transportation departments as he deems necessary for preserving and protecting the highways and insuring the safety of traffic thereon.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 915; Pub. L. 100-17, title I, § 133(b)(18), Apr. 2, 1987, 101 Stat. 172; Pub. L. 105-178, title I, § 1212(a)(2)(A)(ii), June 9, 1998, 112 Stat. 193.)

#### AMENDMENTS

1998—Pub. L. 105-178 substituted “State transportation departments” for “State highway departments”.

1987—Pub. L. 100-17 which directed that this section be amended by substituting “204(f) and 205(a)” for “204(d), 205(a), 207(b), and 208(c)” was executed by substituting “204(f) and 205(a)” for “204(d), 205(a), 206(b), 207(b), and 208(c)”, to reflect the probable intent of Congress.

### **§ 316. Consent by United States to conveyance of property**

For the purposes of this title the consent of the United States is given to any railroad or canal company to convey to the State transportation department of any State, or its nominee, any part of its right-of-way or other property in that State acquired by grant from the United States.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 915; Pub. L. 105-178, title I, § 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193.)

#### AMENDMENTS

1998—Pub. L. 105-178 substituted “State transportation department” for “State highway department”.

### **§ 317. Appropriation for highway purposes of lands or interests in lands owned by the United States**

(a) If the Secretary determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway, or as a source of materials for the construction or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate.

(b) If within a period of four months after such filing, the Secretary of such Department shall not have certified to the Secretary that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved, or shall have agreed to



the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land and materials may be appropriated and transferred to the State transportation department, or its nominee, for such purposes and subject to the conditions so specified.

(c) If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State transportation department to the Secretary and such lands or materials shall immediately revert to the control of the Secretary of the Department from which they had been appropriated.

(d) The provisions of this section shall apply only to projects constructed on a Federal-aid system or under the provisions of chapter 2 of this title.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 916; Pub. L. 105-178, title I, § 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193.)

#### AMENDMENTS

1998—Subsecs. (b), (c). Pub. L. 105-178 substituted “State transportation department” for “State highway department”.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 1770.

### § 318. Highway relocation due to airport

Federal highway funds shall not be used for the reconstruction or relocation of any highway giving access to an airport constructed or extended after December 20, 1944, or for the reconstruction or relocation of any highway which has been or may be closed or the usefulness of which has been may be impaired by the location or construction of any airport constructed or extended after December 20, 1944, unless, prior to such construction or extension as the case may be, the State transportation department and the Secretary have concurred with the officials in charge of the airport that the location of such airport or extension thereof and the consequent reconstruction or relocation of the highway are in the public interest.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 916; Pub. L. 105-178, title I, § 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193.)

#### AMENDMENTS

1998—Pub. L. 105-178 substituted “State transportation department” for “State highway department”.

### § 319. Landscaping and scenic enhancement

(a) **LANDSCAPE AND ROADSIDE DEVELOPMENT.**—The Secretary may approve as a part of the construction of Federal-aid highways the costs of landscape and roadside development, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary to accommodate the traveling public, and for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways.

(b) **PLANTING OF WILDFLOWERS.**—

(1) **GENERAL RULE.**—The Secretary shall require the planting of native wildflower seeds or seedlings, or both, as part of any landscaping project under this section. At least ¼ of 1 percent of the funds expended for such landscaping project shall be used for such plantings.

(2) **WAIVER.**—The requirements of this subsection may be waived by the Secretary if a State certifies that native wildflowers or seedlings cannot be grown satisfactorily or planting areas are limited or otherwise used for agricultural purposes.

(3) **GIFTS.**—Nothing in this subsection shall be construed to prohibit the acceptance of native wildflower seeds or seedlings donated by civic organizations or other organizations and individuals to be used in landscaping projects.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 916; Pub. L. 89-285, title III, § 301(a), Oct. 22, 1965, 79 Stat. 1032; Pub. L. 89-574, § 8(b), Sept. 13, 1966, 80 Stat. 768; Pub. L. 90-495, § 6(f), Aug. 23, 1968, 82 Stat. 818; Pub. L. 94-280, title I, § 136(a), May 5, 1976, 90 Stat. 442; Pub. L. 100-17, title I, § 130, Apr. 2, 1987, 101 Stat. 169.)

#### AMENDMENTS

1987—Pub. L. 100-17 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1976—Pub. L. 94-280, in revising section, struck out subsec. (a) designation for existing text; incorporated as part of the section provision of former subsec. (b) for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to Federal-aid highways; and struck out subsec. (b) designation and other subsec. (b) provisions relating to: allocation to a State out of appropriated funds an amount equivalent to 3 per centum of funds apportioned to a State for Federal-aid highways for landscape and roadside development use within the highway right-of-way, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to the highway right-of-way without being matched by the State; authorization of Secretary to except a State from the requirement upon a showing that amount is in excess of the State needs for the purposes; lapse of unused funds; appropriations authorization of \$120,000,000 for fiscal years ending June 30, 1966, and 1967, and \$20,000,000 for fiscal year ending June 30, 1970; and provision making chapter 1 respecting obligation, period of availability, and expenditure of Federal-aid primary highway funds applicable to funds authorized to be appropriated to carry out subsec. (b) after June 30, 1967.

1968—Subsec. (b). Pub. L. 90-495 inserted provisions authorizing an appropriation of not to exceed \$20,000,000 for the fiscal year ending June 30, 1970.

1966—Subsec. (b). Pub. L. 89-574 substituted provisions making applicable to the funds authorized to be appropriated to carry out this subsection after June 30, 1967, the provisions of chapter 1 of this title relating to the obligations, period of availability, and expenditure of Federal-aid primary highway funds for provisions prohibiting the use of any part of the Highway Trust Fund in carrying out this subsection.

1965—Pub. L. 89-285 rearranged section structurally, made provision for apportionment of an amount, in addition to the state's annual apportionment, equivalent to 3 per centum of the fund annually apportioned to the state for federal-aid highways to acquire interests and improvements for restoration, preservation, and enhancement of scenic beauty adjacent to Federal-aid highways, authorized appropriations of \$120,000,000 for fiscal year ending June 30, 1966, and \$120,000,000 for fiscal year ending June 30, 1967, and prohibited use of

Highway Trust Fund moneys in carrying out the scenic enhancement provisions.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective August 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

CONTINUING AVAILABILITY OF APPROPRIATED FUNDS FOR APPROPRIATION, OBLIGATION, AND EXPENDITURE

Section 136(b) of Pub. L. 94-280 provided that: "All sums authorized to be appropriated to carry out section 319(b) of title 23, United States Code [former subsec. (b) of this section], as in effect immediately before the date of enactment of this section [May 5, 1976] shall continue to be available for appropriation, obligation, and expenditure in accordance with such section 319(b) [former subsec. (b) of this section], notwithstanding the amendment made by the subsection (a) of this section [to this section]."

NATIONAL SCENIC HIGHWAY SYSTEM STUDY AND USER ACCESS STUDY FOR PARKS AND RECREATION AREAS

Pub. L. 93-87, title I, §134, Aug. 13, 1973, 87 Stat. 268, mandated a study to determine the feasibility of a scenic highway system to link together recreational, historical sites, and a study of user access to parks and recreational areas, including alternatives to private automobiles, the results of the studies to be reported to Congress no later than July 1, 1974, and Jan. 1, 1975, respectively.

ACQUISITION OF DWELLINGS

Prohibition against the use of eminent domain to acquire any dwelling (including related buildings) under the terms of Pub. L. 89-285, see section 305 of Pub. L. 89-285, set out as a note under section 131 of this title.

TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION

Prohibition against the taking of private property or the restriction of reasonable and existing use by such taking without just compensation under the terms of Pub. L. 89-285, see section 401 of Pub. L. 89-285, set out as a note under section 131 of this title.

**§ 320. Bridges on Federal dams**

(a) Each executive department, independent establishment, office, board, bureau, commission, authority, administration, corporation wholly owned or controlled by the United States, or other agency of the Government of the United States, hereinafter collectively and individually referred to as "agency", which on or after July 29, 1946, has jurisdiction over and custody of any dam constructed or to be constructed and owned by or for the United States, is authorized, with any funds available to it, to design and construct any such dam in such manner that it will constitute and serve as a suitable and adequate foundation to support a public highway bridge upon and across such dam, and to design and construct upon the foundation thus provided a public highway bridge upon and across such dam. The highway department of the State in which such dam shall be located, jointly with the Secretary, shall first determine and certify to such agency that such bridge is economically desirable and needed as a link in the State or Federal-aid highway systems, and shall request such agency to design and construct such dam so that it will serve as a suitable and adequate foundation for a public highway bridge and to design and construct such public highway bridge upon and across such

dam, and shall agree to reimburse such agency pursuant to subsection (d) of this section for any additional costs which it may be required to incur because of the design and construction of such dam so that it will serve as a foundation for a public highway bridge and for expenditures which it may find it necessary to make in designing and constructing such public highway bridge upon and across such dam. In no case shall the design and construction of a bridge upon and across such dam be undertaken hereunder except by the agency having jurisdiction over and custody of the dam, acting directly or through contractors employed by it, and after such agency shall determine that it will be structurally feasible and will not interfere with the proper functioning and operation of the dam.

(b) Construction of any bridge upon and across any dam pursuant to this section shall not be commenced unless and until the State in which such bridge is to be located, or the appropriate subdivision of such State, shall enter into an agreement with such agency and with the Secretary to construct, or cause to be constructed, with or without the aid of Federal funds, the approach roads necessary to connect such bridge with existing public highways and to maintain, or cause to be maintained, such approach roads from and after their completion. Such agreement may also provide for the design and construction of such bridge upon and across the dam by such agency of the United States and for reimbursing such agency the costs incurred by it in the design and construction of the bridge as provided in subsection (d) of this section. Any such agency is hereby authorized to convey to the State, or to the appropriate subdivision thereof, without costs, such easements and rights-of-way in its custody or over lands of the United States in its custody and control as may be necessary, convenient, or proper for the location, construction, and maintenance of the approach roads referred to in this section including such roadside parks or recreational areas of limited size as may be deemed necessary for the accommodation of the traveling public. Any bridge constructed pursuant to this section upon and across a dam in the custody and jurisdiction of any agency of the United States, including such portion thereof, if any, as may extend beyond the physical limits of the dam, shall constitute and remain a part of said dam and be maintained by the agency. Any such agency may enter into any such contracts and agreements with the State or its subdivisions respecting public use of any bridge so located and constructed as may be deemed appropriate, but no such bridge shall be closed to public use by the agency except in cases of emergency or when deemed necessary in the interest of national security.

(c) All costs and expenses incurred and expenditures made by any agency in the exercise of the powers and authority conferred by this section (but not including any costs, expenses, or expenditures which would have been required in any event to satisfy a legal road or bridge relocation obligation or to meet operating or other agency needs) shall be recorded and kept separate and apart from the other costs, expenses,

and expenditures of such agency, and no portion thereof shall be charged or allocated to flood control, navigation, irrigation, fertilizer production, the national defense, the development of power, or other program, purpose, or function of such agency.

(d) Not to exceed \$65,000,000 of any money heretofore or hereafter appropriated for expenditure in accordance with the provisions of this title or prior Acts shall be available for expenditure by the Secretary in accordance with the provisions of this section, as an emergency fund, to reimburse any agency for any additional costs or expenditures which it may be required to incur because of the design and construction of any such dam so that it will constitute and serve as a foundation for a public highway bridge upon and across such dam and to reimburse any such agency for any costs, expenses, or expenditures which it may be required to make in designing and constructing any such bridge upon and across a dam in accordance with the provisions of this section, except such costs, expenses, or expenditures as would have been required of such agency in any event to satisfy a legal obligation to relocate a highway or bridge or to meet operating or other agency needs, and there is authorized to be appropriated any sum or sums necessary to reimburse the funds so expended by the Secretary from time to time under the authority of this section. Of each bridge constructed upon and across a dam under the provisions of this section, there may be financed wholly with Federal funds that portion thereof which is located within the physical limits of the masonry structure, or structures, of the dam, and the Secretary shall in his sole discretion determine what additional portion of the bridge, if any, may be so financed, such determination to be final and conclusive. The remainder of the bridge, and any necessary related approach roads, shall be financed by the State or its appropriate subdivision with or without the aid of Federal funds; but said portion of the bridge so financed by the State or its subdivisions, including such portion thereof, if any, as may extend beyond the physical limits of the dam, shall nevertheless be designed and constructed solely by the agency having custody and jurisdiction of the dam as provided in subsection (a) of this section.

(e) In making, reviewing, or approving the design of any bridge or approach structure to be constructed under this section, the agency shall, in matters relating to roadway design, loadings, clearances and widths, and traffic safeguards, give full consideration to and be guided by the standards and advice of the Secretary.

(f) The authority conferred by this section shall be in addition to and not in limitation of authority conferred upon any agency by any other law, and nothing in this section contained shall affect or be deemed to relate to any bridge approach structure, or highway constructed or to be constructed by any such agency in furtherance of its lawful purposes and requirements or to satisfy a legal obligation incurred independently of this section.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 917; Pub. L. 86-342, title I, §108, Sept. 21, 1959, 73 Stat. 613; Pub. L. 88-423, §4(c), Aug. 13, 1964, 78 Stat. 398;

Pub. L. 91-605, title I, §116(a), Dec. 31, 1970, 84 Stat. 1724; Pub. L. 93-87, title I, §128(a), Aug. 13, 1973, 87 Stat. 265; Pub. L. 93-643, §123(a), Jan. 4, 1975, 88 Stat. 2290; Pub. L. 94-280, title I, §137(a), May 5, 1976, 90 Stat. 443; Pub. L. 95-599, title I, §128(a), Nov. 6, 1978, 92 Stat. 2707.)

#### AMENDMENTS

1978—Subsec. (d).	Pub. L. 95-599	substituted
“\$65,000,000” for “\$50,000,000”.		
1976—Subsec. (d).	Pub. L. 94-280	substituted
“\$50,000,000” for “\$27,761,000”.		
1975—Subsec. (d).	Pub. L. 93-643	substituted
“\$27,761,000” for “\$25,261,000”.		
1973—Subsec. (d).	Pub. L. 93-87	substituted
“\$25,261,000” for “\$16,761,000”.		
1970—Subsec. (d).	Pub. L. 91-605	substituted
“\$16,761,000” for “\$13,000,000”.		
1964—Subsec. (b).	Pub. L. 88-423	substituted “which such bridge is to be located, or the appropriate subdivision of such State, shall enter into an agreement with such agency and with” for “such State, shall enter into an agreement with such agency and with which such bridge is to be located, or the appropriate subdivision of”.
1959—Subsec. (d).	Pub. L. 86-342	substituted
“\$13,000,000” for “\$10,000,000”.		

#### APPROPRIATION OUT OF HIGHWAY TRUST FUND OF SUMS APPROPRIATED UNDER AUTHORITY OF INCREASED AUTHORIZATION

Section 128(b) of Pub. L. 95-599 provided that: “Sums appropriated or expended under authority of the increased authorization established by the amendment made by subsection (a) of this section [amending subsection (d) of this section] shall be appropriated out of the Highway Trust Fund for the fiscal year ending September 30, 1978, and for subsequent fiscal years.”

#### APPROPRIATION OF INCREASED AUTHORIZATION

Section 137(b) of Pub. L. 94-280 provided that: “Sums appropriated or expended under authority of the increased authorization established by the amendment made by subsection (a) of this section [to subsection (d) of this section] shall be appropriated out of the Highway Trust Fund for the fiscal year ending September 30, 1977, and for subsequent fiscal years.”

#### RESTRICTION ON INCREASED AUTHORIZATION OF APPROPRIATIONS

Section 116(b) of Pub. L. 91-605 provided that: “All sums appropriated under authority of the increased authorization of \$3,761,000 established by the amendment made by subsection (a) of this section [amending subsection (d) of this section] shall be available for expenditure only in connection with the construction of a bridge across Markland Dam on the Ohio River near Markland, Indiana, and Warsaw, Kentucky. No such sums shall be appropriated until all applicable requirements of section 320 of title 23 of the United States Code have been complied with by the appropriate Federal agency, the Secretary of Transportation, and the States of Kentucky and Indiana.”

Section 123(b) of Pub. L. 93-643 provided that: “All sums appropriated under authority of the increased authorization established by the amendment made by subsection (a) of this section shall be available for expenditure in the same manner and for the same purpose as provided for in subsection (b) of section 116 of the Federal-Aid Highway Act of 1970 (Public Law 91-605).”

Section 128(b) of Pub. L. 93-87 provided that: “All sums appropriated under authority of the increased authorization of \$8,500,000 established by the amendment made by subsection (a) of this section [to subsection (d) of this section] shall be available for expenditure only in connection with the construction of a bridge across lock and dam numbered 13 on the Arkansas River near Fort Smith, Arkansas, in the amount of \$2,100,000 and

in connection with reconstruction of a bridge across the Chickamauga Dam on the Tennessee River near Chattanooga, Tennessee, in the amount of \$6,400,000. No such sums shall be appropriated until all applicable requirements of section 320 of title 23 of the United States Code have been complied with by the appropriate Federal agency, the Secretary of Transportation, and the State of Arkansas for the Fort Smith project, and the State of Tennessee for the Chattanooga project.”

**[§ 321. Repealed. Pub. L. 105-178, title V, § 5119(b), June 9, 1998, 112 Stat. 452]**

Section, added Pub. L. 91-605, title I, §115(a), Dec. 31, 1970, 84 Stat. 1723; amended Pub. L. 96-106, §11, Nov. 9, 1979, 93 Stat. 798; Pub. L. 100-17, title I, §131, Apr. 2, 1987, 101 Stat. 170; Pub. L. 102-240, title VI, §6002, Dec. 18, 1991, 105 Stat. 2166; Pub. L. 105-130, §5(e)(3), Dec. 1, 1997, 111 Stat. 2557, related to National Highway Institute.

**§ 322. Magnetic levitation transportation technology deployment program**

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

(1) ELIGIBLE PROJECT COSTS.—The term “eligible project costs”—

(A) means the capital cost of the fixed guideway infrastructure of a MAGLEV project, including land, piers, guideways, propulsion equipment and other components attached to guideways, power distribution facilities (including substations), control and communications facilities, access roads, and storage, repair, and maintenance facilities, but not including costs incurred for a new station; and

(B) includes the costs of preconstruction planning activities.

(2) FULL PROJECT COSTS.—The term “full project costs” means the total capital costs of a MAGLEV project, including eligible project costs and the costs of stations, vehicles, and equipment.

(3) MAGLEV.—The term “MAGLEV” means transportation systems employing magnetic levitation that would be capable of safe use by the public at a speed in excess of 240 miles per hour.

(4) PARTNERSHIP POTENTIAL.—The term “partnership potential” has the meaning given the term in the commercial feasibility study of high-speed ground transportation conducted under section 1036 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1978).

(b) FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—The Secretary shall make available financial assistance to pay the Federal share of full project costs of eligible projects selected under this section. Financial assistance made available under this section and projects assisted with the assistance shall be subject to section 5333(a) of title 49, United States Code.

(2) FEDERAL SHARE.—The Federal share of full project costs under paragraph (1) shall be not more than ¾.

(3) USE OF ASSISTANCE.—Financial assistance provided under paragraph (1) shall be used only to pay eligible project costs of projects selected under this section.

(c) SOLICITATION OF APPLICATIONS FOR ASSISTANCE.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall solicit applications from States, or authorities designated by 1 or more States, for financial assistance authorized by subsection (b) for planning, design, and construction of eligible MAGLEV projects.

(d) PROJECT ELIGIBILITY.—To be eligible to receive financial assistance under subsection (b), a project shall—

(1) involve a segment or segments of a high-speed ground transportation corridor that exhibit partnership potential;

(2) require an amount of Federal funds for project financing that will not exceed the sum of—

(A) the amounts made available under subsection (h)(1); and

(B) the amounts made available by States under subsection (h)(3);

(3) result in an operating transportation facility that provides a revenue producing service;

(4) be undertaken through a public and private partnership, with at least ¼ of full project costs paid using non-Federal funds;

(5) satisfy applicable statewide and metropolitan planning requirements;

(6) be approved by the Secretary based on an application submitted to the Secretary by a State or authority designated by 1 or more States;

(7) to the extent that non-United States MAGLEV technology is used within the United States, be carried out as a technology transfer project; and

(8) be carried out using materials at least 70 percent of which are manufactured in the United States.

(e) PROJECT SELECTION CRITERIA.—Prior to soliciting applications, the Secretary shall establish criteria for selecting which eligible projects under subsection (d) will receive financial assistance under subsection (b). The criteria shall include the extent to which—

(1) a project is nationally significant, including the extent to which the project will demonstrate the feasibility of deployment of MAGLEV technology throughout the United States;

(2) timely implementation of the project will reduce congestion in other modes of transportation and reduce the need for additional highway or airport construction;

(3) States, regions, and localities financially contribute to the project;

(4) implementation of the project will create new jobs in traditional and emerging industries;

(5) the project will augment MAGLEV networks identified as having partnership potential;

(6) financial assistance would foster public and private partnerships for infrastructure development and attract private debt or equity investment;

(7) financial assistance would foster the timely implementation of a project; and

(8) life-cycle costs in design and engineering are considered and enhanced.

## (f) PROJECT SELECTION.—

(1) PRECONSTRUCTION PLANNING ACTIVITIES.—Not later than 90 days after a deadline established by the Secretary for the receipt of applications, the Secretary shall evaluate the eligible projects in accordance with the selection criteria and select 1 or more eligible projects to receive financial assistance for preconstruction planning activities, including—

(A) preparation of such feasibility studies, major investment studies, and environmental impact statements and assessments as are required under State law;

(B) pricing of the final design, engineering, and construction activities proposed to be assisted under paragraph (2); and

(C) such other activities as are necessary to provide the Secretary with sufficient information to evaluate whether a project should receive financial assistance for final design, engineering, and construction activities under paragraph (2).

(2) FINAL DESIGN, ENGINEERING, AND CONSTRUCTION ACTIVITIES.—After completion of preconstruction planning activities for all projects assisted under paragraph (1), the Secretary shall select 1 of the projects to receive financial assistance for final design, engineering, and construction activities.

(g) JOINT VENTURES.—A project undertaken by a joint venture of United States and non-United States persons (including a project involving the deployment of non-United States MAGLEV technology in the United States) shall be eligible for financial assistance under this section if the project is eligible under subsection (d) and selected under subsection (f).

## (h) FUNDING.—

## (1) IN GENERAL.—

(A) CONTRACT AUTHORITY; AUTHORIZATION OF APPROPRIATIONS.—

(i) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$15,000,000 for fiscal year 1999, \$20,000,000 for fiscal year 2000, and \$25,000,000 for fiscal year 2001.

(ii) CONTRACT AUTHORITY.—Funds authorized by this subparagraph shall be available for obligation in the same manner as if the funds were apportioned under chapter 1, except that—

(I) the Federal share of the cost of a project carried out under this section shall be determined in accordance with subsection (b); and

(II) the availability of the funds shall be determined in accordance with paragraph (2).

(B) NONCONTRACT AUTHORITY AUTHORIZATION OF APPROPRIATIONS.—

(i) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section (other than subsection (i)) \$200,000,000 for each of fiscal years 2000 and 2001, \$250,000,000 for fiscal year 2002, and \$300,000,000 for fiscal year 2003.

(ii) AVAILABILITY.—Notwithstanding section 118(a), funds made available under clause (i) shall not be available in advance of an annual appropriation.

(2) AVAILABILITY OF FUNDS.—Funds made available under paragraph (1) shall remain available until expended.

(3) OTHER FEDERAL FUNDS.—Notwithstanding any other provision of law, funds made available to a State to carry out the surface transportation program under section 133 and the congestion mitigation and air quality improvement program under section 149 may be used by the State to pay a portion of the full project costs of an eligible project selected under this section, without requirement for non-Federal funds.

(4) OTHER ASSISTANCE.—Notwithstanding any other provision of law, an eligible project selected under this section shall be eligible for other forms of financial assistance provided under this title and the Transportation Equity Act for the 21st Century, including loans, loan guarantees, and lines of credit.

## (i) LOW-SPEED PROJECT.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, of the funds made available by subsection (h)(1)(A) to carry out this section, \$5,000,000 shall be made available to the Secretary to make grants for the research and development of low-speed superconductivity magnetic levitation technology for public transportation purposes in urban areas to demonstrate energy efficiency, congestion mitigation, and safety benefits.

(2) NONCONTRACT AUTHORITY AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection such sums as are necessary for each of fiscal years 2000 through 2003.

(B) AVAILABILITY.—Notwithstanding section 118(a), funds made available under subparagraph (A)—

(i) shall not be available in advance of an annual appropriation; and

(ii) shall remain available until expended.

(Added and amended Pub. L. 105-178, title I, §1218(a), (c), June 9, 1998, 112 Stat. 216; Pub. L. 105-206, title IX, §9003(i), July 22, 1998, 112 Stat. 841.)

## REFERENCES IN TEXT

Section 1036 of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (a)(4), is section 1036 of Pub. L. 102-240, title I, Dec. 18, 1991, 105 Stat. 1978, which enacted section 309 of Title 49, Transportation, amended section 831 of Title 45, Railroads, and section 302 of Title 49, and enacted provisions set out as notes under section 831 of Title 45 and section 309 of Title 49.

The date of enactment of this subsection, referred to in subsec. (c), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

The Transportation Equity Act for the 21st Century, referred to in subsec. (h)(4), is Pub. L. 105-178, June 9, 1998, 112 Stat. 107, as amended. For complete classification of this Act to the Code, see section 1(a) of Pub. L.

105-178, set out as a Short Title of 1998 Amendment note under section 101 of this title and Tables.

#### PRIOR PROVISIONS

A prior section 322, added Pub. L. 91-605, title II, §205(a), Dec. 31, 1970, 84 Stat. 1742; amended Pub. L. 93-643, §117, Jan. 4, 1975, 88 Stat. 2288; Pub. L. 97-449, §5(d)(3), Jan. 12, 1983, 96 Stat. 2442, related to demonstration projects for elimination or protection of certain ground-level rail-highway crossings and required study of problem of providing increased highway safety at public and private ground-level rail-highway crossings on nationwide basis through elimination of such crossings or otherwise, and report to Congress on such study not later than July 1, 1972, prior to repeal by Pub. L. 100-17, title I, §133(e)(1), Apr. 2, 1987, 101 Stat. 173.

#### AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105-178, §1218(c)(1), as added by Pub. L. 105-206, §9003(i), struck out “or under 50 miles per hour” before period at end.

Subsec. (d)(1). Pub. L. 105-178, §1218(c)(2)(A), as added by Pub. L. 105-206, §9003(i), struck out “or low-speed” after “high-speed”.

Subsec. (d)(2)(A). Pub. L. 105-178, §1218(c)(2)(B)(i), as added by Pub. L. 105-206, §9003(i), substituted “(h)(1)” for “(h)(1)(A)”.

Subsec. (d)(2)(B). Pub. L. 105-178, §1218(c)(2)(B)(ii), as added by Pub. L. 105-206, §9003(i), substituted “(h)(3)” for “(h)(4)”.

Subsec. (h)(1)(B)(i). Pub. L. 105-178, §1218(c)(3), as added by Pub. L. 105-206, §9003(i), inserted “(other than subsection (i))” after “this section”.

Subsec. (i). Pub. L. 105-178, §1218(c)(4), as added by Pub. L. 105-206, §9003(i), added subsec. (i).

#### 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 this title.

#### ADVANCED TECHNOLOGY PILOT PROJECT

Pub. L. 105-178, title III, §3015(c), June 9, 1998, 112 Stat. 361, as amended by Pub. L. 105-206, title IX, §9009(k)(1), July 22, 1998, 112 Stat. 857, provided that:

“(1) IN GENERAL.—The Secretary shall make grants for the development of low speed magnetic levitation technology for public transportation purposes in urban areas to demonstrate energy efficiency, congestion mitigation, and safety benefits.

“(2) FUNDING.—Of the amounts made available under section 5001(a)(2) of this Act [112 Stat. 419] for each of fiscal years 1998 through 2003, \$5,000,000 per fiscal year shall be available to carry out this subsection. Financial assistance made available under this subsection and projects assisted with the assistance shall be subject to section 5333(a) of title 49, United States Code.

“(3) FEDERAL SHARE.—The Federal share payable on account of activities carried out using a grant made under this subsection shall be 80 percent of the cost of such activities.”

#### § 323. Donations and credits

(a) DONATIONS OF PROPERTY BEING ACQUIRED.—Nothing in this title, or in any other provision of law, shall be construed to prevent a person whose real property is being acquired in connection with a project under this title, after he has been fully informed of his right to receive just compensation for the acquisition of his property, from making a gift or donation of such

property, or any part thereof, or of any of the compensation paid therefor, to a Federal agency, a State or a State agency, or a political subdivision of a State, as said person shall determine.

#### (b) CREDIT FOR ACQUIRED LANDS.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, the State share of the cost of a project with respect to which Federal assistance is provided from the Highway Trust Fund (other than the Mass Transit Account) may be credited in an amount equal to the fair market value of any land that—

(A) is lawfully obtained by the State or a unit of local government in the State;

(B) is incorporated into the project;

(C) is not land described in section 138; and

(D) the Secretary determines will not influence the environmental assessment of the project, including—

(i) the decision as to the need to construct the project;

(ii) the consideration of alternatives; and

(iii) the selection of a specific location.

(2) ESTABLISHMENT OF FAIR MARKET VALUE.—The fair market value of land incorporated into a project and credited under paragraph (1) shall be established in the manner determined by the Secretary, except that—

(A) the fair market value shall not include any increase or decrease in the value of donated property caused by the project; and

(B) the fair market value of donated land shall be established as of the earlier of—

(i) the date on which the donation becomes effective; or

(ii) the date on which equitable title to the land vests in the State.

(3) LIMITATION ON APPLICABILITY.—This subsection shall not apply to donations made by an agency of the Federal Government.

(4) LIMITATION ON AMOUNT OF CREDIT.—The credit received by a State pursuant to this subsection may not exceed the State’s matching share for the project.

(c) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES.—Nothing in this title or any other law shall prevent a person from offering to donate funds, materials, or services in connection with a project eligible for assistance under this title. In the case of such a project with respect to which the Federal Government and the State share in paying the cost, any donated funds, or the fair market value of any donated materials or services, that are accepted and incorporated into the project by the State transportation department shall be credited against the State share.

(d) PROCEDURES.—A gift or donation in accordance with subsection (a) may be made at any time during the development of a project. Any document executed as part of such donation prior to the approval of an environmental document prepared pursuant to the National Environmental Policy Act of 1969 shall clearly indicate that—

(1) all alternatives to a proposed alignment will be studied and considered pursuant to such Act;

(2) acquisition of property under this section shall not influence the environmental assess-

ment of a project including the decision relative to the need to construct the project or the selection of a specific location; and

(3) any property acquired by gift or donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings, if required, and completion of the environmental document.

(e) CREDITING OF CONTRIBUTIONS BY UNITS OF LOCAL GOVERNMENT TOWARD THE STATE SHARE.—A contribution by a unit of local government of real property, funds, or material in connection with a project eligible for assistance under this title shall be credited against the State share of the project at the fair market value of the real property, funds, or material.

(Added Pub. L. 93-87, title I, §145(a), Aug. 13, 1973, 87 Stat. 273; amended Pub. L. 93-643, §112, Jan. 4, 1975, 88 Stat. 2285; Pub. L. 100-17, title I, §146(a), Apr. 2, 1987, 101 Stat. 179; Pub. L. 104-59, title III, §322, Nov. 28, 1995, 109 Stat. 591; Pub. L. 105-178, title I, §§1212(a)(2)(A)(i), 1301(b)-(d)(1), June 9, 1998, 112 Stat. 193, 225, 226.)

#### REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (d), 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.

#### AMENDMENTS

1998—Pub. L. 105-178, §1301(d)(1), substituted “Donations and credits” for “Donations” in section catchline.

Subsec. (b). Pub. L. 105-178, §1301(b)(1), substituted “Acquired” for “Donated” in heading.

Subsec. (b)(1), (2). Pub. L. 105-178, §1301(b)(2), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1) GENERAL RULE.—Notwithstanding any provision of this title, the State matching share for a project with respect to which Federal assistance is provided out of the Highway Trust Fund (other than the Mass Transit Account) may be credited by the fair market value of land incorporated into the project and lawfully donated to the State after the date of the enactment of this subsection.

“(2) ESTABLISHMENT OF FAIR MARKET VALUE.—The fair market value of the donated land shall be established as determined by the Secretary. Fair market value shall not include increases and decreases in the value of donated property caused by the project. For purposes of this subsection, the fair market value of donated land shall be established as of the date the donation becomes effective or when equitable title to the land vests in the State, whichever is earlier.”

Subsec. (b)(3). Pub. L. 105-178, §1301(b)(3), substituted “agency of the Federal Government” for “agency of a Federal, State, or local government”.

Subsec. (b)(4). Pub. L. 105-178, §1301(b)(4), struck out “to which the donation is applied” before period at end.

Subsec. (c). Pub. L. 105-178, §1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department”.

Subsec. (e). Pub. L. 105-178, §1301(c), added subsec. (e). 1995—Subsecs. (c), (d). Pub. L. 104-59 added subsec. (c) and redesignated former subsec. (c) as (d).

1987—Pub. L. 100-17 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

1975—Pub. L. 93-643 substituted “after he has been fully informed of his right to receive just compensation

for the acquisition of his property” for “after he has been tendered the full amount of the estimated just compensation as established by an approved appraisal of the fair market value of the subject real property”.

#### § 324. Prohibition of discrimination on the basis of sex

No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.

(Added Pub. L. 93-87, title I, §162(a), Aug. 13, 1973, 87 Stat. 280.)

#### REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 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 2000d of Title 42 and Tables.

#### [§§ 325, 326. Repealed. Pub. L. 105-178, title V, § 5119(b), June 9, 1998, 112 Stat. 452]

Section 325, added Pub. L. 102-240, title VI, §6003[(a)], Dec. 18, 1991, 105 Stat. 2168, related to international highway transportation outreach program.

Section 326, added Pub. L. 102-240, title VI, §6004(a), Dec. 18, 1991, 105 Stat. 2169; amended Pub. L. 105-130, §5(e)(4), Dec. 1, 1997, 111 Stat. 2558, related to education and training program.

#### CHAPTER 4—HIGHWAY SAFETY

Sec.

- 401. Authority of the Secretary.
- 402. Highway safety programs.
- 403. Highway safety research and development.
- 404. National Highway Safety Advisory Committee.
- 405. Occupant protection incentive grants.
- 406. School bus driver training.
- 407. Innovative project grants.
- 408. Alcohol traffic safety programs.
- 409. Discovery and admission as evidence of certain reports and surveys.
- 410. Alcohol-impaired driving countermeasures.
- 411. State highway safety data improvements.

#### AMENDMENTS

1998—Pub. L. 105-178, title II, §§2003(a)(2), 2005(b), June 9, 1998, 112 Stat. 327, 334, substituted “Occupant protection incentive grants” for “Repealed” in item 405 and added item 411.

1991—Pub. L. 102-240, title I, §1035(b), title II, §2004(c), Dec. 18, 1991, 105 Stat. 1978, 2079, substituted “Discovery and admission” for “Admission” in item 409 and “Alcohol-impaired driving countermeasures” for “Drunk driving prevention programs” in item 410.

1988—Pub. L. 100-690, title IX, §9002(b), Nov. 18, 1988, 102 Stat. 4525, added item 410.

1987—Pub. L. 100-17, title I, §132(b), Apr. 2, 1987, 101 Stat. 170, added item 409.

1982—Pub. L. 97-364, title I, §101(b), Oct. 25, 1982, 96 Stat. 1740, added item 408.

1978—Pub. L. 95-599, title II, §208(b), Nov. 6, 1978, 92 Stat. 2732, added item 407.

1976—Pub. L. 94-280, title I, §135(d), May 5, 1976, 90 Stat. 442, substituted item 405 “Repealed” for “Federal-aid safer roads demonstration program”.

1975—Pub. L. 93-643, §126(b), Jan. 4, 1975, 88 Stat. 2291, added item 406.

1973—Pub. L. 93-87, title II, §230(b), Aug. 13, 1973, 87 Stat. 294, added item 405.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 110 of this title; title 49 sections 104, 105.

### § 401. Authority of the Secretary

The Secretary is authorized and directed to assist and cooperate with other Federal departments and agencies, State and local governments, private industry, and other interested parties, to increase highway safety. For the purposes of this chapter, the term “State” means any one of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Added Pub. L. 89-564, title I, §101, Sept. 9, 1966, 80 Stat. 731; amended Pub. L. 93-87, title II, §218, Aug. 13, 1973, 87 Stat. 290; Pub. L. 98-363, §3(b), July 17, 1984, 98 Stat. 436; Pub. L. 100-17, title I, §133(b)(19), Apr. 2, 1987, 101 Stat. 172.)

#### AMENDMENTS

1987—Pub. L. 100-17 inserted reference in second sentence to Commonwealth of the Northern Mariana Islands.

1984—Pub. L. 98-363 struck out “, except that all expenditures for carrying out this chapter in the Virgin Islands, Guam, and American Samoa shall be paid out of money in the Treasury not otherwise appropriated” after “and American Samoa”.

1973—Pub. L. 93-87 inserted definition of “State” and provided that all expenditures for carrying out this chapter in the Virgin Islands, Guam, and American Samoa shall be paid out of money in the Treasury not otherwise appropriated.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 3(c) of Pub. L. 98-363 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 402 of this title] shall apply to fiscal years beginning after the date of enactment of this Act [July 17, 1984].”

#### SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102-240, title II, §2001, Dec. 18, 1991, 105 Stat. 2070, provided that: “This part [part A (§§2001-2009) of title II of Pub. L. 102-240, amending sections 402, 403, and 410 of this title, enacting provisions set out as notes under sections 402, 403, and 410 of this title, and amending provisions set out below] may be cited as the ‘Highway Safety Act of 1991’.”

#### SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-690, title IX, §9001, Nov. 18, 1988, 102 Stat. 4521, provided that: “This subtitle [subtitle A (§§9001 to 9005) of title IX of Pub. L. 100-690, enacting section 410 of this title and provisions set out as notes under sections 403 and 410 of this title] may be cited as the ‘Drunk Driving Prevention Act of 1988’.”

#### SHORT TITLE OF 1987 AMENDMENT

Section 201 of title II of Pub. L. 100-17 provided that: “This title [amending sections 402 and 408 of this title and section 2314 of former Title 49, Transportation, enacting provisions set out as notes under this section, section 402 of this title, and section 2204 of former Title 49, and amending provisions set out as a note under this section] be cited as the ‘Highway Safety Act of 1987’.”

#### SHORT TITLE OF 1983 AMENDMENT

Pub. L. 97-424, title II, §201, Jan. 6, 1983, 96 Stat. 2137, provided that: “This title [amending section 402 of this title and enacting provisions set out as notes under this section and sections 130, 154, and 408 of this title] may be cited as the ‘Highway Safety Act of 1982’.”

#### SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-599, title II, §201, Nov. 6, 1978, 92 Stat. 2727, provided that: “This title [enacting section 407 of this title, amending sections 154 and 402 of this title, and enacting provisions set out as notes under this section and sections 130, 307, 402, and 403 of this title] may be cited as the ‘Highway Safety Act of 1978’.”

#### SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-280, title II, §201, May 5, 1976, 90 Stat. 451, provided that: “That title [amending sections 104, 151, 402, 404, and 406 of this title and provisions set out as a note under section 130 of this title and enacting provisions set out as notes under sections 127 and 402 of this title] may be cited as the ‘Highway Safety Act of 1976’.”

#### SHORT TITLE OF 1973 AMENDMENT

Section 201 of title II of Pub. L. 93-87 provided that: “This title [enacting sections 151 to 153 and 405 of this title, amending this section and sections 104 and 402 to 404 of this title, and enacting provisions set out as notes under this section and sections 130, 144, 151, 217, and 403 of this title] may be cited as the ‘Highway Safety Act of 1973’.”

#### SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91-605, title II, §201, Dec. 31, 1970, 84 Stat. 1739, provided that: “This title [enacting sections 144 and 322 of this title, amending provisions set out as notes under this section and section 402 of this title, and enacting provisions set out as notes under this section and section 402 of this title] may be cited as the ‘Highway Safety Act of 1970’.”

#### SHORT TITLE

Section 208 of Pub. L. 89-564 provided that: “This Act [enacting this chapter, amending sections 105 and 307 of this title, repealing sections 135 and 313 of this title, and enacting provisions set out as notes under this section and sections 303, 307, 402, and 403 of this title] may be cited as the ‘Highway Safety Act of 1966’.”

#### USE OF UNIFORMED POLICE OFFICERS ON FEDERAL-AID HIGHWAY CONSTRUCTION PROJECTS

Pub. L. 105-178, title I, §1213(c), June 9, 1998, 112 Stat. 200, provided that:

“(1) STUDY.—In consultation with the States, State transportation departments, and law enforcement organizations, the Secretary shall conduct a study on the extent and effectiveness of use by States of uniformed police officers on Federal-aid highway construction projects.

“(2) REPORT.—Not later than 2 years after the date of enactment of this Act [June 9, 1998], the Secretary shall submit to Congress a report on the results of the study, including any legislative and administrative recommendations of the Secretary.”

#### RADIO AND MICROWAVE TECHNOLOGY FOR MOTOR VEHICLE SAFETY WARNING SYSTEM

Pub. L. 104-59, title III, §358(c), Nov. 28, 1995, 109 Stat. 625, provided that:

“(1) STUDY.—The Secretary, in consultation with the Federal Communications Commission and the National Telecommunications and Information Administration, shall conduct a study to develop and evaluate radio and microwave technology for a motor vehicle safety warning system in furtherance of safety in all types of motor vehicles.

“(2) EQUIPMENT.—Equipment developed under the study shall be directed toward, but not limited to, ad-



vance warning to operators of all types of motor vehicles of—

“(A) temporary obstructions in a highway;

“(B) poor visibility and highway surface conditions caused by adverse weather; and

“(C) movement of emergency vehicles.

“(3) SAFETY APPLICATIONS.—In conducting the study, the Secretary shall determine whether the technology described in this subsection has other appropriate safety applications.”

#### WORK ZONE SAFETY PROGRAM

Pub. L. 104-59, title III, §358(b), Nov. 28, 1995, 109 Stat. 625, provided that: “In carrying out the work zone safety program under section 1051 of the Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. 102-240] (23 U.S.C. 401 note; 105 Stat. 2001), the Secretary shall utilize a variety of methods to increase safety at highway construction sites, including each of the following:

“(1) Conducting conferences to explore new techniques and stimulate dialogue for improving work zone safety.

“(2) Establishing a national clearinghouse to assemble and disseminate, by electronic and other means, information relating to the improvement of work zone safety.

“(3) Conducting a national promotional campaign in cooperation with the States to provide timely, site-specific information to motorists when construction workers are actually present.

“(4) Encouraging the use of enforceable speed limits in work zones.

“(5) Developing training programs for work site designers and construction workers to promote safe work zone practices.

“(6) Encouraging the use of unit price bid items in contracts for traffic control devices and implementation of traffic control plans.”

Pub. L. 102-240, title I, §1051, Dec. 18, 1991, 105 Stat. 2001, provided that: “The Secretary shall develop and implement a work zone safety program which will improve work zone safety at highway construction sites by enhancing the quality and effectiveness of traffic control devices, safety appurtenances, traffic control plans, and bidding practices for traffic control devices and services.”

#### OLDER DRIVERS AND OTHER SPECIAL DRIVER GROUPS

Pub. L. 104-59, title III, §358(a), Nov. 28, 1995, 109 Stat. 625, provided that:

“(1) STUDY.—The Secretary shall conduct a study of technologies and practices to improve the driving performance of older drivers and other special driver groups.

“(2) DEMONSTRATION ACTIVITIES.—In conducting the study under paragraph (1), the Secretary shall undertake demonstration activities that incorporate and build upon gerontology research related to the study of the normal aging process. The Secretary shall initially implement such activities in those States that have the highest population of aging citizens for whom driving a motor vehicle is their primary mobility mode.

“(3) COOPERATIVE AGREEMENT.—The Secretary shall conduct the study under paragraph (1) by entering into a cooperative agreement with an institution that has demonstrated competencies in gerontological research, population demographics, human factors related to transportation, and advanced technology applied to transportation.”

Section 208 of Pub. L. 100-17, as amended by Pub. L. 100-202, §101(i) [title III, §348(h)], Dec. 22, 1987, 101 Stat. 1329-358, 1329-389, directed Secretary to enter into appropriate arrangements with National Academy of Sciences to conduct a comprehensive study and investigation of (1) problems which could inhibit the safety and mobility of older drivers using the Nation's roads, and (2) means of addressing these problems, to request the Academy to report to Secretary and Congress not later

than 24 months after Apr. 2, 1987, on the results of such study and investigation, to furnish to the Academy any information which it deems necessary for conducting the investigation and study, and to develop, in conjunction with the study, a pilot program of highway safety improvements to enhance the safety and mobility of older drivers and, not later than 3 years after Apr. 2, 1987, to evaluate the pilot program and report to Congress on the effectiveness of the program in improving the safety and mobility of older drivers.

#### ANNUAL REPORT BY SECRETARY OF TRANSPORTATION ON HIGHWAY SAFETY PERFORMANCE OF EACH STATE

Pub. L. 97-424, title II, §207, Jan. 6, 1983, 96 Stat. 2139, provided that: “The Secretary of Transportation shall prepare, publish, and submit to Congress not later than December 31 of each calendar year beginning after December 31, 1982, a report on the highway safety performance of each State in the preceding calendar year. Such report shall provide data on highway fatalities and injuries and motor vehicle accidents involving fatalities and injuries and travel in urban areas of each State for each system of highways and in rural areas of such State for each system of highways. Such report shall be in such form and contain such other information on highway accidents as will permit an evaluation and comparison of highway safety performance of the States. For purposes of this section (1) the systems of highways in a State are the Federal-aid primary system, the Federal-aid secondary system, the Federal-aid urban system, and the Interstate System (as such terms are defined in section 101 of title 23, United States Code) and the other highways in such State which are not on the Federal-aid system, and (2) the terms ‘State’, ‘rural areas’, and ‘urban area’ have the meaning such terms have under section 101.”

#### NATIONAL DRIVER REGISTRATION

Pub. L. 97-364, title II, §§201-211, Oct. 25, 1982, 96 Stat. 1740-1748, as amended by Pub. L. 100-223, title III, §305, Dec. 30, 1987, 101 Stat. 1525; Pub. L. 100-342, §4(b), June 22, 1988, 102 Stat. 626; Pub. L. 101-380, title IV, §4105(a), Aug. 18, 1990, 104 Stat. 512; Pub. L. 102-240, title II, §2007, Dec. 18, 1991, 105 Stat. 2080, directed Secretary of Transportation to establish and maintain a National Driver Register to assist States in exchange of information on motor vehicle driving records of individuals and provided for reports by State officials, accessibility of Register information, a pilot test program, criminal penalties, an advisory committee, and a report to Congress by the Secretary, prior to repeal by Pub. L. 103-272, §7(b), July 5, 1994, 108 Stat. 1379, and Pub. L. 103-429, §8(10), Oct. 31, 1994, 108 Stat. 4390, and was re-stated in part in chapter 303 of Title 49, Transportation.

#### PILOT PROJECTS FOR HIGHWAY SAFETY EDUCATION AND INFORMATION

Pub. L. 95-599, title II, §209, Nov. 6, 1978, 92 Stat. 2732, as amended by Pub. L. 97-424, title II, §206, Jan. 6, 1983, 96 Stat. 2139; Pub. L. 100-17, title II, §207, Apr. 2, 1987, 101 Stat. 221, provided that:

“(a) The Secretary of Transportation shall carry out six pilot projects designed, through the use of television and radio, to develop and evaluate techniques, methods, and practices to achieve maximum measurable effectiveness in reducing traffic accidents, injuries, and deaths.

“(b) Each pilot project authorized by this section shall be in operation not later than the one hundred and eightieth day after the date of the first appropriation of funds made under authority of this section, and shall be conducted for a one-year period. Not later than the ninetieth day after the end of each such one-year period, the Secretary of Transportation shall report to Congress the results of such project, including, but not limited to, an evaluation of the effectiveness of such project and a statistical analysis of the traffic accidents and fatalities within the project area during such one-year period.

“(c) There is authorized to be appropriated, out of the Highway Trust Fund, to carry out subsections (a) and (b) of this section, \$6,000,000, to remain available until expended.

“(d) NATIONAL HIGHWAY SAFETY CAMPAIGN.—Utilizing those techniques, methods, and practices determined most effective under subsection (b), the Secretary of Transportation shall conduct a national highway safety campaign utilizing the local and national television and radio to educate and inform the public of techniques, methods, and practices to reduce the number and severity of highway accidents. Not later than the 180th day after the date of submission of the first report to Congress required by subsection (b) of this section, the Secretary shall commence the conduct of such campaign.

“(e) Such campaign is authorized to be conducted in cooperation with interested government and nongovernment authorities, agencies, organizations, institutions, businesses, and individuals, and shall utilize to the extent possible nongovernmental professional organizations equipped and experienced to conduct such campaign.

“(f) The Secretary of Transportation shall engage such private firms or organizations as he determines necessary to conduct an on-going evaluation of the national campaign authorized by subsection (d) of this section to determine ways and means for encouraging the participation and cooperation of television and radio station licensees, for measuring audience reactions to on-going highway safety programming for evaluating the effectiveness of such programs in terms of the number of lives saved and the reduction in injuries, and for the purpose of developing new programs for the promotion of highway safety. Such evaluation shall include determinations of those programs designed to encourage the voluntary use of safety belts which are most effective and shall include recommendations for new methods and approaches which will result in greater voluntary utilization of safety belts by the public.

“(g) The Secretary of Transportation shall submit a report to the Congress on July 1 of each year in which the campaign is in progress on the results of such evaluation and on the steps being taken by the Secretary of Transportation to implement the recommendations of such evaluation.

“(h) For the purpose of carrying out subsections (d), (e), (f), and (g) of this section, there is authorized to be appropriated out of the Highway Trust Fund, \$10,000,000, to remain available until expended. None of the amounts authorized by this subsection shall be available for obligation for any education or information program conducted in connection with the implementation of Federal Motor Vehicle Safety Standard 208 (49 C.F.R. 571.208).

“(i) All provisions of chapter 1 of title 23, United States Code, that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditure of such funds to the Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section and except that the funds authorized to be appropriated to carry out this section shall not be subject to any obligation limitation.”

HIGHWAY SAFETY EDUCATIONAL PROGRAMING AND STUDY; REPORT TO CONGRESS; SERIES OF HIGHWAY SAFETY TELEVISION PROGRAMS; APPROPRIATIONS AUTHORIZATIONS

Section 211 of Pub. L. 93-87 directed Secretary of Transportation, in cooperation with government and nongovernment authorities and individuals, to conduct a full and complete investigation and study of use of mass media for informing and educating the public of ways and means for reducing number and severity of highway accidents, to report to Congress his findings and recommendations by June 30, 1974, and to develop,

in consultation with State and local highway safety officials, a series of highway safety television programs of varying lengths for use in accordance with provisions of the Communication Act of 1934 (47 U.S.C. 151 et seq.).

HIGHWAY SAFETY CITIZEN PARTICIPATION STUDY

Section 212 of Pub. L. 93-87 authorized the appropriation of \$1,000,000 for a study by the Secretary of Transportation, with cooperation of State and local highway safety authorities, of ways and means of encouraging greater citizen participation in highway safety programs, the results of such study and recommendations to be reported to Congress by June 30, 1974.

NATIONAL CENTER FOR STATISTICAL ANALYSIS OF HIGHWAY OPERATIONS

Section 213 of Pub. L. 93-87 authorized the appropriation of \$5,000,000 to make a study of the feasibility of establishing a National Center for Statistical Analysis of Highway Operations designed to acquire, store and retrieve accident data, the results of such study and recommendations to be reported to Congress not later than Jan. 1, 1975.

PEDESTRIAN AND BICYCLE SAFETY STUDY

Section 214 of Pub. L. 93-87 authorized the appropriation of \$5,000,000 for a study of pedestrian and bicycle safety, including a review of local ordinances, the relationship between alcohol and pedestrian and bicycle safety, etc., the results of such study and recommendations to be reported to Congress not later than Jan. 31, 1975.

HIGHWAY SAFETY NEEDS STUDY

Section 225 of Pub. L. 93-87 mandated a study by the Secretary of Transportation of highway safety needs of the States, including those of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands and other territories, in order to evaluate continuing safety programs and furnish Congress with information necessary for authorization of appropriations for continuing safety programs, the results of such study, estimates and recommendations to be submitted to Congress not later than Jan. 10, 1976.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION; CREATION; APPOINTMENT OF ADMINISTRATOR AND DEPUTY ADMINISTRATOR; DUTIES; RETROACTIVE EFFECT

Section 201 of Pub. L. 89-564, as amended by Pub. L. 89-670, §8(h), Oct. 15, 1966, 80 Stat. 943; Pub. L. 90-83, §10(b), Sept. 11, 1967, 81 Stat. 224; Pub. L. 91-605, title II, §202(a), Dec. 31, 1970, 84 Stat. 1739, which provided for the creation of National Highway Traffic Safety Administration in the Department of Transportation, was repealed by Pub. L. 97-449, §7(b), Jan. 12, 1983, 96 Stat. 2444, and reenacted by section 1(b) of Pub. L. 97-449 as section 105 of Title 49, Transportation.

ACTING ADMINISTRATOR OF NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Pub. L. 91-605, title II, §202(b), Dec. 31, 1970, 84 Stat. 1740, permitted President to authorize any person who immediately before Dec. 31, 1970, held the office of Director of the National Highway Safety Bureau, to act as Administrator of the National Highway Traffic Safety Administration until the appointment of the first Administrator.

ANNUAL REPORT TO CONGRESS ON ADMINISTRATION OF HIGHWAY SAFETY ACT OF 1966

Section 202 of Pub. L. 89-564, as amended by Pub. L. 93-87, title II, §224, Aug. 13, 1973, 87 Stat. 292, provided that:

“(a) The Secretary shall prepare and submit to the President for transmittal to the Congress on July 1 of each year a comprehensive report on the administra-

tion of the Highway Safety Act of 1966 (including chapter 4 of title 23 of the United States Code) for the preceding calendar year. Such report should include but not be restricted to (1) a thorough statistical compilation of the accidents and injuries occurring in such year; (2) a list of all safety standards issued or in effect in such year; (3) the scope of observance of applicable Federal standards; (4) a statement of enforcement actions including judicial decisions, settlements, or pending litigation during the year; (5) a summary of all current research grants and contracts together with a description of the problems to be considered by such grants and contracts; (6) an analysis and evaluation of completed research activities and technological progress achieved during such year together with the relevant policy recommendations flowing therefrom; (7) the effectiveness of State highway safety program (including local highway safety programs) and (8) the extent to which technical information was being disseminated to the scientific community and consumer-oriented material was made available to the motoring public.

“(b) The annual report shall also contain such recommendations for additional legislation as the Secretary deems necessary to promote cooperation among the several States in the improvement of highway safety and to strengthen the national highway safety program.”

#### DETAILED COST ESTIMATE OF HIGHWAY SAFETY ACT OF 1966

Section 207 of Pub. L. 89-564 directed Secretary, in cooperation with the Governors of appropriate State highway safety agencies, make a detailed estimate of the cost of carrying out the Highway Safety Act of 1966 in order to provide a basis for evaluating continuing programs under the Act and to furnish Congress information necessary for authorization of appropriations for fiscal years beginning after June 30, 1969, such estimates to be submitted to Congress not later than Jan. 10, 1968.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 152, 153 of this title.

### § 402. Highway safety programs

(a) Each State shall have a highway safety program approved by the Secretary, designed to reduce traffic accidents and deaths, injuries, and property damage resulting therefrom. Such programs shall be in accordance with uniform guidelines promulgated by the Secretary. Such uniform guidelines shall be expressed in terms of performance criteria. In addition, such uniform guidelines shall include programs (1) to reduce injuries and deaths resulting from motor vehicles being driven in excess of posted speed limits, (2) to encourage the proper use of occupant protection devices (including the use of safety belts and child restraint systems) by occupants of motor vehicles and to increase public awareness of the benefit of motor vehicles equipped with airbags, (3) to reduce deaths and injuries resulting from persons driving motor vehicles while impaired by alcohol or a controlled substance, (4) to prevent accidents and reduce deaths and injuries resulting from accidents involving motor vehicles and motorcycles, (5) to reduce injuries and deaths resulting from accidents involving school buses, and (6) to improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures. The Secretary shall establish a highway safety program for the collection and

reporting of data on traffic-related deaths and injuries by the States. Under such program, the States shall collect and report such data as the Secretary may require. The purposes of the program are to ensure national uniform data on such deaths and injuries and to allow the Secretary to make determinations for use in developing programs to reduce such deaths and injuries and making recommendations to Congress concerning legislation necessary to implement such programs. The program shall provide for annual reports to the Secretary on the efforts being made by the States in reducing deaths and injuries occurring at highway construction sites and the effectiveness and results of such efforts. The Secretary shall establish minimum reporting criteria for the program. Such criteria shall include, but not be limited to, criteria on deaths and injuries resulting from police pursuits, school bus accidents, and speeding, on traffic-related deaths and injuries at highway construction sites and on the configuration of commercial motor vehicles involved in motor vehicle accidents. Such uniform guidelines shall be promulgated by the Secretary so as to improve driver performance (including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles, driver examinations (both physical and mental) and driver licensing) and to improve pedestrian performance and bicycle safety. In addition such uniform guidelines shall include, but not be limited to, provisions for an effective record system of accidents (including injuries and deaths resulting therefrom), accident investigations to determine the probable causes of accidents, injuries, and deaths, vehicle registration, operation, and inspection, highway design and maintenance (including lighting, markings, and surface treatment), traffic control, vehicle codes and laws, surveillance of traffic for detection and correction of high or potentially high accident locations, enforcement of light transmission standards of window glazing for passenger motor vehicles and light trucks as necessary to improve highway safety, and emergency services. Such guidelines as are applicable to State highway safety programs shall, to the extent determined appropriate by the Secretary, be applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations.

#### (b) ADMINISTRATION OF STATE PROGRAMS.—

(1) ADMINISTRATIVE REQUIREMENTS.—The Secretary may not approve a State highway safety program under this section which does not—

(A) provide that the Governor of the State shall be responsible for the administration of the program through a State highway safety agency which shall have adequate powers and be suitably equipped and organized to carry out, to the satisfaction of the Secretary, such program;

(B) authorize political subdivisions of the State to carry out local highway safety programs within their jurisdictions as a part of the State highway safety program if such local highway safety programs are approved by the Governor and are in accordance with the minimum standards established by the Secretary under this section;

(C) except as provided in paragraph (3), provide that at least 40 percent of all Federal funds apportioned under this section to the State for any fiscal year will be expended by the political subdivisions of the State, including Indian tribal governments, in carrying out local highway safety programs authorized in accordance with subparagraph (B); and

(D) provide adequate and reasonable access for the safe and convenient movement of individuals with disabilities, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks throughout the State.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(C), in whole or in part, for a fiscal year for any State whenever the Secretary determines that there is an insufficient number of local highway safety programs to justify the expenditure in the State of such percentage of Federal funds during the fiscal year.

(3) USE OF TECHNOLOGY FOR TRAFFIC ENFORCEMENT.—The Secretary may encourage States to use technologically advanced traffic enforcement devices (including the use of automatic speed detection devices such as photo-radar) by law enforcement officers.

(c) Funds authorized to be appropriated to carry out this section shall be used to aid the States to conduct the highway safety programs approved in accordance with subsection (a), including development and implementation of manpower training programs, and of demonstration programs that the Secretary determines will contribute directly to the reduction of accidents, and deaths and injuries resulting therefrom. Such funds shall be subject to a deduction not to exceed 5 per centum for the necessary costs of administering the provisions of this section, and the remainder shall be apportioned among the several States. Such funds shall be apportioned 75 per centum in the ratio which the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 25 per centum in the ratio which the public road mileage in each State bears to the total public road mileage in all States. For the purposes of this subsection, a "public road" means any road under the jurisdiction of and maintained by a public authority and open to public travel. Public road mileage as used in this subsection shall be determined as of the end of the calendar year preceding the year in which the funds are apportioned and shall be certified to by the Governor of the State and subject to approval by the Secretary. The annual apportionment to each State shall not be less than one-half of 1 per centum of the total apportionment, except that the apportionment to the Secretary of the Interior shall not be less than three-fourths of 1 percent of the total apportionment and the apportionments to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not be less than one-quarter of 1 per centum of the total apportionment. The Secretary shall not apportion any funds under the subsection to any State which is not implement-

ing a highway safety program approved by the secretary in accordance with this section. For the purpose of the seventh sentence of this subsection, a highway safety program approved by the Secretary shall not include any requirement that a State implement such a program by adopting or enforcing any law, rule, or regulation based on a guideline promulgated by the Secretary under this section requiring any motorcycle operator eighteen years of age or older or passenger eighteen years of age or older to wear a safety helmet when operating or riding a motorcycle on the streets and highways of that State. Implementation of a highway safety program under this section shall not be construed to require the Secretary to require compliance with every uniform guideline, or with every element of every uniform guideline, in every State. Funds apportioned under this section to any State, that does not have a highway safety program approved by the Secretary or that is not implementing an approved program, shall be reduced by amounts equal to not less than 50 per centum of the amounts that would otherwise be apportioned to the State under this section, until such time as the Secretary approves such program or determines that the State is implementing an approved program, as appropriate. The Secretary shall consider the gravity of the State's failure to have or implement an approved program in determining the amount of the reduction. The Secretary shall promptly apportion to the State the funds withheld from its apportionment if he approves the State's highway safety program or determines that the State has begun implementing an approved program, as appropriate, prior to the end of the fiscal year for which the funds were withheld. If the Secretary determines that the State did not correct its failure within such period, the Secretary shall reapportion the withheld funds to the other States in accordance with the formula specified in this subsection not later than 30 days after such determination.

(d) All provisions of chapter 1 of this title that are applicable to National Highway System highway funds other than provisions relating to the apportionment formula and provisions limiting the expenditure of such funds to the Federal-aid systems, shall apply to the highway safety funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section, and except that the aggregate of all expenditures made during any fiscal year by a State and its political subdivisions (exclusive of Federal funds) for carrying out the State highway safety program (other than planning and administration) shall be available for the purpose of crediting such State during such fiscal year for the non-Federal share of the cost of any project under this section (other than one for planning or administration) without regard to whether such expenditures were actually made in connection with such project and except that, in the case of a local highway safety program carried out by an Indian tribe, if the Secretary is satisfied that an Indian tribe does not have sufficient funds available to meet the non-Federal share of the cost of such program, he may increase the Federal share of the cost thereof pay-

able under this Act to the extent necessary. In applying such provisions of chapter 1 in carrying out this section the term "State transportation department" as used in such provisions shall mean the Governor of a State for the purposes of this section.

(e) Uniform guidelines promulgated by the Secretary to carry out this section shall be developed in cooperation with the States, their political subdivisions, appropriate Federal departments and agencies, and such other public and private organizations as the Secretary deems appropriate.

(f) The Secretary may make arrangements with other Federal departments and agencies for assistance in the preparation of uniform guidelines for the highway safety programs contemplated by subsection (a) and in the administration of such programs. Such departments and agencies are directed to cooperate in such preparation and administration, on a reimbursable basis.

(g) Nothing in this section authorizes the appropriation or expenditure of funds for (1) highway construction, maintenance, or design (other than design of safety features of highways to be incorporated into guidelines) or (2) any purpose for which funds are authorized by section 403 of this title.

[(h) Repealed. Pub. L. 97-35, title XI, §1107(c), Aug. 13, 1981, 95 Stat. 626.]

(1) APPLICATION IN INDIAN COUNTRY.—

(1) USE OF TERMS.—For the purpose of application of this section in Indian country, the terms "State" and "Governor of a State" include the Secretary of the Interior and the term "political subdivision of a State" includes an Indian tribe.

(2) EXPENDITURES FOR LOCAL HIGHWAY PROGRAMS.—Notwithstanding subsection (b)(1)(C), 95 percent of the funds apportioned to the Secretary of the Interior under this section shall be expended by Indian tribes to carry out highway safety programs within their jurisdictions.

(3) ACCESS FOR INDIVIDUALS WITH DISABILITIES.—The requirements of subsection (b)(1)(D) shall be applicable to Indian tribes, except to those tribes with respect to which the Secretary determines that application of such provisions would not be practicable.

(4) INDIAN COUNTRY DEFINED.—In this subsection, the term "Indian country" means—

(A) all land within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent and including rights-of-way running through the reservation;

(B) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof and whether within or without the limits of a State; and

(C) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

(j) RULEMAKING PROCEEDING.—The Secretary may periodically conduct a rulemaking process to identify highway safety programs that are highly effective in reducing motor vehicle crash-

es, injuries, and deaths. Any such rulemaking shall take into account the major role of the States in implementing such programs. When a rule promulgated in accordance with this section takes effect, States shall consider these highly effective programs when developing their highway safety programs.

(k)(1) Subject to the provisions of this subsection, the Secretary shall make a grant to any State which includes, as part of its highway safety program under section 402 of this title, the use of a comprehensive computerized safety recordkeeping system designed to correlate data regarding traffic accidents, drivers, motor vehicles, and roadways. Any such grant may only be used by such State to establish and maintain a comprehensive computerized traffic safety recordkeeping system or to obtain and operate components to support highway safety priority programs identified by the Secretary under this section. Notwithstanding any other provision of law, if a report, list, schedule, or survey is prepared by or for a State or political subdivision thereof under this subsection, such report, list, schedule, or survey shall not be admitted as evidence or used in any suit or action for damages arising out of any matter mentioned in such report, list, schedule, or survey.

(2) No State may receive a grant under this subsection in more than two fiscal years.

(3) The amount of the grant to any State under this subsection for the first fiscal year such State is eligible for a grant under this subsection shall equal 10 per centum of the amount apportioned to such State for fiscal year 1985 under this section. The amount of a grant to any State under this subsection for the second fiscal year such State is eligible for a grant under this subsection shall equal 10 per centum of the amount apportioned to such State for fiscal year 1986 under this section.

(4) A State is eligible for a grant under this subsection if—

(A) it certifies to the Secretary that it has in operation a computerized traffic safety recordkeeping system and identifies proposed means of upgrading the system acceptable to the Secretary; or

(B) it provides to the Secretary a plan acceptable to the Secretary for establishing and maintaining a computerized traffic safety recordkeeping system.

(5) The Secretary, after making the deduction authorized by the second sentence of subsection (c) of this section for fiscal years 1985 and 1986, shall set aside 10 per centum of the remaining funds authorized to be appropriated to carry out this section for the purpose of making grants under this subsection. Funds set aside under this subsection shall remain available for the fiscal year authorized and for the succeeding fiscal year and any amounts remaining unexpended at the end of such period shall be apportioned in accordance with the provisions of subsection (c) of this section.

(Added Pub. L. 89-564, title I, §101, Sept. 9, 1966, 80 Stat. 731; amended Pub. L. 90-495, §13, Aug. 23, 1968, 82 Stat. 822; Pub. L. 91-605, title II, §§202(c), (d), (e), 203(a), Dec. 31, 1970, 84 Stat. 1740, 1741; Pub. L. 93-87, title II, §§207, 215-217, 219, 228, 229,

231, Aug. 13, 1973, 87 Stat. 285, 290, 293, 294; Pub. L. 94-280, title II, §§204, 208(a), 211, 212, May 5, 1976, 90 Stat. 453, 454, 455; Pub. L. 95-599, title II, §207(a), (b)(1), (c), (d), Nov. 6, 1978, 92 Stat. 2731, 2732; Pub. L. 97-35, title XI, §1107(c)-(e), Aug. 13, 1981, 95 Stat. 626; Pub. L. 97-424, title II, §208, Jan. 6, 1983, 96 Stat. 2140; Pub. L. 98-363, §§3(a), 5, July 17, 1984, 98 Stat. 436; Pub. L. 100-17, title I, §133(b)(20), title II, §206, Apr. 2, 1987, 101 Stat. 172, 221; Pub. L. 102-240, title II, §2002, Dec. 18, 1991, 105 Stat. 2070; Pub. L. 104-66, title I, §1121(d), Dec. 21, 1995, 109 Stat. 724; Pub. L. 105-178, title I, §1212(a)(2)(A)(i), title II, §2001(a)-(e), June 9, 1998, 112 Stat. 193, 323, 324.)

## REFERENCES IN TEXT

This Act, referred to in subsec. (d), probably means Pub. L. 93-87, Aug. 13, 1973, 87 Stat. 250, as amended. For complete classification of this Act to the Code, see Tables.

## AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178, §2001(a), in fourth sentence, substituted “(4) to prevent accidents and” for “(4) to”, in eighth sentence, struck out “include information obtained by the Secretary under section 4007 of the Intermodal Surface Transportation Efficiency Act of 1991 and” before “provide for annual reports to the Secretary”, and in twelfth sentence, inserted “enforcement of light transmission standards of window glazing for passenger motor vehicles and light trucks as necessary to improve highway safety,” before “and emergency services”.

Subsec. (b). Pub. L. 105-178, §2001(b), inserted heading, redesignated pars. (3) to (5) as (1) to (3), respectively, substituted “paragraph (3)” for “paragraph (5)” in par. (1)(C) and “paragraph (1)(C)” for “paragraph (3)(C)” in par. (2), and struck out former pars. (1) and (2) which read as follows:

“(b)(1) The Secretary shall not approve any State highway safety program under this section which does not—

“(A) provide that the Governor of the State shall be responsible for the administration of the program through a State highway safety agency which shall have adequate powers, and be suitably equipped and organized to carry out, to the satisfaction of the Secretary, such program.

“(B) authorize political subdivisions of such State to carry out local highway safety programs within their jurisdictions as a part of the State highway safety program if such local highway safety programs are approved by the Governor and are in accordance with the uniform guidelines of the Secretary promulgated under this section.

“(C) provide that at least 40 per centum of all Federal funds apportioned under this section to such State for any fiscal year will be expended by the political subdivisions of such State in carrying out local highway safety programs authorized in accordance with subparagraph (B) of this paragraph.

“(D) provide adequate and reasonable access for the safe and convenient movement of physically handicapped persons, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks throughout the State.

“(E) provide for programs (which may include financial incentives and disincentives) to encourage the use of safety belts by drivers of, and passengers in, motor vehicles.

“(2) The Secretary is authorized to waive the requirement of subparagraph (C) of paragraph (1) of this subsection, in whole or in part, for a fiscal year for any State whenever he determines that there is an insufficient number of local highway safety programs to justify the expenditure in such State of such percentage of Federal funds during such fiscal year.”

Subsec. (c). Pub. L. 105-178, §2001(c), in sixth sentence, inserted “the apportionment to the Secretary of the Interior shall not be less than three-fourths of 1 percent of the total apportionment and” before “the apportionments to the Virgin Islands”.

Subsec. (d). Pub. L. 105-178, §1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department”.

Subsec. (i). Pub. L. 105-178, §2001(d), inserted heading and amended text of subsec. (i) generally. Prior to amendment, text read as follows: “For the purpose of the application of this section on Indian reservations, ‘State’ and ‘Governor of a State’ includes the Secretary of the Interior and ‘political subdivision of a State’ includes an Indian tribe: *Provided*, That, notwithstanding the provisions of subparagraph (C) of subsection (b)(1) hereof, 95 per centum of the funds apportioned to the Secretary of the Interior after date of enactment, shall be expended by Indian tribes to carry out highway safety programs within their jurisdictions: *And provided further*, That the provisions of subparagraph (E) of subsection (b)(1) hereof shall be applicable except in those tribal jurisdictions in which the Secretary determines such programs would not be practicable.”

Subsec. (j). Pub. L. 105-178, §2001(e), amended heading and text of subsec. (j) generally. Prior to amendment, text read as follows: “The Secretary shall, not later than September 1, 1987, begin a rulemaking process to determine those programs most effective in reducing accidents, injuries, and deaths. Not later than April 1, 1988, the Secretary shall promulgate a final rule establishing those programs determined to be most effective in reducing accidents, injuries, and deaths. If such rule is promulgated by April 1, 1988, then it shall take effect October 1, 1988. If such rule is not promulgated by April 1, 1988, it shall take effect October 1, 1989. After a rule is promulgated in accordance with this subsection, the Secretary may from time to time thereafter revise such rule under a rulemaking process described in the first sentence of this subsection. Any rule under this subsection shall be promulgated taking into account consideration of the States having a major role in establishing programs described in the first sentence of this subsection. When a rule promulgated in accordance with this subsection takes effect, only those programs established by such rule as most effective in reducing accidents, injuries, and deaths shall be eligible to receive Federal financial assistance under this section.”

1995—Subsec. (a). Pub. L. 104-66 struck out after fourth sentence “If the Secretary does not designate as priority programs those programs described in the preceding sentence, the Secretary shall submit to Congress a report describing the reasons for not prioritizing such programs.”

1991—Subsec. (a). Pub. L. 102-240, §2002(a), inserted after third sentence “In addition, such uniform guidelines shall include programs (1) to reduce injuries and deaths resulting from motor vehicles being driven in excess of posted speed limits, (2) to encourage the proper use of occupant protection devices (including the use of safety belts and child restraint systems) by occupants of motor vehicles and to increase public awareness of the benefit of motor vehicles equipped with airbags, (3) to reduce deaths and injuries resulting from persons driving motor vehicles while impaired by alcohol or a controlled substance, (4) to reduce deaths and injuries resulting from accidents involving motor vehicles and motorcycles, (5) to reduce injuries and deaths resulting from accidents involving school buses, and (6) to improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures. If the Secretary does not designate as priority programs those programs described in the preceding sentence, the Secretary shall submit to Congress a report describing the reasons for not prioritizing such programs. The Secretary shall establish a highway safety program for the collection and reporting of data on traffic-related deaths and injuries by the States. Under such program, the States shall collect

and report such data as the Secretary may require. The purposes of the program are to ensure national uniform data on such deaths and injuries and to allow the Secretary to make determinations for use in developing programs to reduce such deaths and injuries and making recommendations to Congress concerning legislation necessary to implement such programs. The program shall include information obtained by the Secretary under section 4007 of the Intermodal Surface Transportation Efficiency Act of 1991 and provide for annual reports to the Secretary on the efforts being made by the States in reducing deaths and injuries occurring at highway construction sites and the effectiveness and results of such efforts. The Secretary shall establish minimum reporting criteria for the program. Such criteria shall include, but not be limited to, criteria on deaths and injuries resulting from police pursuits, school bus accidents, and speeding, on traffic-related deaths and injuries at highway construction sites and on the configuration of commercial motor vehicles involved in motor vehicle accidents."

Subsec. (b)(3) to (5). Pub. L. 102-240, §2002(b), added pars. (3) to (5).

Subsec. (d). Pub. L. 102-240, §2002(c), substituted "National Highway System" for "Federal-aid primary".

1987—Subsec. (a). Pub. L. 100-17, §206(a), (b), substituted "guidelines" for "standards" wherever appearing and struck out provisions authorizing the Secretary to temporarily amend or waive standards in public interest for purpose of evaluating new or different highway safety programs instituted on an experimental, pilot or demonstration basis.

Subsec. (b)(1)(B). Pub. L. 100-17, §206(a), substituted "guidelines" for "standards".

Subsec. (b)(1)(D) to (F). Pub. L. 100-17, §206(c), redesignated subpars. (E) and (F) as (D) and (E), respectively, and struck out former subpar. (D) which read as follows: "provide for comprehensive driver training programs, including (1) the initiation of a State program for driver education in the school systems or for a significant expansion and improvement of such a program already in existence, to be administered by appropriate school officials under the supervision of the Governor as set forth in subparagraph (A) of this paragraph; (2) the training of qualified school instructors and their certification; (3) appropriate regulation of other driver training schools, including licensing of the schools and certification of their instructors; (4) adult driver training programs, and programs for the retraining of selected drivers; (5) adequate research, development and procurement of practice driving facilities, simulators, and other similar teaching aids for both school and other driver training use, and (6) driver education programs, including research, that will assure greater safety for bicyclists using public roads in such State."

Subsec. (c). Pub. L. 100-17, §§133(b)(20), 206(a), substituted "Such" for "For the fiscal years ending June 30, 1967, June 30, 1968, and June 30, 1969, such funds shall be apportioned 75 per centum on the basis of population and 25 per centum as the Secretary in his administrative discretion may deem appropriate and thereafter such", "American Samoa, and the Commonwealth of the Northern Mariana Islands" for "and American Samoa", "The Secretary shall" for "After December 31, 1969, the Secretary shall", and "guideline" for "standard" wherever appearing.

Subsecs. (e) to (g). Pub. L. 100-17, §206(a), substituted "guidelines" for "standards".

Subsec. (j). Pub. L. 100-17, §206(d), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: "The Secretary of Transportation shall, not later than September 1, 1981, begin a rulemaking process to determine those programs most effective in reducing accidents, injuries, and deaths. Such rule shall be promulgated taking into account consideration of the States having a major role in establishing these programs. Not later than April 1, 1982, the Secretary shall promulgate a final rule establishing those programs determined most effective in reducing accidents, injuries,

and deaths. Before such rule shall take effect, it shall be transmitted to Congress. If such rule is not transmitted by April 1, 1982, it shall not take effect before October 1, 1983. If such rule is transmitted by April 1, 1982, it shall take effect October 1, 1982, unless before June 1, 1982, either House of Congress by resolution disapproves such rule. If such rule is disapproved by either House of Congress, the Secretary shall not apportion or obligate any amount authorized to carry out this section for the fiscal year ending September 30, 1983, or any subsequent fiscal year, unless specifically authorized to do so by a statute enacted after the date of enactment of the Omnibus Budget Reconciliation Act of 1981. When a rule promulgated in accordance with this subsection takes effect, only those programs established by such rule as most effective in reducing accidents, injuries, and deaths shall be eligible to receive Federal financial assistance under this chapter."

1984—Subsec. (c). Pub. L. 98-363, §3(a), inserted "except that the apportionments to the Virgin Islands, Guam, and American Samoa shall be not less than one-quarter of 1 per centum of the total apportionment" in sixth sentence.

Subsec. (k). Pub. L. 98-363, §5, added subsec. (k).

1983—Subsec. (c). Pub. L. 97-424 struck out provision that apportionments to Virgin Islands, Guam, and American Samoa were not to be less than one third of 1 per centum of total apportionment from provision relating to the minimum apportionment for each State.

1981—Subsec. (b)(1). Pub. L. 97-35, §1107(e), struck out subpar. (D) which related to aggregate expenditure of funds, and redesignated subpars. (E) to (G) as (D) to (F), respectively.

Subsec. (h). Pub. L. 97-35, §1107(c), struck out subsec. (h) which related to continuation in effect of uniform safety standards promulgated on or before July 1, 1973.

Subsec. (j). Pub. L. 97-35, §1107(d), substituted provisions requiring the Secretary to begin by Sept. 1, 1981, a rulemaking process to determine the most effective programs to reduce accidents, injuries, and deaths, and procedures applicable to the process, for provisions authorizing the Secretary to make incentive grants to States most progressive in reducing traffic fatalities, criteria, duration, etc., of such grants, and authorization of appropriations.

1978—Subsec. (a). Pub. L. 95-599, §207(a), inserted "including, but not limited to, such programs for identifying accident causes, adopting measures to reduce accidents, and evaluating effectiveness of such measures" after "one or more States".

Subsec. (b)(1)(A). Pub. L. 95-599, §207(b)(1), substituted "State highway safety agency" for "State agency".

Subsec. (b)(1)(G). Pub. L. 95-599, §207(c), added subpar. (G).

Subsec. (d). Pub. L. 95-599, §207(d), inserted "(other than planning and administration)" after "State highway safety program" and "(other than one for planning or administration)" after "cost of any project under this section".

1976—Subsec. (c), sixth sentence. Pub. L. 94-280, §211, inserted exception provision requirement that the apportionments to the Virgin Islands, Guam, and American Samoa be not less than one-third of 1 per centum of the total apportionment.

Subsec. (c), eighth and ninth sentences. Pub. L. 94-280, §208(a), inserted eighth and ninth sentences: excluding from any highway safety program approved by the Secretary any requirement that a State implement a Federal safety helmet wearing standard for operators or passengers of motorcycles by adopting or enforcing any law, rule, or regulation based on the Federal standard, and authorizing State implementation of a highway safety program without compliance with every uniform standard in every State; and deleted prior eighth, ninth, and tenth sentences providing for: a 10 per centum reduction of funds apportioned to a State on or after January 1, 1970, for nonimplementation of a highway safety program approved by the Secretary during such a period; suspension of application of such

provision during necessary periods when in the public interest; and reapportionment of withheld amounts to other States in accordance with applicable provisions of law, now covered in the tenth through thirteenth sentences.

Subsec. (c), tenth through thirteenth sentences. Pub. L. 94-280, § 212, inserted provisions for: a 50 per centum reduction of funds apportioned to a State during time of absence or nonimplementation of a highway safety program; gravity rule in determining amount of reduction of funds; apportionment to a State of withheld funds prior to the end of the fiscal year for which the funds were withheld in event of approval of or State implementation of a highway safety program; and for reapportionment of funds to other States in accordance with the prescribed formula not later than 30 days after determination of absence of correction by a State, similar provisions being formerly covered in prior eighth, ninth, and tenth sentences providing for: a 10 per centum reduction of funds apportioned to a State on or after January 1, 1970, for nonimplementation of a highway safety program approved by the Secretary during such a period; suspension of application of such provision during necessary periods when in the public interest; and reapportionment of withheld amounts to other States in accordance with applicable provisions of law.

Subsec. (j)(3) to (5). Pub. L. 94-280, § 204, added par. (3) provisions respecting incentive safety grants, struck out prior par. (3) provisions limiting incentive awards authorized by this section to 25 per centum of each State's apportionment as authorized by this chapter, and added pars. (4) and (5).

1973—Subsec. (a). Pub. L. 93-87, § 231(a), provided for promulgation of uniform standards so as to improve bicycle safety.

Subsec. (b)(1)(E)(6). Pub. L. 93-87, § 231(b), added item (6) of subpar. (E).

Subsec. (b)(1)(F). Pub. L. 93-87, § 228, added subpar. (F).

Subsec. (c). Pub. L. 93-87, §§ 215-217, provided for use of funds for development and implementation of manpower training programs, and of demonstration programs that the Secretary determines will contribute directly to the reduction of accidents, and deaths and injuries resulting therefrom and inserted "Such funds" before "shall be subject to a deduction"; provided for the determination of public road mileage as of the end of the calendar year preceding the year in which the funds are apportioned and shall be certified to by the Governor of the State and subject to approval by the Secretary; and increased the annual apportionment to each State from "one-third of 1 per centum" to "one-half of 1 per centum" of the total apportionment, respectively.

Subsec. (d). Pub. L. 93-87, § 207(b), inserted at end of first sentence provision that in the case of a local highway safety program carried out by an Indian tribe, if the Secretary is satisfied that an Indian tribe does not have sufficient funds available to meet the non-Federal share of the cost of such program, he may increase the Federal share of the cost thereof payable under this Act to the extent necessary.

Subsec. (h). Pub. L. 93-87, § 229, substituted provisions for continuation of uniform safety standards promulgated under this section on or before July 1, 1973, unless otherwise specifically provided by law enacted after Aug. 13, 1973, and prohibiting the Secretary from promulgating any other uniform safety standard under this section (including by revision of a standard continued in effect by the preceding sentence) unless otherwise specifically provided by law enacted after Aug. 13, 1973, for former prohibition against promulgation of any other uniform safety standard unless at least 90 days prior to the effective date of such standard the Secretary shall have submitted such standard to Congress, except in the case of State safety program elements with respect to which uniform standards have been promulgated by the Secretary before Dec. 31, 1970.

Subsec. (i). Pub. L. 93-87, § 207(a), added subsec. (i).

Subsec. (j). Pub. L. 93-87, § 219, added subsec. (j).

1970—Subsec. (b)(1)(A). Pub. L. 91-605, § 203(A), required the Governor of a State be responsible for the administration of the State highway safety program through a State agency suitably organized and possessed of adequate powers to carry out such programs to the satisfaction of the Secretary.

Subsec. (c). Pub. L. 91-605, § 202(c), provided a formula for apportionments to States, after June 30, 1969, to carry out this section, whereby 75% of the appropriation is based on the ratio which the population of each State bears to the total population of all the States and 25% of the appropriation is based on the ratio which the public road mileage in each State bears to the total public road mileage in all States, defined "public road", provided the annual apportionment to each State not to be less than one-third of 1% of the total apportionment, struck out provisions authorizing appropriations after June 30, 1969 to be apportioned as Congress shall provide and struck out provisions mandating the Secretary to report to Congress his recommendations for a nondiscretionary formula of apportionment for the fiscal year ending June 30, 1970, and the fiscal years thereafter.

Subsec. (d). Pub. L. 91-605, § 202(d), provided that the aggregate of all expenditures made during any fiscal year by a State and its political subdivisions for carrying out the State highway safety program be available for crediting such State for the non-Federal share of the cost of any project under this section without regard to whether such expenditures were actually made in connection with such project.

Subsec. (h). Pub. L. 91-605, § 202(e), added subsec. (h).

1968—Subsec. (c). Pub. L. 90-495 substituted "December 31, 1969" for "December 31, 1968" as the last day on which the Secretary may apportion funds to States which are not implementing highway safety programs approved by the Secretary and substituted "January 1, 1970" for "January 1, 1969" as the date after which funds apportioned to States not having approved safety programs shall be reduced until a safety program is implemented.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Section 2008 of title II of Pub. L. 102-240 provided that: "Except as otherwise provided, this title [amending this section and sections 403 and 410 of this title and sections 1392, 1413, and 1414 of Title 15, Commerce and Trade, enacting provisions set out as notes under this section and sections 401, 403, and 410 of this title and section 1392 of Title 15, and amending provisions set out as a note under section 401 of this title], including the amendments made by this title, shall take effect on the date of the enactment of this Act [Dec. 18, 1991], shall apply to funds authorized to be appropriated or made available after September 30, 1991, and shall not apply to funds appropriated or made available on or before such date of enactment."

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 3(a) of Pub. L. 98-363 applicable to fiscal years beginning after July 17, 1984, see section 3(c) of Pub. L. 98-363, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Section 1107(c) of Pub. L. 97-35 provided that the amendment made by that section is effective Oct. 1, 1982.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 207(b)(2) of Pub. L. 95-599 provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall take effect January 1, 1979."

#### EFFECTIVE DATE OF 1970 AMENDMENT

Section 203(b) of Pub. L. 91-605 provided that: "The amendment made by subsection (a) of this section



[amending this section] shall take effect December 31, 1971.”

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

#### NATIONAL BICYCLE SAFETY EDUCATION CURRICULUM

Pub. L. 105-178, title I, §1202(e), June 9, 1998, 112 Stat. 170, provided that:

“(1) DEVELOPMENT.—The Secretary is authorized to develop a national bicycle safety education curriculum that may include courses relating to on-road training.

“(2) REPORT.—Not later than 12 months after the date of enactment of this Act [June 9, 1998], the Secretary shall transmit to Congress a copy of the curriculum.

“(3) FUNDING.—From amounts made available under section 210 [probably should be section 206], the Secretary may use not to exceed \$500,000 for fiscal year 1999 to carry out this subsection.”

#### BICYCLE AND PEDESTRIAN SAFETY GRANTS

Pub. L. 105-178, title I, §1212(i), formerly §1212(o), June 9, 1998, 112 Stat. 196; renumbered §1212(i), Pub. L. 105-206, title IX, §9003(e)(5), July 22, 1998, 112 Stat. 840, provided that: “The Secretary shall make grants to a national, not-for-profit organization engaged in promoting bicycle and pedestrian safety—

“(A) to operate a national bicycle and pedestrian clearinghouse;

“(B) to develop information and educational programs; and

“(C) to disseminate techniques and strategies for improving bicycle and pedestrian safety.

“(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection \$500,000 for each of fiscal years 1998 through 2003.

“(E) APPLICABILITY OF TITLE 23.—Funds authorized by this subsection shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code, except that the funds shall remain available until expended.”

#### HIGHWAY SAFETY EDUCATION AND INFORMATION

Pub. L. 105-178, title II, §2001(f), June 9, 1998, 112 Stat. 325, provided that:

“(1) IN GENERAL.—For fiscal years 1999 and 2000, the Secretary shall allow any State to use funds apportioned to the State under section 402 of title 23, United States Code, to purchase television and radio time for highway safety public service messages.

“(2) REPORTS BY STATES.—Any State that uses funds described in paragraph (1) for purchasing television and radio time for highway safety public service messages shall submit to the Secretary a report describing, and assessing the effectiveness of, the messages.

“(3) STUDY.—Based on information contained in the reports submitted under paragraph (2), the Secretary shall prepare and transmit to Congress a report on the effectiveness of purchasing television and radio time for highway safety public service messages using funds described in paragraph (1).”

#### EVALUATION OF HANDICAPPED PARKING SYSTEM

Section 1088 of Pub. L. 102-240 directed Secretary to conduct a study on progress being made by States in adopting and implementing uniform system for handicapped parking established in regulations issued pursuant to Pub. L. 100-641 (102 Stat. 3335), set out below, and, not later than 2 years after Dec. 18, 1991, submit to Congress the results of the study.

#### OBLIGATION LIMITATION

Section 2009(b) of Pub. L. 102-240 provided that: “If an obligation limitation is placed on sums authorized to

be appropriated to carry out section 402 of title 23, United States Code, for fiscal year 1993 or subsequent fiscal years, any amounts made available out of such funds to carry out sections 2004 and 2006 of this Act [amending section 410 of this title and enacting provisions set out as notes under sections 403 and 410 of this title] and section 211(b) of the National Driver Register Act of 1982 [Pub. L. 97-364, set out as a note under section 401 of this title] shall be reduced proportionally.”

#### HANDICAPPED PARKING SYSTEM

Pub. L. 100-641, §3, Nov. 9, 1988, 102 Stat. 3335, provided that:

“(a) REGULATIONS.—Not later than the 180th day following the date of the enactment of this Act [Nov. 9, 1988], the Secretary of Transportation shall issue regulations—

“(1) which establish a uniform system for handicapped parking designed to enhance the safety of handicapped individuals, and

“(2) which encourage adoption of such system by all the States.

In issuing such regulations, the Secretary shall consult the States.

“(b) DEFINITIONS.—For purposes of this section—

“(1) UNIFORM SYSTEM FOR HANDICAPPED PARKING.—A uniform system for handicapped parking designed to enhance the safety of handicapped individuals is a system which—

“(A) adopts the International Symbol of Access (as adopted by Rehabilitation International in 1969 at its 11th World Congress on Rehabilitation of the Disabled) as the only recognized symbol for the identification of vehicles used for transporting individuals with handicaps which limit or impair the ability to walk;

“(B) provides for the issuance of license plates displaying the International Symbol of Access for vehicles which will be used to transport individuals with handicaps which limit or impair the ability to walk, under criteria determined by the State;

“(C) provides for the issuance of removable windshield placards (displaying the International Symbol of Access) to individuals with handicaps which limit or impair the ability to walk, under criteria determined by the State;

“(D) provides that fees charged for the licensing or registration of a vehicle used to transport individuals with handicaps do not exceed fees charged for the licensing or registration of other similar vehicles operated in the State; and

“(E) for purposes of easy access parking, recognizes licenses and placards displaying the International Symbol of Access which have been issued by other States and countries.

“(2) STATE.—The term ‘State’ has the meaning such term has when used in chapter 4 of title 23, United States Code.”

#### PARKING FOR HANDICAPPED PERSONS; STUDY AND REPORT; PROPOSED UNIFORM STATE LAW

Section 161 of Pub. L. 100-17 provided that:

“(a) STUDY.—The Secretary shall conduct a study for the purpose of determining—

“(1) any problems encountered by handicapped persons in parking motor vehicles; and

“(2) whether or not each State should establish parking privileges for handicapped persons and grant to nonresidents of the State the same parking privileges as are granted to residents.

“(b) REPORT.—Not later than 180 days after the date of the enactment of this Act [Apr. 2, 1987], the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives a report on the results of the study conducted under subsection (a).

“(c) DEVELOPMENT OF PROPOSED UNIFORM STATE LAW.—

“(1) REQUIREMENT.—If the Secretary determines under subsection (a) that each State should establish parking privileges for handicapped persons and grant to nonresidents of the State the same parking privileges as are granted to residents, the Secretary shall develop a proposed uniform State law with respect to parking privileges for handicapped persons and submit a copy of the proposed uniform State law to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives and each State.

“(2) FACTORS TO CONSIDER.—In developing the proposed uniform State law, the Secretary shall consult with the States and shall consider any advantages—

“(A) of ensuring that parking privileges for handicapped persons may be utilized whether a handicapped person is a passenger or a driver;

“(B) of the use of the international symbol of access as the exclusive symbol identifying parking zones for handicapped persons and identifying vehicles that may park in such parking zones;

“(C) of displaying the international symbol of access on license plates or license plate decals and on identification placards; and

“(D) of designing any identification placard so that the placard is easily visible when placed in the interior of any vehicle.

“(3) REPORT.—If a proposed uniform State law with respect to parking privileges for handicapped persons is developed and submitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation [now Committee on Transportation and Infrastructure] of the House of Representatives under paragraph (1), within 12 months after the date of such submission and each year thereafter, the Secretary shall report to such committees on the extent to which each State has adopted the proposed uniform State law.”

SCHOOLBUS SAFETY MEASURES; STUDY BY NATIONAL ACADEMY OF SCIENCES AND REPORT; PUBLICATION OF LIST OF MOST EFFECTIVE SAFETY MEASURES IN FEDERAL REGISTER; SCHOOLBUS SAFETY GRANT PROGRAM

Section 204 of Pub. L. 100-17 provided that:

“(a) STUDY.—

“(1) NATIONAL ACADEMY OF SCIENCES.—Not later than 30 days after the date of the enactment of this Act [Apr. 2, 1987], the Secretary shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the principal causes of fatalities and injuries to schoolchildren riding in schoolbuses and of the use of seatbelts in schoolbuses and other measures that may improve the safety of schoolbus transportation. The purpose of the study and investigation is to determine those safety measures that are the most effective in protecting the safety of schoolchildren while boarding, leaving, and riding in schoolbuses.

“(2) REPORT.—In entering into any arrangements with the National Academy of Sciences for conducting the study and investigation under this subsection, the Secretary shall request the National Academy of Sciences to submit, not later than 18 months after the date on which such arrangements are completed, to Congress and the Secretary a report on the results of such study and investigation. The report shall contain a list of those safety measures determined by the Academy to be most effective in protecting the safety of schoolchildren while boarding, leaving, and riding in schoolbuses.

“(3) REVIEW OF REPORT.—Upon receipt of the report under paragraph (2), the Secretary shall review such report for the purpose of determining those safety measures that are the most effective in protecting the safety of schoolchildren while boarding, leaving, and riding in schoolbuses. Not later than 2 months after the date of receipt of such report, the Secretary shall publish in the Federal Register a list of those

safety measures which the Secretary determines are the most effective in protecting the safety of such children.

“(4) INFORMATION.—Upon request of the National Academy of Sciences, the Secretary shall furnish to the Academy any information which the Academy deems necessary for the purpose of conducting the study and investigation under this subsection.

“(b) SCHOOLBUS SAFETY GRANT PROGRAM.—

“(1) SET-ASIDE.—Before apportioning any funds made available to carry out section 402 of title 23, United States Code, for each of fiscal years 1989, 1990, and 1991, the Secretary may set aside an amount not to exceed \$5,000,000 for making grants to States to implement those schoolbus safety measures published by the Secretary under subsection (a).

“(2) APPLICATION.—Any State interested in receiving under this subsection a grant to implement schoolbus safety measures in fiscal year 1989, 1990, or 1991 shall submit to the Secretary an application for such grant. Applications under this subsection shall be submitted at such time and in such form and contain such information as the Secretary may require by regulation.

“(3) LIMITATION.—No State shall receive more than 30 percent of the funds set aside pursuant to this subsection for any fiscal year in grants under this subsection.”

#### SPECIAL PARKING PRIVILEGES FOR HANDICAPPED PERSONS

Pub. L. 98-78, title III, §321, Aug. 15, 1983, 97 Stat. 473, provided that:

“(a) The Congress finds that—

“(1) in this Nation there exist millions of handicapped people with severe physical impairments including partial paralysis, limb amputation, chronic heart condition, emphysema, arthritis, rheumatism, and other debilitating conditions which greatly limit their personal mobility;

“(2) these people reside in each of the several States and have need and reason to travel from one State to another for business and recreational purposes;

“(3) each State maintains the right to establish and enforce its own code of regulations regarding the appropriate use of motor vehicles operating within its jurisdiction;

“(4) within a given State handicapped individuals are oftentimes granted special parking privileges to help offset the limitations imposed by their physical impairment;

“(5) these special parking privileges vary from State to State as do the methods and means of identifying vehicles used by disabled individuals, all of which serve to impede both the enforcement of special parking privileges and the handicapped individual's freedom to properly utilize such privileges;

“(6) there are many efforts currently underway to help alleviate these problems through public awareness and administrative change as encouraged by concerned individuals and national associations directly involved in matters relating to the issue of special parking privileges for disabled individuals; and

“(7) despite these efforts the fact remains that many States may need to give the matter legislative consideration to ensure a proper resolution of this issue, especially as it relates to law enforcement and placard responsibility.

“(b) The Congress encourages each of the several States working through the National Governors Conference to—

“(1) adopt the International Symbol of Access as the only recognized and adopted symbol to be used to identify vehicles carrying those citizens with acknowledged physical impairments;

“(2) grant to vehicles displaying this symbol the special parking privileges which a State may provide; and

“(3) permit the International Symbol of Access to appear either on a specialized license plate, or on a

specialized placard placed in the vehicles so as to be clearly visible through the front windshield, or on both such places.

“(c) It is the sense of the Congress that agreements of reciprocity relating to the special parking privileges granted handicapped individuals should be developed and entered into by and between the several States so as to—

“(1) facilitate the free and unencumbered use between the several States, of the special parking privileges afforded those people with acknowledged handicapped conditions, without regard to the State of residence of the handicapped person utilizing such privilege;

“(2) improve the ease of law enforcement in each State of its special parking privileges and to facilitate the handling of violators; and

“(3) ensure that motor vehicles carrying individuals with acknowledged handicapped conditions be given fair and predictable treatment throughout the Nation.

“(d) As used in this section the term ‘State’ means the several States and the District of Columbia.

“(e) The Secretary of Transportation shall provide a copy of this section to the Governor of each State and the Mayor of the District of Columbia.”

#### MOTORCYCLE HELMET STUDY

Section 210 of Pub. L. 95-599 provided that the Secretary of Transportation make a full and complete study of the effects of the provision contained in the eighth sentence of subsec. (c) of this section and that the Secretary report the results of such study to Congress not later than one year after Nov. 6, 1978.

#### STUDY OF METHODS OF ENCOURAGING USE OF SAFETY BELTS IN AUTOMOBILES

Section 214 of Pub. L. 95-599 provided that the Secretary of Transportation undertake to enter into arrangements with the National Academy of Sciences to conduct a study and investigation of methods of encouraging the use of safety belts by drivers of, and passengers in, motor vehicles and that the National Academy of Sciences report to the Secretary and the Congress not later than one year after Nov. 6, 1978, on the results of such study.

#### EVALUATION OF SAFETY STANDARDS; REPORT TO CONGRESS

Section 208(b) of Pub. L. 94-280 provided that: “The Secretary of Transportation shall, in cooperation with the States, conduct an evaluation of the adequacy and appropriateness of all uniform safety standards established under section 402 of title 23 of the United States Code which are in effect on the date of enactment of this Act [May 5, 1976]. The Secretary shall report his findings, together with his recommendations, including but not limited to, the need for revision or consolidation of existing standards and the establishment of new standards, to Congress on or before July 1, 1977. Until such report is submitted, the Secretary shall not, pursuant to subsection (c) of section 402 of title 23, United States Code, withhold any apportionment or any funds apportioned to any State because such State is failing to implement a highway safety program approved by the Secretary in accordance with such section 402.”

#### REPORT TO CONGRESS BY JULY 1, 1967, ON INITIAL STANDARDS

Section 203 of Pub. L. 89-564 required the Secretary of Commerce to report to Congress by July 1, 1967, all standards to be initially applied in carrying out section 402 of this title.

#### AUTHORIZATION OF APPROPRIATIONS

Section 104 of Pub. L. 89-564 authorized the appropriation of \$67,000,000, \$100,000,000, and \$100,000,000 for the fiscal years ending June 30, 1967, 1968, and 1969, respectively, to carry out this section.

#### STUDY OF RELATIONSHIP BETWEEN CONSUMPTION OF ALCOHOL AND HIGHWAY SAFETY

Section 204 of Pub. L. 89-564, as amended by Pub. L. 97-449, §2(a), Jan. 12, 1983, 96 Stat. 2439, directed the Secretary to make a thorough and complete study of the relationship between the consumption of alcohol and its effect upon highway safety and drivers of motor vehicles, in consultation with such other government and private agencies as may be necessary. Such study shall cover review and evaluation of State and local laws and enforcement methods and procedures relating to driving under the influence of alcohol, State and local programs for the treatment of alcoholism, and such other aspects of this overall problem as may be useful. The results of this study were required to be reported to the Congress by the Secretary on or before July 1, 1967, with recommendations for legislation if warranted.

#### EX. ORD. NO. 13043. INCREASING SEAT BELT USE IN THE UNITED STATES

Ex. Ord. No. 13043, Apr. 16, 1997, 62 F.R. 19217, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Highway Safety Act of 1966, 23 U.S.C. 402 and 403, as amended, section 7902(c) of title 5, United States Code, and section 19 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 668, as amended, and in order to require that Federal employees use seat belts while on official business; to require that motor vehicle occupants use seat belts in national park areas and on Department of Defense (“Defense”) installations; to encourage Tribal Governments to adopt and enforce seat belt policies and programs for occupants of motor vehicles traveling on highways in Indian Country; and to encourage Federal contractors, subcontractors, and grantees to adopt and enforce on-the-job seat belt use policies and programs, it is hereby ordered as follows:

SECTION 1. *Policies.* (a) *Seat Belt Use by Federal Employees.* Each Federal employee occupying any seating position of a motor vehicle on official business, whose seat is equipped with a seat belt, shall have the seat belt properly fastened at all times when the vehicle is in motion.

(b) *Seat Belt Use in National Parks and on Defense Installations.* Each operator and passenger occupying any seating position of a motor vehicle in a national park area or on a Defense installation, whose seat is equipped with a seat belt or child restraint system, shall have the seat belt or child restraint system properly fastened, as required by law, at all times when the vehicle is in motion.

(c) *Seat Belt Use by Government Contractors, Subcontractors and Grantees.* Each Federal agency, in contracts, subcontracts, and grants entered into after the date of this order, shall seek to encourage contractors, subcontractors, and grantees to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.

(d) *Tribal Governments.* Tribal Governments are encouraged to adopt and enforce seat belt policies and programs for occupants of motor vehicles traveling on highways in Indian Country that are subject to their jurisdiction.

SEC. 2. *Scope of Order.* All agencies of the executive branch are directed to promulgate rules and take other appropriate measures within their existing programs to further the policies of this order. This includes, but is not limited to, conducting education, awareness, and other appropriate programs for Federal employees about the importance of wearing seat belts and the consequences of not wearing them. It also includes encouraging Federal contractors, subcontractors, and grantees to conduct such programs. In addition, the National Park Service and the Department of Defense are directed to initiate rulemaking to consider regulatory

changes with respect to enhanced seat belt use requirements and standard (primary) enforcement of such requirements in national park areas and on Defense installations, consistent with the policies outlined in this order, and to widely publicize and actively enforce such regulations. The term "agency" as used in this order means an Executive department, as defined in 5 U.S.C. 101, or any employing unit or authority of the Federal Government, other than those of the legislative and judicial branches.

SEC. 3. *Coordination.* The Secretary of Transportation shall provide leadership and guidance to the heads of executive branch agencies to assist them with the employee seat belt programs established pursuant to this order. The Secretary of Transportation shall also cooperate and consult with the legislative and judicial branches of the Government to encourage and help them to adopt seat belt use programs.

SEC. 4. *Reporting Requirements.* The Secretary of Transportation, in cooperation with the heads of executive branch agencies, and after consultation with the judicial and legislative branches of Government, shall submit an annual report to the President. The report shall include seat belt use rates and statistics of crashes, injuries, and related costs involving Federal employees on official business and occupants of motor vehicles driven in national park areas, on Defense installations, and on highways in Indian Country. The report also shall identify specific agency programs that have made significant progress towards achieving the goals of this order or are notable and deserving of recognition. All agencies of the executive branch shall provide information to, and otherwise cooperate with, the Secretary of Transportation to assist with the preparation of the annual report.

SEC. 5. *Other Powers and Duties.* Nothing in this order shall be construed to impair or alter the powers and duties of the heads of the various Federal agencies pursuant to the Highway Safety Act of 1966, 23 U.S.C. 402 and 403, as amended, section 19 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 668, as amended, or sections 7901, 7902, and 7903 of title 5, United States Code, nor shall it be construed to affect any right, duty, or procedure under the National Labor Relations Act, 29 U.S.C. 151 *et seq.*

SEC. 6. *General Provisions.* (a) Executive Order 12566 of September 26, 1986, is revoked. To the extent that this order is inconsistent with any provisions of any prior Executive order, this order shall control.

(b) If any provision of this order or application of any such provision is held to be invalid, the remainder of this order and other applications of such provision shall not be affected.

(c) Nothing in this order shall be construed to create a new cause of action against the United States, or to alter in any way the United States liability under the Federal Tort Claims Act, 28 U.S.C. 2671-2680.

(d) The Secretary of Defense shall implement the provisions of this order insofar as practicable for vehicles of the Department of Defense.

(e) The Secretary of the Treasury and the Attorney General, consistent with their protective and law enforcement responsibilities, shall determine the extent to which the requirements of this order apply to the protective and law enforcement activities of their respective agencies.

WILLIAM J. CLINTON.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 153, 154, 163, 164, 403, 404, 405, 406, 408, 410, 411 of this title; title 42 section 7544; title 49 sections 30308, 31107.

### § 403. Highway safety research and development

(a) **AUTHORITY OF THE SECRETARY.**—

(1) **IN GENERAL.**—The Secretary is authorized to use funds appropriated to carry out this section to engage in research on all phases of highway safety and traffic conditions.

(2) **ADDITIONAL AUTHORITY.**—In addition, the Secretary may use the funds appropriated to carry out this section, either independently or in cooperation with other Federal departments or agencies, for—

(A) training or education of highway safety personnel, including training in work zone safety management,

(B) research fellowships in highway safety,

(C) development of improved accident investigation procedures,

(D) emergency service plans,

(E) demonstration projects, and

(F) related research and development activities which the Secretary deems will promote the purposes of this section.

(3) **SAFETY DEFINED.**—As used in this section, the term "safety" includes highway safety and highway safety-related research and development, including research and development relating to highway and driver characteristics, crash investigations, communications, emergency medical care, and transportation of the injured.

(b) **DRUGS AND DRIVER BEHAVIOR.**—In addition to the research authorized by subsection (a), the Secretary, in consultation with other Government and private agencies as may be necessary, is authorized to carry out safety research on the following:

(1) The relationship between the consumption and use of drugs and their effect upon highway safety and drivers of motor vehicles.

(2) Driver behavior research, including the characteristics of driver performance, the relationships of mental and physical abilities or disabilities to the driving task, and the relationship of frequency of driver crash involvement to highway safety.

(3) Measures that may deter drugged driving.

(4) Programs to train law enforcement officers on motor vehicle pursuits conducted by the officers.

(c) The research authorized by subsections (a) and (b) of this section may be conducted by the Secretary through grants and contracts with public and private agencies, institutions, and individuals.

(d) The Secretary may, where he deems it to be in furtherance of the purposes of section 402 of this title, vest in State or local agencies, on such terms and conditions as he deems appropriate, title to equipment purchased for demonstration projects with funds authorized by this section.

(e) In addition to the research authorized by subsection (a) of this section, the Secretary shall, either independently or in cooperation with other Federal departments or agencies, conduct research into, and make grants to or contracts with State or local agencies, institutions, and individuals for projects to demonstrate the administrative adjudication of traffic infractions. Such administrative adjudication demonstration projects shall be designed to improve highway safety by developing fair, efficient, and effective processes and procedures for traffic infraction adjudication, utilizing appropriate punishment, training, and rehabilitative measures for traffic offenders. The Secretary

shall report to Congress by July 1, 1975, and each year thereafter during the continuance of the program, on the research and demonstration projects authorized by this subsection, and shall include in such report a comparison of the fairness, efficiency, and effectiveness of administrative adjudication of traffic infractions with other methods of handling such infractions.

(f) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

(1) IN GENERAL.—For the purpose of encouraging innovative solutions to highway safety problems, stimulating voluntary improvements in highway safety, and stimulating the marketing of new highway safety-related technology by private industry, the Secretary is authorized to undertake, on a cost-shared basis, collaborative research and development with non-Federal entities, including State and local governments, colleges, and universities and corporations, partnerships, sole proprietorships, and trade associations that are incorporated or established under the laws of any State or the United States. This collaborative research may include crash data collection and analysis; driver and pedestrian behavior; and demonstrations of technology.

(2) COOPERATIVE AGREEMENTS.—In carrying out this subsection, the Secretary may enter into cooperative research and development agreements, as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a); except that in entering into such agreements, the Secretary may agree to provide not more than 50 percent of the cost of any research or development project selected by the Secretary under this subsection.

(3) PROJECT SELECTION.—In selecting projects to be conducted under this subsection, the Secretary shall establish a procedure to consider the views of experts and the public concerning the project areas.

(4) APPLICABILITY OF STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT.—The research, development, or utilization of any technology pursuant to an agreement under the provisions of this subsection, including the terms under which technology may be licensed and the resulting royalties may be distributed, shall be subject to the provisions of the Stevenson-Wydler Technology Innovation Act of 1980.

(Added Pub. L. 89-564, title I, §101, Sept. 9, 1966, 80 Stat. 733; amended Pub. L. 93-87, title II, §§208(a), 220-222, 226(a), Aug. 13, 1973, 87 Stat. 286, 291, 292; Pub. L. 102-240, title II, §2003, Dec. 18, 1991, 105 Stat. 2071; Pub. L. 105-178, title II, §2002(a), (b)(1), June 9, 1998, 112 Stat. 325.)

REFERENCES IN TEXT

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsec. (f)(4), is Pub. L. 96-480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified generally to chapter 63 (§3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

AMENDMENTS

1998—Subsec. (a)(2)(A). Pub. L. 105-178, §2002(a), inserted “, including training in work zone safety management” after “personnel”.

Subsec. (b)(3), (4). Pub. L. 105-178, §2002(b)(1), added pars. (3) and (4).

1991—Subsec. (a). Pub. L. 102-240, §2003(a), added subsec. (a) and struck out former subsec. (a) which read as follows: “The Secretary is authorized to use funds appropriated to carry out this subsection to carry out safety research which he is authorized to conduct by subsection (a) of section 307 of this title. In addition, the Secretary may use the funds appropriated to carry out this section, either independently or in cooperation with other Federal departments or agencies, for making grants to or contracting with State or local agencies, institutions, and individuals for (1) training or education of highway safety personnel, (2) research fellowships in highway safety, (3) development of improved accident investigation procedures, (4) emergency service plans, (5) demonstration projects, and (6) related activities which the Secretary deems will promote the purposes of this section. The Secretary shall assure that no fees are charged for any meetings or services attendant thereto or other activities relating to training and education of highway safety personnel.”

Subsec. (b). Pub. L. 102-240, §2003(a), added subsec. (b) and struck out former subsec. (b) which read as follows: “In addition to the research authorized by subsection (a) of this section, the Secretary, in consultation with such other Government and private agencies as may be necessary, is authorized to carry out safety research on the following:

“(1) The relationship between the consumption and use of drugs and their effect upon highway safety and drivers of motor vehicles; and

“(2) Driver behavior research, including the characteristics of driver performance, the relationships of mental and physical abilities or disabilities to the driving task, and the relationship of frequency of driver accident involvement to highway safety.”

Subsec. (c). Pub. L. 102-240, §2003(c), substituted “subsections (a) and (b)” for “subsection (b)”.

Subsec. (f). Pub. L. 102-240, §2003(b), added subsec. (f) and struck out former subsec. (f) which read as follows: “In addition to the research authorized by subsection (a) of this section, the Secretary shall carry out research, development, and demonstration projects to improve and evaluate the effectiveness of various types of driver education programs in reducing traffic accidents and deaths, injuries, and property damage resulting therefrom. The research, development, and demonstration projects authorized by this subsection may be carried out by the Secretary through grants and contracts with public and private agencies, institutions, and individuals. The Secretary shall report to the Congress by July 1, 1975, and each year thereafter during the continuance of the program, on the research, development, and demonstration projects authorized by this subsection, and shall include in such report an evaluation of the effectiveness of driver education programs in reducing traffic accidents and deaths, injuries, and property damage resulting therefrom.”

1973—Subsec. (a). Pub. L. 93-87, §§208(a), 220, designated existing provisions as subsec. (a); substituted in first sentence “this subsection” for “this section”; substituted in second sentence “for making grants to or contracting with State or local agencies, institutions, and individuals for (1) training or education of highway safety personnel” for “for (1) grants to State or local agencies, institutions, and individuals for training or education of highway safety personnel” and “(6) related activities which the Secretary deems will promote the purposes of this section” for “(6) related activities which are deemed by the Secretary to be necessary to carry out the purposes of this section”; and inserted requirement that the Secretary assure that no fees be charged for any meeting or services attendant thereto or other activities relating to training and education of highway safety personnel.

Subsecs. (b), (c). Pub. L. 93-87, §208(a), added subsecs. (b) and (c).

Subsecs. (d) to (f). Pub. L. 93-87, §§221, 222, 226(a), added subsecs. (d) to (f).

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240, except as otherwise provided, effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and not applicable to funds appropriated or made available on or before Dec. 18, 1991, see section 2008 of Pub. L. 102-240, set out as a note under section 402 of this title.

#### SAFETY STUDIES

Pub. L. 105-178, title II, §2007, June 9, 1998, 112 Stat. 336, provided that:

“(a) BLOWOUT RESISTANT TIRES STUDY.—The Secretary shall conduct a study on the benefit to public safety of the use of blowout resistant tires on commercial motor vehicles and the potential to decrease the incidence of accidents and fatalities from accidents occurring as a result of blown out tires.

“(b) SCHOOL BUS OCCUPANT SAFETY STUDY.—The Secretary shall conduct a study to assess occupant safety in school buses. The study shall examine available information about occupant safety and analyze options for improving occupant safety.

“(c) REPORTS.—Not later than 2 years after the date of enactment of this Act [June 9, 1998], the Secretary shall transmit to Congress a report on the results of each study conducted under this section.

“(d) LIMITATION ON FUNDING.—The Secretary may not expend more than \$200,000 from funds made available by section 403 of title 23, United States Code, for conducting each study under this section.”

#### SCHOOL TRANSPORTATION SAFETY

Pub. L. 105-178, title IV, §4030, June 9, 1998, 112 Stat. 418, provided that:

“(a) STUDY.—Not later than 3 months after the date of enactment of this Act [June 9, 1998], the Secretary shall offer to enter into an agreement with the Transportation Research Board of the National Academy of Sciences to conduct, subject to the availability of appropriations, a study of the safety issues attendant to the transportation of school children to and from school and school-related activities by various transportation modes.

“(b) TERMS OF AGREEMENT.—The agreement under subsection (a) shall provide that—

“(1) the Transportation Research Board, in conducting the study, shall consider—

“(A) in consultation with the National Transportation Safety Board, the Bureau of Transportation Statistics, and other relevant entities, available crash injury data;

“(B) vehicle design and driver training requirements, routing, and operational factors that affect safety; and

“(C) other factors that the Secretary considers to be appropriate;

“(2) if the data referred to in paragraph (1)(A) is unavailable or insufficient, the Transportation Research Board shall recommend a new data collection regimen and implementation guidelines; and

“(3) a panel shall conduct the study and shall include—

“(A) representatives of—

“(i) highway safety organizations;

“(ii) school transportation;

“(iii) mass transportation operators;

“(iv) employee organizations; and

“(v) bicycling organizations;

“(B) academic and policy analysts; and

“(C) other interested parties.

“(c) REPORT.—Not later than 12 months after the Secretary enters into an agreement under subsection (a), the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastruc-

ture of the House of Representatives a report that contains the results of the study.

“(d) AUTHORIZATION.—There are authorized to be appropriated to the Department of Transportation to carry out this section \$200,000 for fiscal year 2000 and \$200,000 for fiscal year 2001. Such sums shall remain available until expended.”

#### DRUG RECOGNITION EXPERT TRAINING PROGRAM

Section 2006 of Pub. L. 102-240 provided that:

“(a) ESTABLISHMENT.—The Secretary, acting through the National Highway Traffic Safety Administration, shall establish a regional program for implementation of drug recognition programs and for training law enforcement officers (including enforcement officials under the motor carrier safety assistance program) to recognize and identify individuals who are operating a motor vehicle while under the influence of alcohol or one or more controlled substances or other drugs.

“(b) ADVISORY COMMITTEE.—The Secretary shall establish a citizens advisory committee that shall report to Congress annually on the progress of the implementation of subsection (a). Members of the committee shall include 1 member of each of the following: Mothers Against Drunk Driving; a narcotics control organization; American Medical Association; American Bar Association; and such other organizations as the Secretary deems appropriate. The committee shall be subject to the provisions of the [Federal] Advisory Committee Act [5 App. U.S.C.] and shall terminate 2 years after the date of the enactment of this Act [Dec. 18, 1991].

“(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$4,000,000 for each of fiscal years 1992 through 1997.

“(d) DEFINITION.—For purposes of this section, the term ‘controlled substance’ means any controlled substance, as defined under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), whose use the Secretary has determined poses a risk to transportation safety.”

#### PILOT PROGRAM FOR DRUG RECOGNITION EXPERT TRAINING

Pub. L. 100-690, title IX, §9004, Nov. 18, 1988, 102 Stat. 4525, provided that:

“(a) ESTABLISHMENT.—The Secretary of Transportation, acting through the National Highway Traffic Safety Administration, shall establish a 3-year pilot, regional program for training law enforcement officers to recognize and identify individuals who are operating a motor vehicle while under the influence of alcohol or 1 or more controlled substances or other drugs.

“(b) REPORT.—Not later than 1 year after the completion of the pilot program under this section, the Secretary of Transportation shall transmit to Congress a report on the effectiveness of such pilot program together with any recommendations.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$5,000,000 for fiscal year 1989, \$7,000,000 for fiscal year 1990, and \$9,000,000 for fiscal year 1991. Such sums shall remain available until expended.”

#### PILOT GRANT PROGRAM FOR RANDOM TESTING FOR ILLEGAL DRUG USE

Pub. L. 100-690, title IX, §9005, Nov. 18, 1988, 102 Stat. 4526, provided that:

“(a) ESTABLISHMENT OF PILOT PROGRAM.—The Secretary shall design, within 9 months after the date of the enactment of this Act [Nov. 18, 1988], and implement, within 15 months after the date of the enactment of this Act, a pilot State grant program for the purpose of testing individuals described in subsection (e)(1) to determine whether such individuals have used, without lawful authorization, a controlled substance.

“(b) STATE PARTICIPATION.—The Secretary shall solicit the participation of States from those States in-

terested in participating in such a program not more than 4 States to participate in the program.

“(c) STATE SELECTION PROCESS.—The Secretary shall ensure that the selection made pursuant to this section is representative of varying geographical and population characteristics of the Nation, and takes into consideration the historical geographical incidence of motor vehicle accidents involving loss of human life. In selecting the States for participation, the Secretary shall attempt to solicit States which meet the following criteria:

“(1) One of the States shall be a western State which is one of the 3 most populous States, with numerous large cities, with at least one city exceeding 7,000,000 people. The State should have a diverse demographic population with larger than average drug use according to reliable surveys.

“(2) One of the remaining States should be a southern State, one a northeastern State, and one a central State.

“(3) One of the remaining States should be mainly rural and among the least populous States.

“(4) One of the remaining States should have less than average drug use according to reliable surveys.

“(d) LENGTH OF PROGRAM.—The pilot program authorized by this section shall continue for a period of 1 year. The Secretary shall consider alternative methodologies for implementing a system of random testing of such individuals.

“(e) REQUIREMENTS FOR STATE PARTICIPATION.—

“(1) PERSONS TO BE TESTED.—Each State participating in the test program shall test for controlled substances in accordance with paragraph (2) individuals who—

“(A) are applicants seeking the privilege to drive, and

“(B) have never been issued a driver’s license by any State.

“(2) TYPES OF TESTING.—To deter drug use and promote highway safety, all individuals described in paragraph (1) shall be subject to random testing—

“(A) prior to issuance of driver’s licenses, and

“(B) during the first year following the date of issuance of such licenses.

“(3) DENIAL OF DRIVING PRIVILEGES.—Each State participating in the test program shall deny an individual driving privileges if drug testing required by paragraph (1) indicates that such individual has used illicit drugs, with such denial lasting for a period of at least 1 year following such test or subsequent confirmatory test.

“(4) REINSTITUTION OF DRIVING PRIVILEGES.—The program described in paragraph (3) may allow for reinstatement of driving privileges after a period of 3 months if such reinstatement is accompanied by a requirement that the individual be available for a period of 9 months for drug testing on a regular basis. If any such test indicates that the individual has used illicit drugs, then driving privileges must be denied for 1 year following such test or confirmatory test.

“(f) REGULATIONS.—The Secretary may issue regulations to assist States in implementing the programs described in subsection (e) and to grant temporary exceptions in appropriate circumstances.

“(g) REPORT.—Not later than 30 months after the date of the enactment of this Act [Nov. 18, 1988], the Secretary shall prepare and transmit to Congress a comprehensive report setting forth the results of the pilot program conducted under this section. Such report shall include any recommendations of the Secretary concerning the desirability and implementation of a system for random testing of such operators of motor vehicles.

“(h) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out this test program, there is authorized to be appropriated \$5,000,000 for fiscal year 1990.

“(i) DEFINITIONS.—For purposes of this section—

“(1) CONTROLLED SUBSTANCE.—The term ‘controlled substance’ means any controlled substance as defined

under section 102(6) of the Controlled Substance Act (21 U.S.C. 802(6)) whose use the Secretary has determined poses a risk to transportation safety.

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of Transportation.

“(3) STATE.—The term ‘State’ has the meaning such term has when used in chapter 1 of title 23, United States Code.”

#### DRUG AND HIGHWAY SAFETY STUDY AND REPORT

Pub. L. 99-570, title III, §3402, Oct. 27, 1986, 100 Stat. 3207-102, directed Secretary of Transportation to conduct a study to determine relationship between usage of controlled substances and highway safety and, not later than one year after Oct. 27, 1986, submit to Congress a report on results of study.

#### NATIONAL DRIVER REGISTER STUDY

Pub. L. 95-599, title II, §204, Nov. 6, 1978, 92 Stat. 2729, directed Secretary of Transportation to make a full and complete investigation and study of the need for, and, if necessary, ways and means to establish, a national driver register to assist States in electronically exchanging information regarding motor vehicle driving records of certain individuals, with Secretary to issue a final report to Congress not later than one year after Nov. 6, 1978.

#### DETECTION AND PREVENTION OF MARIJUANA AND OTHER DRUG USE BY OPERATORS OF MOTOR VEHICLES

Pub. L. 95-599, title II, §212, Nov. 6, 1978, 92 Stat. 2734, directed Secretary to report to Congress not later than Dec. 31, 1979, concerning the progress of efforts to detect and prevent marijuana and drug use by motor vehicle operators, capabilities of law enforcement officials to detect the use of marijuana and drugs by motor vehicle operators, and a description of Federal and State projects undertaken into methods of detection and prevention.

#### FORM AND USE OF REPORTS OF HIGHWAY TRAFFIC ACCIDENTS OR RESEARCH PROJECTS IN COURT; AVAILABILITY TO PUBLIC

Pub. L. 89-564, title I, §106, Sept. 9, 1966, 80 Stat. 735, as amended by Pub. L. 105-178, title V, §5119(f), June 9, 1998, 112 Stat. 452, provided that: “All facts contained in any report of any Federal department or agency or any officer, employee, or agent thereof, relating to any highway traffic accident or the investigation thereof conducted pursuant to chapter 4 of title 23 of the United States Code shall be available for use in any civil, criminal, or other judicial proceeding arising out of such accident, and any such officer, employee, or agent may be required to testify in such proceedings as to the facts developed in such investigation. Any such report shall be made available to the public in a manner which does not identify individuals. All completed reports on research projects, demonstration projects, and other related activities conducted under section 403 and chapter 5 of title 23, United States Code, shall be made available to the public in a manner which does not identify individuals.”

#### APPROPRIATIONS AUTHORIZATIONS

Section 208(b) of Pub. L. 93-87 provided that: “There is authorized to be appropriated to carry out the amendments made by this section [amending this section] by the National Highway Traffic Safety Administration, out of the Highway Trust Fund, the sum of \$10,000,000 per fiscal year for each of the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976.”

Section 226(b) of Pub. L. 93-87 provided that: “For the purpose of carrying out the amendment made by subsection (a) of this section [amending this section], there is authorized to be appropriated \$10,000,000 out of the Highway Trust Fund.”

#### AUTHORIZATION OF ADDITIONAL APPROPRIATIONS

Authorization of appropriation of additional sum of \$10,000,000 for the fiscal year ending June 30, 1967,

\$20,000,000 for the fiscal year ending June 30, 1968, and \$25,000,000 for the fiscal year ending June 30, 1969, for the purpose of carrying out this section and section 307(a) of this title, see section 105 of Pub. L. 89-564, set out as a note under section 307 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 110, 402 of this title.

**§ 404. National Highway Safety Advisory Committee**

(a)(1) There is established in the Department of Transportation a National Highway Safety Advisory Committee, composed of the Secretary or an officer of the Department appointed by him, the Federal Highway Administrator, the National Highway Traffic Safety Administrator, and thirty-five members appointed by the President, no more than four of whom shall be Federal officers or employees. The Secretary shall select the Chairman of the Committee from among the Committee members. The appointed members, having due regard for the purposes of this chapter, shall be selected from among representatives of various State and local governments, including State legislatures, of public and private interests contributing to, affected by, or concerned with highway safety, including the national organizations of passenger car, bus, and truck owners, and of other public and private agencies, organizations, or groups demonstrating an active interest in highway safety, as well as research scientists and other individuals who are expert in this field.

(2)(A) Each member appointed by the President shall hold office for a term of three years, except that (i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of members first taking office after the date of enactment of this section shall expire as follows: Twelve at the end of one year after the date such committee members are appointed by the President, twelve at the end of two years after the date such committee members are appointed by the President, and eleven at the end of three years after the date such committee members are appointed, as designated by the President at the time of appointment, and (iii) the term of any member shall be extended until the date on which the successor's appointment is effective. None of the members appointed by the President who has served a three-year term, other than Federal officers or employees, shall be eligible for reappointment within one year following the end of his preceding term.

(B) Members of the Committee who are not officers or employees of the United States shall, while attending meetings or conferences of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem, including travel-time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized in section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b-2)

for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

(b) The National Highway Safety Advisory Committee shall advise, consult with, and make recommendations to, the Secretary on matters relating to the activities and functions of the Department in the field of highway safety. The Committee is authorized (1) to review research projects or programs submitted to or recommended by it in the field of highway safety and recommend to the Secretary, for prosecution under this title, any such projects which it believes show promise of making valuable contributions to human knowledge with respect to the cause and prevention of highway accidents; and (2) to review, prior to issuance, standards proposed to be issued by order of the Secretary under the provisions of section 402(a) of this title and to make recommendations thereon. Such recommendations shall be published in connection with the Secretary's determination or order.

(c) The National Highway Safety Advisory Committee shall meet from time to time as the Secretary shall direct, but at least once each year.

(d) The Secretary shall provide to the National Highway Safety Committee from among the personnel and facilities of the Department of Commerce<sup>1</sup> such staff and facilities as are necessary to carry out the functions of such Committee.

(Added Pub. L. 89-564, title I, §101, Sept. 9, 1966, 80 Stat. 733; amended Pub. L. 90-150, Nov. 24, 1967, 81 Stat. 507; Pub. L. 93-87, title II, §223, Aug. 13, 1973, 87 Stat. 292; Pub. L. 94-280, title II, §209, May 5, 1976, 90 Stat. 455.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a)(2)(A), is Sept. 9, 1966.

Section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b-2), referred to in subsec. (a)(2)(B), was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 632. Section 7(b) of Pub. L. 89-554 provided that references to sections of former Title 5, Executive Departments and Government Officers and Employees, are to be deemed to be references to corresponding provisions of Title 5, Government Organization and Employees. Provisions similar to section 73b-2 of former title 5 are now contained in section 5703 of Title 5, Government Organization and Employees.

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94-280 substituted provision for selection by the Secretary of the Chairman of the Committee from among the Committee members for prior provision making the Secretary or an officer of the Department appointed by him the Chairman of the Committee.

1973—Subsec. (a)(1). Pub. L. 93-87 added the National Highway Traffic Safety Administrator to the membership of the National Highway Safety Advisory Committee.

1967—Subsec. (a)(1). Pub. L. 90-150, §1(1), substituted "Department of Transportation" for "Department of Commerce", increased number of Committee appointees from twenty-nine to thirty-five, and provided

<sup>1</sup> So in original. Probably should be "Transportation".



for selection of members from representatives of national organizations of passenger car, bus, and truck owners.

Subsec. (a)(2)(A). Pub. L. 90-150, §1(2), substituted provisions for expirations of term of office of initial appointees one, two, and three years after date of appointment for twelve, twelve, and eleven members, respectively, for former provisions for such expiration one, two, and three years following enactment date of Sept. 9, 1966, for ten, ten, and nine members, respectively, and prohibited reappointment within one year after end of preceding term of member serving a three-year term of office.

#### TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

### § 405. Occupant protection incentive grants

#### (a) GENERAL AUTHORITY.—

(1) AUTHORITY TO MAKE GRANTS.—Subject to the requirements of this section, the Secretary shall make grants under this section to States that adopt and implement effective programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles. Such grants may be used by recipient States only to implement and enforce, as appropriate, such programs.

(2) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all other sources for programs described in paragraph (1) at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of the Transportation Equity Act for the 21st Century.

(3) MAXIMUM PERIOD OF ELIGIBILITY.—No State may receive grants under this section in more than 6 fiscal years beginning after September 30, 1997.

(4) FEDERAL SHARE.—The Federal share of the cost of implementing and enforcing, as appropriate, in a fiscal year a program adopted by a State pursuant to paragraph (1) shall not exceed—

(A) in each of the first and second fiscal years in which the State receives a grant under this section, 75 percent;

(B) in each of the third and fourth fiscal years in which the State receives a grant under this section, 50 percent; and

(C) in each of the fifth and sixth fiscal years in which the State receives a grant under this section, 25 percent.

(b) GRANT ELIGIBILITY.—A State shall become eligible for a grant under this section by adopting or demonstrating to the satisfaction of the Secretary at least 4 of the following:

(1) SAFETY BELT USE LAW.—The State has in effect a safety belt use law that makes unlaw-

ful throughout the State the operation of a passenger motor vehicle whenever an individual (other than a child who is secured in a child restraint system) in the front seat of the vehicle (and, beginning in fiscal year 2001, in any seat in the vehicle) does not have a safety belt properly secured about the individual's body.

(2) PRIMARY SAFETY BELT USE LAW.—The State provides for primary enforcement of the safety belt use law of the State.

(3) MINIMUM FINE OR PENALTY POINTS.—The State imposes a minimum fine or provides for the imposition of penalty points against the driver's license of an individual—

(A) for a violation of the safety belt use law of the State; and

(B) for a violation of the child passenger protection law of the State.

(4) SPECIAL TRAFFIC ENFORCEMENT PROGRAM.—The State has implemented a statewide special traffic enforcement program for occupant protection that emphasizes publicity for the program.

(5) CHILD PASSENGER PROTECTION EDUCATION PROGRAM.—The State has implemented a statewide comprehensive child passenger protection education program that includes education programs about proper seating positions for children in air bag equipped motor vehicles and instruction on how to reduce the improper use of child restraint systems.

(6) CHILD PASSENGER PROTECTION LAW.—The State has in effect a law that requires minors who are riding in a passenger motor vehicle to be properly secured in a child safety seat or other appropriate restraint system.

(c) GRANT AMOUNTS.—The amount of a grant for which a State qualifies under this section for a fiscal year shall equal up to 25 percent of the amount apportioned to the State for fiscal year 1997 under section 402.

(d) ADMINISTRATIVE EXPENSES.—Funds authorized to be appropriated to carry out this section in a fiscal year shall be subject to a deduction not to exceed 5 percent for the necessary costs of administering the provisions of this section.

(e) APPLICABILITY OF CHAPTER 1.—The provisions contained in section 402(d) shall apply to this section.

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

(1) CHILD SAFETY SEAT.—The term "child safety seat" means any device (except safety belts) designed for use in a motor vehicle to restrain, seat, or position a child who weighs 50 pounds or less.

(2) MOTOR VEHICLE.—The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.

(3) MULTIPURPOSE PASSENGER VEHICLE.—The term "multipurpose passenger vehicle" means a motor vehicle with motive power (except a trailer), designed to carry not more than 10 individuals, that is constructed either on a truck chassis or with special features for occasional off-road operation.

(4) PASSENGER CAR.—The term “passenger car” means a motor vehicle with motive power (except a multipurpose passenger vehicle, motorcycle, or trailer) designed to carry not more than 10 individuals.

(5) PASSENGER MOTOR VEHICLE.—The term “passenger motor vehicle” means a passenger car or a multipurpose passenger motor vehicle.

(6) SAFETY BELT.—The term “safety belt” means—

(A) with respect to open-body passenger vehicles, including convertibles, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt; and

(B) with respect to other passenger vehicles, an occupant restraint system consisting of integrated lap and shoulder belts.

(Added Pub. L. 105-178, title II, §2003(a)(1), June 9, 1998, 112 Stat. 325.)

#### REFERENCES IN TEXT

The date of enactment of the Transportation Equity Act for the 21st Century, referred to in subsec. (a)(2), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

#### PRIOR PROVISIONS

A prior section 405, added Pub. L. 93-87, title II, §230(a), Aug. 13, 1973, 87 Stat. 293; amended Pub. L. 93-643, §121, Jan. 4, 1975, 88 Stat. 2289, related to the Federal-aid safer roads demonstration program, prior to repeal by Pub. L. 94-280, title I, §135(c), May 5, 1976, 90 Stat. 442.

#### CHILD PASSENGER PROTECTION EDUCATION GRANTS

Pub. L. 105-178, title II, §2003(b), June 9, 1998, 112 Stat. 327, provided that:

“(1) IN GENERAL.—The Secretary may make a grant to a State that submits an application, in such form and manner as the Secretary may prescribe, that is approved by the Secretary to carry out the activities specified in paragraph (2) through—

“(A) the child passenger protection program of the State; and

“(B) at the option of the State, a grant program established by the State to carry out 1 or more of the activities specified in paragraph (2) by a political subdivision of the State or an appropriate private entity.

“(2) USE OF FUNDS.—Funds provided to a State as a grant under this subsection shall be used to implement child passenger protection programs that—

“(A) are designed to prevent deaths and injuries to children;

“(B) educate the public concerning—

“(i) all aspects of the proper installation of child restraints using standard seatbelt hardware, supplemental hardware, and modification devices (if needed), including special installation techniques;

“(ii) appropriate child restraint design, selection, and placement; and

“(iii) harness threading and harness adjustment on child restraints; and

“(C) train and retrain child passenger safety professionals, police officers, fire and emergency medical personnel, and other educators concerning all aspects of child restraint use.

“(3) GRANT AWARDS.—The Secretary may make a grant under this subsection without regard to whether a State is eligible to receive, or has received, a grant under section 405 of title 23, United States Code (as inserted by subsection (a) of this section).

“(4) FEDERAL SHARE.—The Federal share of the cost of a program carried out using funds made available from a grant under this subsection may not exceed 80 percent.

“(5) REPORT.—Each State that receives a grant under this subsection shall transmit to the Secretary a report for the period covered by the grant that, at a minimum, describes the program activities carried out with the funds made available under the grant.

“(6) REPORT TO CONGRESS.—Not later than June 1, 2002, the Secretary shall transmit to Congress a report on the implementation of this subsection that includes a description of the programs carried out and materials developed and distributed by the States that receive grants under this subsection.

“(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$7,500,000 for each of fiscal years 2000 and 2001.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 410 of this title.

#### § 406. School bus driver training

(a) The Secretary is authorized to make grants to the States for the purpose of carrying out State programs approved by him of driver education and training for persons driving school buses.

(b) A State program under this section shall be approved by the Secretary if such program—

(1) provide for the establishment and enforcement of qualifications for persons driving school buses;

(2) provides for initial education and training and for refresher courses;

(3) provides for periodic reports to the Secretary on the results of such program; and

(4) includes persons driving publicly operated, and persons driving privately operated, school buses.

(c) Not less than \$7,500,000 of the sums authorized to carry out section 402 of this title for fiscal year 1976 shall be obligated to carry out this section. Not less than \$7,000,000 of the sums authorized to carry out section 402 of this title for each of the fiscal years 1977 and 1978 shall be obligated to carry out this section. All sums authorized to carry out this section shall be apportioned among the States in accordance with the formula established under subsection (c) of section 402 of this title, and shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under such subsection (c). The Federal share payable on account of any project to carry out a program under this section shall not exceed 75 per centum of the cost of the project.

(Added Pub. L. 93-643, §126(a), Jan. 4, 1975, 88 Stat. 2291; amended Pub. L. 94-280, title II, §205, May 5, 1976, 90 Stat. 453; Pub. L. 95-599, title I, §129(g), Nov. 6, 1978, 92 Stat. 2708.)

#### AMENDMENTS

1978—Subsec. (c). Pub. L. 95-599 substituted “section shall not exceed 75 per centum” for “title shall not exceed 70 per centum”.

1976—Subsecs. (b), (c). Pub. L. 94-280 redesignated as subsec. (c) the authorization provisions previously set out as a second subsec. (b), provided for obligation of at least \$7,000,000 for fiscal years 1977 and 1978 to carry out this section, and provided for availability of funds for obligation in the same manner and to the same extent as if the funds were apportioned under section 402(c) of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment Pub. L. 95-599 effective with respect to obligations incurred after Nov. 6, 1978, see section 129(h)

of Pub. L. 95-599, set out as a note under section 120 of this title.

#### § 407. Innovative project grants

(a) In addition to other grants authorized by this chapter, the Secretary may make grants in any fiscal year to those States, political subdivisions thereof, and nonprofit organizations which develop innovative approaches to highway safety problems in accordance with criteria to be established by the Secretary in cooperation with the States, political subdivisions thereof, and such nonprofit organizations as the Secretary deems appropriate.

(b) The Secretary shall establish a procedure for the selection of grant applications submitted under this section. In developing such procedure, the Secretary shall consult with the States and political subdivisions thereof, appropriate Federal departments and agencies, and such other public and nonprofit organizations as the Secretary deems appropriate.

(c) Any State, political subdivision thereof, and nonprofit organization may make an application under this section to carry out an innovative project described in subsection (a) of this section. Such application shall be in such form and contain such information as the Secretary, by regulation, prescribes.

(d) Not to exceed 2 per centum of the funds authorized to be appropriated to carry out this section shall be available to the Secretary for the necessary costs of administering the provisions of this section.

(e) The Secretary shall submit an annual report to the Congress which provides a description of each application received for a grant under this section and an evaluation of innovative projects carried out with grants made under this section.

(Added Pub. L. 95-599, title II, §208(a), Nov. 6, 1978, 92 Stat. 2732.)

#### § 408. Alcohol traffic safety programs

(a) Subject to the provisions of this section, the Secretary shall make grants to those States which adopt and implement effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol or a controlled substance. Such grants may only be used by recipient States to implement and enforce such programs.

(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for alcohol traffic safety programs at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

(c) No State may receive grants under this section in more than 5 fiscal years. The Federal share payable for any grant under this section shall not exceed—

(1) in the first fiscal year the State receives a grant under this section, 75 per centum of the cost of implementing and enforcing in such fiscal year the alcohol and controlled substance traffic safety program adopted by the State pursuant to subsection (a);

(2) in the second fiscal year the State receives a grant under this section, 50 per centum of the cost of implementing and enforcing in such fiscal year such program; and

(3) in the third, fourth, and fifth fiscal years the State receives a grant under this section, 25 per centum of the cost of implementing and enforcing in such fiscal year such program.

(d)(1) Subject to subsection (c), the amount of a basic grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(1) shall equal 30 per centum of the amount apportioned to such State for fiscal year 1983 under section 402 of this title.

(2) Subject to subsection (c), the amount of a supplemental grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(2) shall not exceed 20 per centum of the amount apportioned to such State for fiscal year 1983 under section 402 of this title. Such supplemental grant shall be in addition to any basic grant received by such State.

(3) Subject to subsection (c), the amount of a special grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(3) shall not exceed 5 per centum of the amount apportioned to such State for fiscal year 1984 under sections 402 and 408 of this title. Such grant shall be in addition to any basic or supplemental grant received by such State.

(e)(1) For purposes of this section, a State is eligible for a basic grant if such State provides—

(A) for the prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer;

(B) for a mandatory sentence, which shall not be subject to suspension or probation, of (i) imprisonment for not less than forty-eight consecutive hours, or (ii) not less than ten days of community service, of any person convicted of driving while intoxicated more than once in any five-year period;

(C) that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated; and

(D) for increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

(2) For purposes of this section, a State is eligible for a supplemental grant if such State is eligible for a basic grant and in addition provides for some or all of the criteria established by the Secretary under subsection (f).

(3) For the purposes of this section, a State is eligible for a special grant if the State enacts a statute which provides that—

(A) any person convicted of a first violation of driving under the influence of alcohol shall receive—

(i) a mandatory license suspension for a period of not less than ninety days; and either

(ii)(I) an assignment of one hundred hours of community service; or

(II) a minimum sentence of imprisonment for forty-eight consecutive hours;

(B) any person convicted of a second violation of driving under the influence of alcohol within five years after a conviction for the same offense, shall receive a mandatory minimum sentence of imprisonment for ten days and license revocation for not less than one year;

(C) any person convicted of a third or subsequent violation of driving under the influence of alcohol within five years after a prior conviction for the same offense shall—

(i) receive a mandatory minimum sentence of imprisonment for one hundred and twenty days; and

(ii) have his license revoked for not less than three years; and

(D) any person convicted of driving with a suspended or revoked license or in violation of a restriction due to driving under the influence of alcohol conviction shall receive a mandatory sentence of imprisonment for at least thirty days, and shall upon release from imprisonment, receive an additional period of license suspension or revocation of not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license.

(f) The Secretary shall, by rule, establish criteria for effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol, which criteria shall be in addition to those required for a basic grant under subsection (e)(1). The Secretary shall establish such criteria in cooperation with the States and political subdivisions thereof, appropriate Federal departments and agencies, and such other public and nonprofit organizations as the Secretary may deem appropriate. Such criteria may include, but need not be limited to, requirements—

(1) for the establishment and maintenance of a statewide driver recordkeeping system from which repeat offenders may be identified and which is accessible in a prompt and timely manner to the courts and to the public;

(2) for the creation and operation of rehabilitation and treatment programs for those arrested and convicted of driving while intoxicated;

(3) for the impoundment of any vehicle operated on a State road by any individual whose driver's license is suspended or revoked for an alcohol-related driving offense;

(4) for the establishment in each major political subdivision of a State of locally coordinated alcohol traffic safety programs which

are administered by local officials and are financially self-sufficient;

(5) for the grant of presentence screening authority to the courts;

(6) for the setting of the minimum drinking age in such State at twenty-one years of age;

(7) for the consideration of and, where consistent with other provisions of State law and constitution the adoption of, recommendations that the Presidential Commission on Drunk Driving may issue during the period in which rules are being made to carry out this section; and

(8) for the creation and operation of rehabilitation and treatment programs for those arrested and convicted of driving while under the influence of a controlled substance or for the establishment of research programs to develop effective means of detecting use of controlled substances by drivers.

(g) There is hereby authorized to be appropriated to carry out this section, out of the Highway Trust Fund, \$25,000,000 for the fiscal year ending September 30, 1983, and \$50,000,000 per fiscal year for each of the fiscal years ending September 30, 1984, and September 30, 1985. All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditures of such funds to Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section and except that sums authorized by this subsection shall remain available until expended. Sums authorized by this subsection shall not be subject to any obligation limitation for State and community highway safety programs.

(Added Pub. L. 97-364, title I, §101(a), Oct. 25, 1982, 96 Stat. 1738; amended Pub. L. 98-363, §§4, 7, July 17, 1984, 98 Stat. 436, 438; Pub. L. 100-17, title II, §203(a), (b), Apr. 2, 1987, 101 Stat. 219.)

#### AMENDMENTS

1987—Subsec. (c). Pub. L. 100-17, §203(a), substituted “5” for “three” in introductory provisions and “third, fourth, and fifth fiscal years” for “third fiscal year” in par. (3).

Subsec. (g). Pub. L. 100-17, §203(b), inserted “and except that sums authorized by this subsection shall remain available until expended” before period at end of second sentence.

1984—Subsec. (a). Pub. L. 98-363, §§4(a), 7(a), struck out “basic and supplemental” after “Secretary shall make” and inserted “or a controlled substance” after “alcohol”.

Subsec. (c)(1). Pub. L. 98-363, §4(b), inserted “and controlled substance” after “alcohol”.

Subsec. (d)(3). Pub. L. 98-363, §7(b), added par. (3).

Subsec. (e)(3). Pub. L. 98-363, §7(c), added par. (3).

Subsec. (f)(8). Pub. L. 98-363, §4(c), added par. (8).

#### EFFECTIVENESS OF DRUNK DRIVING LAWS

Pub. L. 104-59, title III, §358(d), Nov. 28, 1995, 109 Stat. 626, provided that: “The Secretary shall conduct a study to evaluate the effectiveness on reducing drunk driving and appropriateness of laws enacted in the States which allow a health care provider who treats an individual involved in a vehicular accident to report the blood alcohol level, if known, of such individual to the local law enforcement agency which has jurisdiction”.

tion over the accident site if the blood alcohol concentration level exceeds the maximum level permitted under State law.”

#### MINIMUM DRINKING AGE

Pub. L. 97-424, title II, §209, Jan. 6, 1983, 96 Stat. 2140, provided that: “The Congress strongly encourages each State to prohibit the sale of alcoholic beverages to persons who are less than 21 years of age.”

#### REGULATIONS; CONGRESSIONAL VETO OF SUPPLEMENTAL GRANTS

Section 101(c) of Pub. L. 97-364 provided that: “The Secretary of Transportation shall issue and publish in the Federal Register proposed regulations to implement section 408 of title 23, United States Code, not later than November 1, 1982. The Secretary shall allow public comment and hold public hearings on the proposed regulations to encourage maximum citizen participation. The final regulations shall be issued, published in the Federal Register, and transmitted to Congress before February 1, 1983. To the extent such regulations relate to the making of basic grants under such section 408, such regulations shall become effective on the date on which they are published in the Federal Register. To the extent such regulations relate to the making of supplemental grants under such section 408, such regulations shall become effective April 1, 1983, unless before such date either House of Congress by resolution disapproves such regulations to such extent. If such regulations are so disapproved by either House of Congress, the Secretary shall not obligate for such supplemental grants any amount authorized to carry out such section 408 for the fiscal year ending September 30, 1983, or any subsequent fiscal year, unless specifically authorized to do so by a statute enacted after the date of enactment of this Act [Oct. 25, 1982].”

#### § 409. Discovery and admission as evidence of certain reports and surveys

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings, pursuant to sections 130, 144, and 152 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.

(Added Pub. L. 100-17, title I, §132(a), Apr. 2, 1987, 101 Stat. 170; amended Pub. L. 102-240, title I, §1035(a), Dec. 18, 1991, 105 Stat. 1978; Pub. L. 104-59, title III, §323, Nov. 28, 1995, 109 Stat. 591.)

#### AMENDMENTS

1995—Pub. L. 104-59 inserted “or collected” after “data compiled”.

1991—Pub. L. 102-240 substituted “Discovery and admission” for “Admission” in section catchline and “subject to discovery or admitted into evidence in a Federal or State court proceeding” for “admitted into evidence in Federal or State court” in text.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or

made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### § 410. Alcohol-impaired driving countermeasures

##### (a) GENERAL AUTHORITY.—

(1) AUTHORITY TO MAKE GRANTS.—Subject to the requirements of this section, the Secretary shall make grants to States that adopt and implement effective programs to reduce traffic safety problems resulting from individuals driving while under the influence of alcohol. Such grants may only be used by recipient States to implement and enforce such programs.

(2) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all other sources for alcohol traffic safety programs at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of the Transportation Equity Act for the 21st Century.

(3) MAXIMUM PERIOD OF ELIGIBILITY.—No State may receive grants under this section in more than 6 fiscal years beginning after September 30, 1997.

(4) FEDERAL SHARE.—The Federal share of the cost of implementing and enforcing in a fiscal year a program adopted by a State pursuant to paragraph (1) shall not exceed—

(A) in each of the first and second fiscal years in which the State receives a grant under this section, 75 percent;

(B) in each of the third and fourth fiscal years in which the State receives a grant under this section, 50 percent; and

(C) in each of the fifth and sixth fiscal years in which the State receives a grant under this section, 25 percent.

##### (b) BASIC GRANT ELIGIBILITY.—

(1) BASIC GRANT A.—A State shall become eligible for a grant under this paragraph by adopting or demonstrating to the satisfaction of the Secretary at least 5 of the following:

(A) ADMINISTRATIVE LICENSE REVOCATION.—An administrative driver’s license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol that requires that—

(i) in the case of an individual who, in any 5-year period beginning after the date of enactment of the Transportation Equity Act for the 21st Century, is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or is determined to have refused to submit to such a test as proposed by a law enforcement officer, the State agency responsible for administering drivers’ licenses, upon receipt of the report of the law enforcement officer—

(I) shall suspend the driver’s license of such individual for a period of not less than 90 days if such individual is a first offender in such 5-year period; and

(II) shall suspend the driver’s license of such individual for a period of not less

than 1 year, or revoke such license, if such individual is a repeat offender in such 5-year period; and

(ii) the suspension and revocation referred to under clause (i) shall take effect not later than 30 days after the day on which the individual refused to submit to a chemical test or received notice of having been determined to be driving under the influence of alcohol, in accordance with the procedures of the State.

(B) UNDERAGE DRINKING PROGRAM.—An effective system, as determined by the Secretary, for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages and for preventing persons from making alcoholic beverages available to individuals under age 21. Such system may include the issuance of drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals age 21 or older and the issuance of drivers' licenses that are tamper resistant.

(C) ENFORCEMENT PROGRAM.—Either—

(i) a statewide program for stopping motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether the operators of such motor vehicles are driving while under the influence of alcohol; or

(ii) a statewide special traffic enforcement program for impaired driving that emphasizes publicity for the program.

(D) GRADUATED LICENSING SYSTEM.—A 3-stage graduated licensing system for young drivers that includes nighttime driving restrictions during the first 2 stages, requires all vehicle occupants to be properly restrained, and makes it unlawful for a person under age 21 to operate a motor vehicle with a blood alcohol concentration of .02 percent or greater.

(E) DRIVERS WITH HIGH BAC.—Programs to target individuals with high blood alcohol concentrations who operate a motor vehicle. Such programs may include implementation of a system of graduated penalties and assessment of individuals convicted of driving under the influence of alcohol.

(F) YOUNG ADULT DRINKING PROGRAMS.—Programs to reduce driving while under the influence of alcohol by individuals age 21 through 34. Such programs may include awareness campaigns; traffic safety partnerships with employers, colleges, and the hospitality industry; assessments of first-time offenders; and incorporation of treatment into judicial sentencing.

(G) TESTING FOR BAC.—An effective system for increasing the rate of testing of the blood alcohol concentrations of motor vehicle drivers involved in fatal accidents and, in fiscal year 2001 and each fiscal year thereafter, a rate of such testing that is equal to or greater than the national average.

(2) BASIC GRANT B.—A State shall become eligible for a grant under this paragraph by adopting or demonstrating to the satisfaction of the Secretary each of the following:

(A) FATAL IMPAIRED DRIVER PERCENTAGE REDUCTION.—The percentage of fatally injured drivers with 0.10 percent or greater blood alcohol concentration in the State has decreased in each of the 3 most recent calendar years for which statistics for determining such percentages are available.

(B) FATAL IMPAIRED DRIVER PERCENTAGE COMPARISON.—The percentage of fatally injured drivers with 0.10 percent or greater blood alcohol concentration in the State has been lower than the average percentage for all States in each of the calendar years referred to in subparagraph (A).

(3) BASIC GRANT AMOUNT.—The amount of a basic grant made to a State for a fiscal year under this subsection shall equal up to 25 percent of the amount apportioned to the State for fiscal year 1997 under section 402.

(c) SUPPLEMENTAL GRANTS.—

(1) IN GENERAL.—Upon receiving an application from a State, the Secretary may make supplemental grants to the State for meeting 1 or more of the following criteria:

(A) VIDEO EQUIPMENT FOR DETECTION OF DRUNK DRIVERS.—The State provides for a program to acquire video equipment to be used in detecting persons who operate motor vehicles while under the influence of alcohol and in prosecuting those persons, and to train personnel in the use of that equipment.

(B) SELF-SUSTAINING DRUNK DRIVING PREVENTION PROGRAM.—The State provides for a self-sustaining drunk driving prevention program under which a significant portion of the fines or surcharges collected from individuals apprehended and fined for operating a motor vehicle while under the influence of alcohol are returned to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

(C) REDUCING DRIVING WITH A SUSPENDED LICENSE.—The State enacts and enforces a law to reduce driving with a suspended license. Such law, as determined by the Secretary, may require a "zebra" stripe that is clearly visible on the license plate of any motor vehicle owned and operated by a driver with a suspended license.

(D) USE OF PASSIVE ALCOHOL SENSORS.—The State provides for a program to acquire passive alcohol sensors to be used by police officers in detecting persons who operate motor vehicles while under the influence of alcohol, and to train police officers in the use of that equipment.

(E) EFFECTIVE DWI TRACKING SYSTEM.—The State demonstrates an effective driving while intoxicated (DWI) tracking system. Such a system, as determined by the Secretary, may include data covering arrests, case prosecutions, court dispositions and sanctions, and provide for the linkage of such data and traffic records systems to appropriate jurisdictions and offices within the State.

(F) OTHER PROGRAMS.—The State provides for other innovative programs to reduce traffic safety problems resulting from indi-

viduals driving while under the influence of alcohol or controlled substances, including programs that seek to achieve such a reduction through legal, judicial, enforcement, educational, technological, or other approaches.

(2) ELIGIBILITY.—A State shall be eligible to receive a grant under this subsection in a fiscal year only if the State is eligible to receive a grant under subsection (b) in such fiscal year.

(3) FUNDING.—Of the amounts made available to carry out this section in a fiscal year, not to exceed 10 percent shall be available for making grants under this subsection.

(d) ADMINISTRATIVE EXPENSES.—Funds authorized to be appropriated to carry out this section in a fiscal year shall be subject to a deduction not to exceed 5 percent for the necessary costs of administering the provisions of this section.

(e) APPLICABILITY OF CHAPTER 1.—The provisions contained in section 402(d) shall apply to this section.

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

(1) ALCOHOLIC BEVERAGE.—The term “alcoholic beverage” has the meaning given such term in section 158(c).

(2) CONTROLLED SUBSTANCES.—The term “controlled substances” has the meaning given such term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

(3) MOTOR VEHICLE.—The term “motor vehicle” has the meaning given such term in section 405.

(Added Pub. L. 100-690, title IX, §9002(a), Nov. 18, 1988, 102 Stat. 4521; amended Pub. L. 101-516, title III, §336, Nov. 5, 1990, 104 Stat. 2186; Pub. L. 102-240, title II, §2004(a), Dec. 18, 1991, 105 Stat. 2073; Pub. L. 102-388, title VI, §§601-606, Oct. 6, 1992, 106 Stat. 1569, 1570; Pub. L. 104-59, title III, §324, Nov. 28, 1995, 109 Stat. 591; Pub. L. 105-18, title II, §8003, June 12, 1997, 111 Stat. 195; Pub. L. 105-130, §6(b), Dec. 1, 1997, 111 Stat. 2558; Pub. L. 105-178, title II, §2004(a), June 9, 1998, 112 Stat. 328.)

#### REFERENCES IN TEXT

The date of enactment of the Transportation Equity Act for the 21st Century, referred to in subsecs. (a)(2) and (b)(1)(A)(i), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

#### AMENDMENTS

1998—Pub. L. 105-178 reenacted section catchline without change and amended text generally. Prior to amendment, section related to alcohol-impaired driving countermeasures, providing for general authority in subsec. (a), maintenance of effort in subsec. (b), maximum period of eligibility and Federal share for grants in subsec. (c), basic grant eligibility in subsec. (d), amount of basic grant in subsec. (e), supplemental grants in subsec. (f), administrative expenses in subsec. (g), applicability of chapter 1 of this title in subsec. (h), definitions in subsec. (i), and authorization of appropriations in subsec. (j).

1997—Subsec. (c). Pub. L. 105-130, §6(b)(1)(A), substituted “6 fiscal years” for “5 fiscal years” in introductory provisions.

Subsec. (c)(3). Pub. L. 105-130, §6(b)(1)(B), substituted “fifth, and sixth fiscal years” for “and fifth fiscal years”.

Subsec. (d)(2)(B). Pub. L. 105-130, §6(b)(2), substituted “3 fiscal years” for “two fiscal years”.

Subsec. (j). Pub. L. 105-130, §6(b)(3), substituted “1997,” for “1997, and” and inserted before period at end “, and \$12,500,000 for the period of October 1, 1997, through March 31, 1998”.

Pub. L. 105-18 inserted “, and an additional \$500,000 for fiscal year 1997” after “1997”.

1995—Subsec. (d)(1)(E). Pub. L. 104-59, §324(a), substituted “December 18, 1991” for “the date of enactment of this section” in introductory provisions.

Subsec. (d)(3). Pub. L. 104-59, §324(b)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d)(7). Pub. L. 104-59, §324(b)(2), added par. (7).

Subsec. (f). Pub. L. 104-59, §324(c), redesignated pars. (2) to (7) as (1) to (6), respectively, and struck out former par. (1) which read as follows:

“(1) BLOOD ALCOHOL CONCENTRATION FOR PERSONS UNDER AGE 21.—Subject to subsection (c), a State shall be eligible to receive a supplemental grant in a fiscal year of 5 percent of the amount apportioned to the State in fiscal year 1992 under section 402 of this title if the State is eligible for a basic grant in the fiscal year and provides that any person under age 21 with a blood alcohol concentration of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.”

1992—Subsec. (c). Pub. L. 102-388, §601(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 102-388, §§601(2), 602, redesignated subsec. (c) as (d), substituted “5 or more of the following” for “4 or more of the following” in introductory provisions, struck out “within the time period specified in subparagraph (F)” after “revocation” in par. (1)(C), and added par. (6). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 102-388, §§601(2), 603, redesignated subsec. (d) as (e) and amended it generally. Prior to amendment, subsec. (e) read as follows: “AMOUNT OF BASIC GRANTS.—The amount of a basic grant to be made in a fiscal year under this section to a State eligible to receive such grant shall be 65 percent of the amount of funds apportioned to such State in such fiscal year under this section.” Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 102-388, §§601(2), 604, redesignated subsec. (e) as (f) and substituted “Subject to subsection (c), a State shall be eligible to receive a supplemental grant in a fiscal year of 5 percent of the amount apportioned to the State in fiscal year 1992 under section 402 of this title” for “A State shall be eligible to receive a supplemental grant in a fiscal year of 5 percent of the amount apportioned to the State in the fiscal year under this section” in pars. (1) to (7). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 102-388, §§601(1), (2), 605, redesignated subsec. (f) as (g), struck out “, and the remainder shall be apportioned among the several States” before the period at end, and struck out former subsec. (g) which provided for apportionment of the remainder of the funds authorized to be appropriated to carry out this section among the States according to certain formulas.

Subsec. (j). Pub. L. 102-388, §606, amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: “FUNDING FOR FISCAL YEARS 1993-1997.—From sums made available to carry out section 402 of this title, the Secretary shall make available \$25,000,000 for each of fiscal years 1993 through 1997 to carry out this section.”

1991—Pub. L. 102-240 substituted section catchline for one which read: “Drunk driving prevention programs” and amended text generally, substituting present provisions for provisions authorizing grants to those States which adopt and implement drunk driving prevention programs described in this section, requiring States to maintain expenditures for drunk driving prevention programs, providing for Federal share payable, maximum amount of basic grants and eligibility for basic grants, providing for supplemental grants to States which implement specific measures to fight drunk driv-

ing, and providing for definitions and appropriations for this section.

1990—Subsec. (e)(1)(C). Pub. L. 101-516 struck out “within the time period specified in subparagraph (F)” after “revocation”.

Subsec. (e)(2). Pub. L. 101-516 inserted “a significant portion of” after “under which” and substituted “apprehended and fined for” for “convicted of”.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-178, title II, §2004(b), June 9, 1998, 112 Stat. 332, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1998.”

#### EFFECTIVE DATE OF 1992 AMENDMENT; TRANSITION PROVISIONS

Section 607 of title VI of Pub. L. 102-388 provided that:

“(a) EFFECTIVE DATE.—The amendments made by sections 601 through 606 [amending this section] shall take effect October 1, 1992.

“(b) STATES ELIGIBLE FOR BASIC GRANTS UNDER SECTION 410 BEFORE DATE OF ENACTMENT.—A State that received a basic grant in fiscal year 1992 under section 410 of title 23, United States Code, as in effect on September 30, 1992, and that continues to meet the criteria for a basic grant, as in effect on September 30, 1992, shall be eligible for a basic grant under such section 410, as amended by this title.”

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240, except as otherwise provided, effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and not applicable to funds appropriated or made available on or before Dec. 18, 1991, see section 2008 of Pub. L. 102-240, set out as a note under section 402 of this title.

#### EFFECTIVENESS OF LAWS ESTABLISHING MAXIMUM BLOOD ALCOHOL CONCENTRATIONS

Pub. L. 105-178, title II, §2008, June 9, 1998, 112 Stat. 337, provided that:

“(a) STUDY.—The Comptroller General shall conduct a study to evaluate the effectiveness of State laws that—

“(1) deem any individual with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle to be driving while intoxicated; and

“(2) deem any individual under the age of 21 with a blood alcohol concentration of 0.02 percent or greater while operating a motor vehicle to be driving while intoxicated;

in reducing the number and severity of alcohol-involved crashes.

“(b) REPORT.—Not later than 2 years after the date of enactment of this Act [June 9, 1998], the Comptroller General shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing the results of the study conducted under this section.”

#### STATES ELIGIBLE FOR GRANTS BEFORE DECEMBER 18, 1991

Section 2004(b) of Pub. L. 102-240 provided that: “A State which, before the date of the enactment of this Act [Dec. 18, 1991], was eligible to receive a grant under section 410 of title 23, United States Code, as in effect on the day before such date of enactment, may elect to receive in a fiscal year grants under such section 410, as so in effect, in lieu of receiving in such fiscal year grants under such section 410, as amended by this Act.”

#### ISSUANCE OF REGULATIONS

Section 9002(c) of Pub. L. 100-690 provided that: “The Secretary of Transportation shall issue and publish in

the Federal Register proposed regulations to implement section 410 of title 23, United States Code, not later than 6 months after the date of the enactment of this section [Nov. 18, 1988]. The final regulations for such implementation shall be issued, published in the Federal Register, and transmitted to Congress not later than 12 months after such date of enactment.”

#### ALCOHOL IMPAIRMENT STANDARDS AND INFORMATION EXCHANGE

Section 9003 of Pub. L. 100-690 provided that:

“(a) ALCOHOL IMPAIRMENT STANDARDS.—

“(1) STUDY.—Not later than 30 days after the date of enactment of this Act [Nov. 18, 1988], the Secretary of Transportation shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study to determine the blood alcohol concentration level at or above which any individual when operating any motor vehicle should be deemed to be driving while under the influence of alcohol.

“(2) REPORT.—In entering into any arrangement with the National Academy of Sciences for conducting the study under this subsection, the Secretary shall request the National Academy of Sciences to submit, not later than 15 months after the date of the enactment of this Act, to the Secretary a report on the results of such study. Upon its receipt, the Secretary shall immediately transmit the report to Congress.

“(b) FEDERAL-STATE EXCHANGE OF INFORMATION.—

“(1) STUDY.—The Secretary of Transportation shall conduct a study regarding the exchange of information between the Federal Government and State law enforcement officials on all arrests for drunk driving offenses in all States. In conducting such study, the Secretary shall consider the usefulness of such information to law enforcement officials as well as any legal restraints on the exchange or use of such information. One purpose of such study shall be to identify effective methods, if any, for the exchange of such information.

“(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Nov. 18, 1988], the Secretary shall transmit to Congress a report on the results of the study conducted under this section.

“(c) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated to carry out this section \$300,000 for fiscal year 1989.”

#### § 411. State highway safety data improvements

(a) GENERAL AUTHORITY.—

(1) AUTHORITY TO MAKE GRANTS.—Subject to the requirements of this section, the Secretary shall make grants to States that adopt and implement effective programs—

(A) to improve the timeliness, accuracy, completeness, uniformity, and accessibility of the data of the State that is needed to identify priorities for national, State, and local highway and traffic safety programs;

(B) to evaluate the effectiveness of efforts to make such improvements;

(C) to link these State data systems, including traffic records, with other data systems within the State, such as systems that contain medical and economic data; and

(D) to improve the compatibility of the data system of the State with national data systems and data systems of other States and to enhance the ability of the Secretary to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.

Such grants may be used by recipient States only to implement such programs.



(2) **MODEL DATA ELEMENTS.**—The Secretary, in consultation with States and other appropriate parties, shall determine the model data elements necessary to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances. In order to become eligible for a grant under this section, a State shall demonstrate how the multiyear highway safety data and traffic records plan of the State described in subsection (b)(1) will be incorporated into data systems of the State.

(3) **MAINTENANCE OF EFFORT.**—No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all other sources for highway safety data programs at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of the Transportation Equity Act for the 21st Century.

(4) **MAXIMUM PERIOD OF ELIGIBILITY.**—No State may receive grants under this section in more than 6 fiscal years beginning after September 30, 1997.

(5) **FEDERAL SHARE.**—The Federal share of the cost of implementing and enforcing, as appropriate, in a fiscal year a program adopted by a State pursuant to paragraph (1) shall not exceed—

(A) in the first and second fiscal years in which the State receives a grant under this section, 75 percent;

(B) in the third and fourth fiscal years in which the State receives a grant under this section, 50 percent; and

(C) in the fifth and sixth fiscal years in which the State receives a grant under this section, 25 percent.

(b) **FIRST-YEAR GRANTS.**—

(1) **ELIGIBILITY.**—A State shall become eligible for a first-year grant under this subsection in a fiscal year if the State either—

(A) demonstrates, to the satisfaction of the Secretary, that the State has—

(i) established a highway safety data and traffic records coordinating committee with a multidisciplinary membership, including the administrators, collectors, and users of such data (including the public health, injury control, and motor carrier communities);

(ii) completed, within the preceding 5 years, a highway safety data and traffic records assessment or an audit of the highway safety data and traffic records system of the State; and

(iii) initiated the development of a multiyear highway safety data and traffic records strategic plan that—

(I) identifies and prioritizes the highway safety data and traffic records needs and goals of the State;

(II) identifies performance-based measures by which progress toward those goals will be determined; and

(III) will be submitted to the highway safety data and traffic records coordinating committee of the State for approval; or

(B) provides, to the satisfaction of the Secretary—

(i) a certification that the State has met the requirements of clauses (i) and (ii) of subparagraph (A);

(ii) a multiyear highway safety data and traffic records strategic plan that—

(I) meets the requirements of subparagraph (A)(iii); and

(II) specifies how the incentive funds of the State for the fiscal year will be used to address needs and goals identified in the plan; and

(iii) a certification that the highway safety data and traffic records coordinating committee of the State continues to operate and supports the multiyear plan described in clause (ii).

(2) **GRANT AMOUNTS.**—The amount of a first-year grant made to a State for a fiscal year under this subsection shall equal—

(A) if the State is eligible for the grant under paragraph (1)(A), \$125,000; and

(B) if the State is eligible for the grant under paragraph (1)(B), an amount determined by multiplying—

(i) the amount appropriated to carry out this section for such fiscal year; by

(ii) the ratio that the funds apportioned to the State under section 402 for fiscal year 1997 bears to the funds apportioned to all States under section 402 for fiscal year 1997;

except that no State eligible for a grant under paragraph (1)(B) shall receive less than \$250,000.

(3) **STATES NOT MEETING CRITERIA.**—The Secretary may award a grant of up to \$25,000 for 1 year to any State that does not meet the criteria established in paragraph (1). The grant may only be used to conduct activities needed to enable the State to qualify for a first-year grant in the next fiscal year.

(c)<sup>1</sup> **SUCCEEDING YEAR GRANTS.**—

(1) **ELIGIBILITY.**—A State shall be eligible for a grant under this subsection in a fiscal year succeeding the first fiscal year in which the State receives a grant under subsection (b) if the State, to the satisfaction of the Secretary—

(A) submits or updates a multiyear highway safety data and traffic records strategic plan that meets the requirements of subsection (b)(1);

(B) certifies that the highway safety data and traffic records coordinating committee of the State continues to operate and supports the multiyear plan; and

(C) reports annually on the progress of the State in implementing the multiyear plan.

(2) **GRANT AMOUNTS.**—The amount of a succeeding year grant made to the State for a fiscal year under this paragraph shall equal the amount determined by multiplying—

(A) the amount appropriated to carry out this section for such fiscal year; by

<sup>1</sup> So in original. Two subsecs. (c) have been enacted.

(B) the ratio that the funds apportioned to the State under section 402 for fiscal year 1997 bears to the funds apportioned to all States under section 402 for fiscal year 1997; except that no State eligible for a grant under this paragraph shall receive less than \$225,000.

(c)<sup>1</sup> ADMINISTRATIVE EXPENSES.—Funds authorized to be appropriated to carry out this section in a fiscal year shall be subject to a deduction not to exceed 5 percent for the necessary costs of administering the provisions of this section.

(d) APPLICABILITY OF CHAPTER 1.—The provisions contained in section 402(d) shall apply to this section.

(Added Pub. L. 105-178, title II, §2005(a), June 9, 1998, 112 Stat. 332.)

REFERENCES IN TEXT

The date of enactment of the Transportation Equity Act for the 21st Century, referred to in subsec. (a)(3), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

CHAPTER 5—RESEARCH AND TECHNOLOGY

Sec.	
501.	Definitions.
502.	Surface transportation research.
503.	Technology deployment program. <sup>1</sup>
504.	Training and education.
505.	State planning and research.
506.	International highway transportation outreach program.
507.	Surface transportation-environment cooperative research program.
508.	Surface transportation research strategic planning.

PRIOR PROVISIONS

A prior chapter 5, added Pub. L. 90-495, §30, Aug. 23, 1968, 82 Stat. 830, consisting of sections 501 to 512, related to highway relocation assistance, prior to repeal by Pub. L. 91-646, title II, §220(a)(10), Jan. 2, 1971, 84 Stat. 1903. See section 4601 et seq. of Title 42, The Public Health and Welfare. For Effective Date of Repeal and Savings Provisions, see sections 221 and 220(b) of Pub. L. 91-646, set out as notes under sections 4601 and 4621, respectively, of Title 42.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 103 of this title.

§ 501. Definitions

In this chapter, the following definitions apply:

(1) FEDERAL LABORATORY.—The term “Federal laboratory” includes a Government-owned, Government-operated laboratory and a Government-owned, contractor-operated laboratory.

(2) SAFETY.—The term “safety” includes highway and traffic safety systems, research, and development relating to vehicle, highway, driver, passenger, bicyclist, and pedestrian characteristics, accident investigations, communications, emergency medical care, and transportation of the injured.

(Added Pub. L. 105-178, title V, §5101(2), June 9, 1998, 112 Stat. 422.)

<sup>1</sup> So in original. Does not conform to section catchline.

PRIOR PROVISIONS

A prior section 501, added Pub. L. 90-495, §30, Aug. 23, 1968, 82 Stat. 830, related to declaration of policy as to highway relocation assistance, prior to repeal by Pub. L. 91-646, title II, §220(a)(10), Jan. 2, 1971, 84 Stat. 1903.

§ 502. Surface transportation research

(a) GENERAL AUTHORITY.—

(1) RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—The Secretary may carry out research, development, and technology transfer activities with respect to—

- (A) motor carrier transportation;
- (B) all phases of transportation planning and development (including construction, operation, modernization, development, design, maintenance, safety, financing, and traffic conditions); and
- (C) the effect of State laws on the activities described in subparagraphs (A) and (B).

(2) TESTS AND DEVELOPMENT.—The Secretary may test, develop, or assist in testing and developing any material, invention, patented article, or process.

(3) COOPERATION, GRANTS, AND CONTRACTS.—The Secretary may carry out this section—

- (A) independently;
- (B) in cooperation with other Federal departments, agencies, and instrumentalities and Federal laboratories; or

(C) by making grants to, or entering into contracts, cooperative agreements, and other transactions with, the National Academy of Sciences, the American Association of State Highway and Transportation Officials, or any Federal laboratory, State agency, authority, association, institution, for-profit or nonprofit corporation, organization, foreign country, or person.

(4) TECHNOLOGICAL INNOVATION.—The programs and activities carried out under this section shall be consistent with the surface transportation research and technology development strategic plan developed under section 508.

(5) FUNDS.—

(A) SPECIAL ACCOUNT.—In addition to other funds made available to carry out this section, the Secretary shall use such funds as may be deposited by any cooperating organization or person in a special account of the Treasury established for this purpose.

(B) USE OF FUNDS.—The Secretary shall use funds made available to carry out this section to develop, administer, communicate, and promote the use of products of research, development, and technology transfer programs under this section.

(b) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

(1) IN GENERAL.—To encourage innovative solutions to surface transportation problems and stimulate the deployment of new technology, the Secretary may carry out, on a cost-shared basis, collaborative research and development with—

- (A) non-Federal entities, including State and local governments, foreign governments,

colleges and universities, corporations, institutions, partnerships, sole proprietorships, and trade associations that are incorporated or established under the laws of any State; and

(B) Federal laboratories.

(2) AGREEMENTS.—In carrying out this subsection, the Secretary may enter into cooperative research and development agreements (as defined in section 12 of the Stevenson-Wylder Technology Innovation Act of 1980 (15 U.S.C. 3710a)).

(3) FEDERAL SHARE.—

(A) IN GENERAL.—The Federal share of the cost of activities carried out under a cooperative research and development agreement entered into under this subsection shall not exceed 50 percent, except that if there is substantial public interest or benefit, the Secretary may approve a greater Federal share.

(B) NON-FEDERAL SHARE.—All costs directly incurred by the non-Federal partners, including personnel, travel, and hardware development costs, shall be credited toward the non-Federal share of the cost of the activities described in subparagraph (A).

(4) USE OF TECHNOLOGY.—The research, development, or use of a technology under a cooperative research and development agreement entered into under this subsection, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wylder Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

(5) WAIVER OF ADVERTISING REQUIREMENTS.—Section 3709 of the Revised Statutes (41 U.S.C. 5) shall not apply to a contract or agreement entered into under this chapter.

(c) CONTENTS OF RESEARCH PROGRAM.—The Secretary shall include in surface transportation research, technology development, and technology transfer programs carried out under this title coordinated activities in the following areas:

(1) Development, use, and dissemination of indicators, including appropriate computer programs for collecting and analyzing data on the status of infrastructure facilities, to measure the performance of the surface transportation systems of the United States, including productivity, efficiency, energy use, air quality, congestion, safety, maintenance, and other factors that reflect system performance.

(2) Methods, materials, and testing to improve the durability of surface transportation infrastructure facilities and extend the life of bridge structures, including—

(A) new and innovative technologies to reduce corrosion;

(B) tests simulating seismic activity, vibration, and weather; and

(C) the use of innovative recycled materials.

(3) Technologies and practices that reduce costs and minimize disruptions associated with the construction, rehabilitation, and maintenance of surface transportation systems, including responses to natural disasters.

(4) Development of nondestructive evaluation equipment for use with existing infrastructure facilities and with next-generation infrastructure facilities that use advanced materials.

(5) Dynamic simulation models of surface transportation systems for—

(A) predicting capacity, safety, and infrastructure durability problems;

(B) evaluating planned research projects; and

(C) testing the strengths and weaknesses of proposed revisions to surface transportation operations programs.

(6) Economic highway geometrics, structures, and desirable weight and size standards for vehicles using the public highways and the feasibility of uniformity in State regulations with respect to such standards.

(7) Telecommuting and the linkages between transportation, information technology, and community development and the impact of technological change and economic restructuring on travel demand.

(8) Expansion of knowledge of implementing life cycle cost analysis, including—

(A) establishing the appropriate analysis period and discount rates;

(B) learning how to value and properly consider use costs;

(C) determining tradeoffs between reconstruction and rehabilitation; and

(D) establishing methodologies for balancing higher initial costs of new technologies and improved or advanced materials against lower maintenance costs.

(9) Standardized estimates, to be developed in conjunction with the National Institute of Standards and Technology and other appropriate organizations, of useful life under various conditions for advanced materials of use in surface transportation.

(10) Evaluation of traffic calming measures that promote community preservation, transportation mode choice, and safety.

(11) Development and implementation of safety-enhancing equipment, including unobtrusive eyetracking technology.

(d) ADVANCED RESEARCH.—

(1) IN GENERAL.—The Secretary shall establish an advanced research program, consistent with the surface transportation research and technology development strategic plan developed under section 508, that addresses longer-term, higher-risk research that shows potential benefits for improving the durability, efficiency, environmental impact, productivity, and safety (including bicycle and pedestrian safety) of highway and intermodal transportation systems. In carrying out the program, the Secretary shall strive to develop partnerships with the public and private sectors.

(2) RESEARCH AREAS.—In carrying out the program, the Secretary may make grants and enter into cooperative agreements and contracts in such areas as the Secretary determines appropriate, including the following:

(A) Characterization of materials used in highway infrastructure, including analytical techniques, microstructure modeling, and the deterioration processes.

(B) Diagnostics for evaluation of the condition of bridge and pavement structures to enable the assessment of risks of failure, including from seismic activity, vibration, and weather.

(C) Design and construction details for composite structures.

(D) Safety technology-based problems in the areas of pedestrian and bicycle safety, roadside hazards, and composite materials for roadside safety hardware.

(E) Environmental research, including particulate matter source apportionment and model development.

(F) Data acquisition techniques for system condition and performance monitoring.

(G) Human factors, including prediction of the response of travelers to new technologies.

(e) LONG-TERM PAVEMENT PERFORMANCE PROGRAM.—

(1) AUTHORITY.—The Secretary shall complete the long-term pavement performance program tests initiated under the strategic highway research program established under section 307(d) (as in effect on the day before the date of enactment of this section) and continued by the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1914 et seq.) through the midpoint of a planned 20-year life of the long-term pavement performance program.

(2) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—Under the program, the Secretary shall make grants and enter into cooperative agreements and contracts to—

(A) monitor, material-test, and evaluate highway test sections in existence as of the date of the grant, agreement, or contract;

(B) analyze the data obtained in carrying out subparagraph (A); and

(C) prepare products to fulfill program objectives and meet future pavement technology needs.

(f) SEISMIC RESEARCH PROGRAM.—

(1) ESTABLISHMENT.—The Secretary shall establish a program to study the vulnerability of the Federal-aid highway system and other surface transportation systems to seismic activity and to develop and implement cost-effective methods to reduce such vulnerability.

(2) COOPERATION WITH NATIONAL CENTER FOR EARTHQUAKE ENGINEERING RESEARCH.—The Secretary shall conduct the program in cooperation with the National Center for Earthquake Engineering Research at the University of Buffalo.

(3) COOPERATION WITH AGENCIES PARTICIPATING IN NATIONAL EARTHQUAKE HAZARDS REDUCTION PROGRAM.—The Secretary shall conduct the program in consultation and cooperation with Federal departments and agencies participating in the National Earthquake Hazards Reduction Program established by section 5 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704) and shall take such actions as may be necessary to ensure that the program is consistent with—

(A) planning and coordination activities of the Director of the Federal Emergency Man-

agement Agency under section 5(b)(1) of such Act (42 U.S.C. 7704(b)(1)); and

(B) the plan developed by the Director of the Federal Emergency Management Agency under section 8(b) of such Act (42 U.S.C. 7705b(b)).

(g) INFRASTRUCTURE INVESTMENT NEEDS REPORT.—

(1) IN GENERAL.—Not later than January 31, 1999, and January 31 of every second year thereafter, the Secretary shall report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on—

(A) estimates of the future highway and bridge needs of the United States; and

(B) the backlog of current highway and bridge needs.

(2) COMPARISON WITH PRIOR REPORTS.—Each report under paragraph (1) shall provide the means, including all necessary information, to relate and compare the conditions and service measures used in the 3 biannual reports published prior to the date of enactment of the Transportation Equity Act for the 21st Century.

(Added Pub. L. 105-178, title V, §5102, June 9, 1998, 112 Stat. 422.)

REFERENCES IN TEXT

The Stevenson-Wylder Technology Innovation Act of 1980, referred to in subsec. (b)(4), is Pub. L. 96-480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified generally to chapter 63 (§3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short title note set out under section 3701 of Title 15 and Tables.

The date of enactment of this section, referred to in subsec. (e)(1), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

The Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (e)(1), is Pub. L. 102-240, Dec. 18, 1991, 105 Stat. 1914, as amended. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 101 of Title 49, Transportation, and Tables.

The date of enactment of the Transportation Equity Act for the 21st Century, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

PRIOR PROVISIONS

A prior section 502, added Pub. L. 90-495, §30, Aug. 23, 1968, 82 Stat. 831, related to State assurances of adequate highway relocation assistance program, prior to repeal by Pub. L. 91-646, title II, §220(a)(10), Jan. 2, 1971, 84 Stat. 1903.

STUDY OF FUTURE STRATEGIC HIGHWAY RESEARCH PROGRAM

Pub. L. 105-178, title V, §5112, June 9, 1998, 112 Stat. 445, provided that:

“(a) STUDY.—Not later than 120 days after the date of enactment of this Act [June 9, 1998], the Secretary shall make a grant to, or enter into a cooperative agreement or contract with, the Transportation Research Board of the National Academy of Sciences (in this section referred to as the ‘Board’) to conduct a study to determine the goals, purposes, research agenda and projects, administrative structure, and fiscal needs for a new strategic highway research program to replace the program established under section 307(d) (as in effect on the day before the date of enactment of this Act), or a similar effort.

“(b) CONSULTATION.—In conducting the study, the Board shall consult with the American Association of State Highway and Transportation Officials and such other entities as the Board determines appropriate to the conduct of the study.

“(c) REPORT.—Not later than 5 years after making a grant or entering into a cooperative agreement or contract under subsection (a), the Board shall submit a final report on the results of the study to the Secretary, the Committee on Environment and Public Works of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.”

COMMERCIAL REMOTE SENSING PRODUCTS AND SPATIAL INFORMATION TECHNOLOGIES

Pub. L. 105-178, title V, §5113, June 9, 1998, 112 Stat. 445, provided that:

“(a) IN GENERAL.—The Secretary shall establish and carry out a program to validate commercial remote sensing products and spatial information technologies for application to national transportation infrastructure development and construction.

“(b) PROGRAM STAGES.—

“(1) FIRST STAGE.—Not later than 18 months after the date of enactment of this Act [June 9, 1998], the Secretary shall establish a national policy for the use of commercial remote sensing products and spatial information technologies in national transportation infrastructure development and construction.

“(2) SECOND STAGE.—After establishment of the national policy under paragraph (1), the Secretary shall develop new applications of commercial remote sensing products and spatial information technologies for the implementation of the national policy.

“(c) COOPERATION.—The Secretary shall carry out this section in cooperation with the Commercial Remote Sensing Program of the National Aeronautics and Space Administration and a consortium of university research centers.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$10,000,000 for each of fiscal years 1999 through 2004.”

TRANSPORTATION TECHNOLOGY INNOVATION AND DEMONSTRATION PROGRAM

Pub. L. 105-178, title V, §5117, June 9, 1998, 112 Stat. 448, as amended by Pub. L. 105-206, title IX, §9011(g), (h), July 22, 1998, 112 Stat. 864; Pub. L. 105-277, div. A, §101(g) [title III, §3769 [369]], Oct. 21, 1998, 112 Stat. 2681-439, 2681-478, provided that:

“(a) IN GENERAL.—The Secretary shall carry out a transportation technology innovation and demonstration program in accordance with the requirements of this section.

“(b) CONTENTS OF PROGRAM.—

“(1) MOTOR VEHICLE SAFETY WARNING SYSTEM.—

“(A) IN GENERAL.—The Secretary shall expand and continue the study authorized by section 358(c) of the National Highway System Designation Act of 1995 [Pub. L. 104-59] (23 U.S.C. 401 note; 109 Stat. 625) relating to the development of a motor vehicle safety warning system and shall conduct tests of such system.

“(B) GRANTS.—In carrying out this paragraph, the Secretary may make grants to State and local governments.

“(C) FUNDING.—Of the amounts made available for each of fiscal years 1998 through 2000 by section 5001(a)(2) of this Act [112 Stat. 419], \$700,000 per fiscal year shall be available to carry out this paragraph.

“(2) MOTOR CARRIER ADVANCED SENSOR CONTROL SYSTEM.—

“(A) IN GENERAL.—The Secretary shall conduct research on the deployment of a system of advanced sensors and signal processors in trucks and tractor trailers to determine axle and wheel alignment, monitor collision alarm, check tire pressure and

tire balance conditions, measure and detect load distribution in the vehicle, and monitor and adjust automatic braking systems.

“(B) FUNDING.—Of the amounts made available for each of fiscal years 1998 through 2003 by section 5001(a)(2) of this Act, \$700,000 per fiscal year shall be available to carry out this paragraph.

“(3) INTELLIGENT TRANSPORTATION INFRASTRUCTURE.—

“(A) IN GENERAL.—The Secretary shall carry out a program to advance the deployment of an operational intelligent transportation infrastructure system for the measurement of various transportation system activities to aid in the transportation planning and analysis while making a significant contribution to the ITS program under this title [see Tables for classification]. This program shall be initiated in the 2 largest metropolitan areas in the Commonwealth of Pennsylvania. The program may locate its database at the facility authorized under paragraph (6).

“(B) DESCRIPTION.—The program under this section shall meet the following objectives:

“(i) Build an infrastructure of the measurement of various transportation system metrics to aid in planning, analysis, and maintenance of the Department of Transportation, including the build-out, maintenance, and operation of greater than 40 metropolitan area systems with a cost not to exceed \$2,000,000 per metropolitan area. For the purposes of this demonstration initiative, a metropolitan area is defined as any area that has a population exceeding 300,000 and that meets several of the criteria established by the Secretary in conjunction with the intelligent vehicle highway systems corridors program.

“(ii) Provide private technology commercialization initiatives to generate revenues which will be shared with the Department of Transportation.

“(iii) Collect data primarily through wireless transmission along with some shared wide area networks.

“(iv) Aggregate data into reports for multipoint data distribution techniques.

“(v) Utilize an advanced information system designed and monitored by an entity with experience with the Department of Transportation in the design and monitoring of high reliability, mission critical voice and data systems.

“(C) ELIGIBILITY.—In addition to the amounts made available under subparagraph (D), the program authorized under this paragraph shall be eligible for funding under sections 5207 and 5208 of this Act [set out in a note below].

“(D) FUNDING.—Of the amounts made available for each of fiscal years 1998 through 2003 by section 5001(a)(2) of this Act, \$1,700,000 per fiscal year shall be available to carry out this paragraph.

“(E) FEDERAL SHARE.—The Federal share of the cost of a program carried out under this paragraph shall be 80 percent of the cost of such program.

“(4) CORROSION CONTROL AND PREVENTION.—

“(A) IN GENERAL.—The Secretary shall make a grant to conduct a study on the costs and benefits of corrosion control and prevention. The study shall be conducted in conjunction with an interdisciplinary team of experts from the fields of metallurgy, chemistry, economics, and others, as appropriate. Not later than September 30, 2001, the Secretary shall submit to Congress a report on the study results, together with any recommendations.

“(B) FUNDING.—Of the amounts made available for each of fiscal years 1999 and 2000 by section 5001(a)(1) of this Act [112 Stat. 419], \$500,000 per fiscal year shall be available to carry out this paragraph.

“(5) FUNDAMENTAL PROPERTIES OF ASPHALTS AND MODIFIED ASPHALTS.—

“(A) IN GENERAL.—The Secretary shall continue to carry out section 6016 of the Intermodal Surface

Transportation Efficiency Act of 1991 [Pub. L. 102-240, set out as a note below]. Additional areas of the program under such section shall be asphalt-water interaction studies and asphalt-aggregate thin film behavior studies.

“(B) FUNDING.—Of the amounts made available for each of fiscal years 1998 through 2003 by section 5001(a)(1) of this Act, \$1,000,000 for fiscal year 1998 and \$3,000,000 for each of fiscal years 1999 through 2003 shall be available to carry out this paragraph.

“(6) ADVANCED TRAFFIC MONITORING AND RESPONSE CENTER.—

“(A) IN GENERAL.—The Secretary shall make grants to the Commonwealth of Pennsylvania, in conjunction with the Pennsylvania Turnpike Commission, to establish an advanced traffic monitoring and emergency response center at Letterkenny Army Depot in Chambersburg, Pennsylvania. The center shall help develop and coordinate traffic monitoring and ITS systems on portions of the Pennsylvania Turnpike system and I-81, coordinate emergency response with State and local governments in the Central Pennsylvania Region and conduct research on emergency response and prototype trauma response.

“(B) FUNDING.—

“(i) ELIGIBILITY UNDER SECTION 5208.—The center established under this paragraph shall be eligible for funding under section 5208 of this Act [set out in a note below].

“(ii) ALLOCATION.—Of the amounts made available for each of fiscal years 1998 through 2003 by section 5001(a)(2) of this Act, \$1,667,000 per fiscal year shall be available to carry out this paragraph.

“(7) TRANSPORTATION ECONOMIC AND LAND USE SYSTEM.—

“(A) IN GENERAL.—The Secretary shall continue development and deployment through the New Jersey Institute of Technology to metropolitan planning organizations of the Transportation Economic and Land Use System.

“(B) FUNDING.—Of the amounts made available for each of fiscal years 1998 through 2003 by section 5001(a)(2) of this Act, \$1,000,000 per fiscal year shall be available to carry out this paragraph.

“(8) RECYCLED MATERIALS RESOURCE CENTER.—

“(A) ESTABLISHMENT.—The Secretary shall establish at the University of New Hampshire a research program to be known as the ‘Recycled Materials Resource Center’ (referred to in this paragraph as the ‘Center’).

“(B) ACTIVITIES.—

“(i) IN GENERAL.—The Center shall—

“(I) systematically test, evaluate, develop appropriate guidelines for, and demonstrate environmentally acceptable and occupationally safe technologies and techniques for the increased use of traditional and nontraditional recycled and secondary materials in transportation infrastructure construction and maintenance;

“(II) make information available to State transportation departments, the Federal Highway Administration, the construction industry, and other interested parties to assist in evaluating proposals to use traditional and nontraditional recycled and secondary materials in transportation infrastructure construction;

“(III) encourage the increased use of traditional and nontraditional recycled and secondary materials by using sound science to analyze thoroughly all potential long-term considerations that affect the physical and environmental performance of the materials; and

“(IV) work cooperatively with Federal and State officials to reduce the institutional barriers that limit widespread use of traditional and nontraditional recycled and secondary materials and to ensure that such increased use is consistent with the sustained environmental

and physical integrity of the infrastructure in which the materials are used.

“(ii) SITES AND PROJECTS UNDER ACTUAL FIELD CONDITIONS.—In carrying out clause (i)(III), the Secretary may authorize the Center to—

“(I) use test sites and demonstration projects under actual field conditions to develop appropriate performance data; and

“(II) develop appropriate tests and guidelines to ensure correct use of recycled and secondary materials in transportation infrastructure construction.

“(C) REVIEW AND EVALUATION.—

“(i) IN GENERAL.—Not less often than every 2 years, the Secretary shall review and evaluate the program carried out by the Center.

“(ii) NOTIFICATION OF DEFICIENCIES.—In carrying out clause (i), if the Secretary determines that the Center is deficient in carrying out subparagraph (B), the Secretary shall notify the Center of each deficiency and recommend specific measures to address the deficiency.

“(iii) DISQUALIFICATION.—If, after the end of the 180-day period that begins on the date of notification to the Center under clause (ii), the Secretary determines that the Center has not corrected each deficiency identified under clause (ii), the Secretary may, after notifying the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the determination, disqualify the Center from further participation under this section.

“(D) FUNDING.—Of the amounts made available for each of fiscal years 1998 through 2003 by section 5001(a)(1) of this Act, \$1,500,000 per fiscal year shall be available to carry out this paragraph.”

#### INTELLIGENT TRANSPORTATION SYSTEMS

Pub. L. 105-178, title V, subtitle C, June 9, 1998, 112 Stat. 452, as amended by Pub. L. 105-206, title IX, §9011(c), July 22, 1998, 112 Stat. 863; Pub. L. 105-277, div. A, §101(g) [title III, §370], Oct. 21, 1998, 112 Stat. 2681-439, 2681-478, provided that:

“SEC. 5201. SHORT TITLE.

“This subtitle may be cited as the ‘Intelligent Transportation Systems Act of 1998’.

“SEC. 5202. FINDINGS.

“Congress finds that—

“(1) investments authorized by the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1914 et seq.) [Pub. L. 104-240, see Tables for classification] have demonstrated that intelligent transportation systems can mitigate surface transportation problems in a cost-effective manner; and

“(2) continued investment in architecture and standards development, research, and systems integration is needed to accelerate the rate at which intelligent transportation systems are incorporated into the national surface transportation network, thereby improving transportation safety and efficiency and reducing costs and negative impacts on communities and the environment.

“SEC. 5203. GOALS AND PURPOSES.

“(a) GOALS.—The goals of the intelligent transportation system program include—

“(1) enhancement of surface transportation efficiency and facilitation of intermodalism and international trade to enable existing facilities to meet a significant portion of future transportation needs, including public access to employment, goods, and services, and to reduce regulatory, financial, and other transaction costs to public agencies and system users;

“(2) achievement of national transportation safety goals, including the enhancement of safe operation of motor vehicles and nonmotorized vehicles, with particular emphasis on decreasing the number and severity of collisions;

“(3) protection and enhancement of the natural environment and communities affected by surface transportation, with particular emphasis on assisting State and local governments to achieve national environmental goals;

“(4) accommodation of the needs of all users of surface transportation systems, including operators of commercial vehicles, passenger vehicles, and motorcycles, and including individuals with disabilities; and

“(5) improvement of the Nation’s ability to respond to emergencies and natural disasters and enhancement of national defense mobility.

“(b) PURPOSES.—The Secretary shall implement activities under the intelligent system transportation program to, at a minimum—

“(1) expedite, in both metropolitan and rural areas, deployment and integration of intelligent transportation systems for consumers of passenger and freight transportation;

“(2) ensure that Federal, State, and local transportation officials have adequate knowledge of intelligent transportation systems for full consideration in the transportation planning process;

“(3) improve regional cooperation and operations planning for effective intelligent transportation system deployment;

“(4) promote the innovative use of private resources;

“(5) develop a workforce capable of developing, operating, and maintaining intelligent transportation systems; and

“(6) complete deployment of Commercial Vehicle Information Systems and Networks in a majority of States by September 30, 2003.

“SEC. 5204. GENERAL AUTHORITIES AND REQUIREMENTS.

“(a) SCOPE.—Subject to the provisions of this subtitle, the Secretary shall conduct an ongoing intelligent transportation system program to research, develop, and operationally test intelligent transportation systems and advance nationwide deployment of such systems as a component of the surface transportation systems of the United States.

“(b) POLICY.—Intelligent transportation system operational tests and deployment projects funded pursuant to this subtitle shall encourage and not displace public-private partnerships or private sector investment in such tests and projects.

“(c) COOPERATION WITH GOVERNMENTAL, PRIVATE, AND EDUCATIONAL ENTITIES.—The Secretary shall carry out the intelligent transportation system program in cooperation with State and local governments and other public entities, the United States private sector, the Federal laboratories, and colleges and universities, including historically black colleges and universities and other minority institutions of higher education.

“(d) CONSULTATION WITH FEDERAL OFFICIALS.—In carrying out the intelligent transportation system program, the Secretary, as appropriate, shall consult with the Secretary of Commerce, the Secretary of the Treasury, the Administrator of the Environmental Protection Agency, the Director of the National Science Foundation, and the heads of other Federal departments and agencies.

“(e) TECHNICAL ASSISTANCE, TRAINING, AND INFORMATION.—The Secretary may provide technical assistance, training, and information to State and local governments seeking to implement, operate, maintain, or evaluate intelligent transportation system technologies and services.

“(f) TRANSPORTATION PLANNING.—The Secretary may provide funding to support adequate consideration of transportation system management and operations, including intelligent transportation systems, within metropolitan and statewide transportation planning processes.

“(g) INFORMATION CLEARINGHOUSE.—

“(1) IN GENERAL.—The Secretary shall—

“(A) maintain a repository for technical and safety data collected as a result of federally sponsored projects carried out under this subtitle; and

“(B) on request, make that information (except for proprietary information and data) readily available to all users of the repository at an appropriate cost.

“(2) DELEGATION OF AUTHORITY.—

“(A) IN GENERAL.—The Secretary may delegate the responsibility of the Secretary under this subsection, with continuing oversight by the Secretary, to an appropriate entity not within the Department of Transportation.

“(B) FEDERAL ASSISTANCE.—If the Secretary delegates the responsibility, the entity to which the responsibility is delegated shall be eligible for Federal assistance under this section.

“(h) ADVISORY COMMITTEES.—

“(1) IN GENERAL.—In carrying out this subtitle, the Secretary may use 1 or more advisory committees.

“(2) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—Any advisory committee so used shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

“(i) PROCUREMENT METHODS.—

“(1) TECHNICAL ASSISTANCE.—The Secretary shall develop appropriate technical assistance and guidance to assist State and local agencies in evaluating and selecting appropriate methods of procurement for intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including innovative and nontraditional methods such as the Information Technology Omnibus Procurement.

“(2) INTELLIGENT TRANSPORTATION SYSTEM SOFTWARE.—To the maximum extent practicable, contracting officials shall use as a critical evaluation criterion the Software Engineering Institute’s Capability Maturity Model, or another similar recognized standard risk assessment methodology, to reduce the cost, schedule, and performance risks associated with the development, management, and integration of intelligent transportation system software.

“(j) EVALUATIONS.—

“(1) GUIDELINES AND REQUIREMENTS.—

“(A) IN GENERAL.—The Secretary shall issue guidelines and requirements for the evaluation of operational tests and deployment projects carried out under this subtitle.

“(B) OBJECTIVITY AND INDEPENDENCE.—The guidelines and requirements issued under subparagraph (A) shall include provisions to ensure the objectivity and independence of the evaluator so as to avoid any real or apparent conflict of interest or potential influence on the outcome by parties to any such test or deployment project or by any other formal evaluation carried out under this subtitle.

“(C) FUNDING.—The guidelines and requirements issued under subparagraph (A) shall establish evaluation funding levels based on the size and scope of each test or project that ensure adequate evaluation of the results of the test or project.

“(2) SPECIAL RULE.—Any survey, questionnaire, or interview that the Secretary considers necessary to carry out the evaluation of any test, deployment project, or program assessment activity under this subtitle shall not be subject to chapter 35 of title 44.

“(k) USE OF RIGHTS-OF-WAY.—Intelligent transportation system projects specified in section 5117(b)(3) and 5117(b)(6) [set out above] and involving privately owned intelligent transportation system components that is carried out using funds made available from the Highway Trust Fund shall not be subject to any law or regulation of a State or political subdivision of a State prohibiting or regulating commercial activities in the rights-of-way of a highway for which Federal-aid highway funds have been utilized for planning, design, construction, or maintenance, if the Secretary of Transportation determines that such use is in the public interest. Nothing in this subsection shall affect the au-

thority of a State or political subdivision of a State to regulate highway safety.

“SEC. 5205. NATIONAL ITS PROGRAM PLAN.

“(a) IN GENERAL.—

“(1) UPDATES.—The Secretary shall maintain and update, as necessary, the National ITS Program Plan developed by the Department of Transportation and the Intelligent Transportation Society of America.

“(2) SCOPE.—The National ITS Program Plan shall—

“(A) specify the goals, objectives, and milestones for the research and deployment of intelligent transportation systems in the context of major metropolitan areas, smaller metropolitan and rural areas, and commercial vehicle operations;

“(B) specify how specific programs and projects will achieve the goals, objectives, and milestones referred to in subparagraph (A), including consideration of the 5- and 10-year timeframes for the goals and objectives;

“(C) identify activities that provide for the dynamic development of standards and protocols to promote and ensure interoperability in the implementation of intelligent transportation system technologies, including actions taken to establish critical standards; and

“(D) establish a cooperative process with State and local governments for determining desired surface transportation system performance levels and developing plans for incorporation of specific intelligent transportation system capabilities into surface transportation systems.

“(b) REPORTING.—The plan described in subsection (a) shall be transmitted and updated as part of the Surface Transportation Research and Development Strategic Plan developed under section 508 of title 23, United States Code.

“SEC. 5206. NATIONAL ARCHITECTURE AND STANDARDS.

“(a) IN GENERAL.—

“(1) DEVELOPMENT, IMPLEMENTATION, AND MAINTENANCE.—Consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995 [Pub. L. 104–113] (15 U.S.C. 272 note; 110 Stat. 783), the Secretary shall develop, implement, and maintain a national architecture and supporting standards and protocols to promote the widespread use and evaluation of intelligent transportation system technology as a component of the surface transportation systems of the United States.

“(2) INTEROPERABILITY AND EFFICIENCY.—To the maximum extent practicable, the national architecture shall promote interoperability among, and efficiency of, intelligent transportation system technologies implemented throughout the United States.

“(3) USE OF STANDARDS DEVELOPMENT ORGANIZATIONS.—In carrying out this section, the Secretary may use the services of such standards development organizations as the Secretary determines to be appropriate.

“(b) REPORT ON CRITICAL STANDARDS.—Not later than June 1, 1999, the Secretary shall submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure and the Committee on Science of the House of Representatives identifying which standards are critical to ensuring national interoperability or critical to the development of other standards and specifying the status of the development of each standard identified.

“(c) PROVISIONAL STANDARDS.—

“(1) IN GENERAL.—If the Secretary finds that the development or balloting of an intelligent transportation system standard jeopardizes the timely achievement of the objectives identified in subsection (a), the Secretary may establish a provisional standard after consultation with affected parties, and using, to the extent practicable, the work product of appropriate standards development organizations.

“(2) CRITICAL STANDARDS.—If a standard identified as critical in the report under subsection (b) is not adopted and published by the appropriate standards development organization by January 1, 2001, the Secretary shall establish a provisional standard after consultation with affected parties, and using, to the extent practicable, the work product of appropriate standards development organizations.

“(3) PERIOD OF EFFECTIVENESS.—A provisional standard established under paragraph (1) or (2) shall be published in the Federal Register and remain in effect until the appropriate standards development organization adopts and publishes a standard.

“(d) WAIVER OF REQUIREMENT TO ESTABLISH PROVISIONAL STANDARD.—

“(1) IN GENERAL.—The Secretary may waive the requirement under subsection (c)(2) to establish a provisional standard if the Secretary determines that additional time would be productive or that establishment of a provisional standard would be counterproductive to achieving the timely achievement of the objectives identified in subsection (a).

“(2) NOTICE.—The Secretary shall publish in the Federal Register a notice describing each standard for which a waiver of the provisional standard requirement has been granted, the reasons for and effects of granting the waiver, and an estimate as to when the standard is expected to be adopted through a process consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995 [Pub. L. 104–113] (15 U.S.C. 272 note; 110 Stat. 783).

“(3) WITHDRAWAL OF WAIVER.—At any time the Secretary may withdraw a waiver granted under paragraph (1). Upon such withdrawal, the Secretary shall publish in the Federal Register a notice describing each standard for which a waiver has been withdrawn and the reasons for withdrawing the waiver.

“(e) CONFORMITY WITH NATIONAL ARCHITECTURE.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall ensure that intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including funds made available under this subtitle to deploy intelligent transportation system technologies, conform to the national architecture, applicable standards or provisional standards, and protocols developed under subsection (a).

“(2) SECRETARY’S DISCRETION.—The Secretary may authorize exceptions to paragraph (1) for—

“(A) projects designed to achieve specific research objectives outlined in the National ITS Program Plan under section 5205 or the Surface Transportation Research and Development Strategic Plan developed under section 508 of title 23, United States Code; or

“(B) the upgrade or expansion of an intelligent transportation system in existence on the date of enactment of this subtitle [June 9, 1998], if the Secretary determines that the upgrade or expansion—

“(i) would not adversely affect the goals or purposes of this subtitle;

“(ii) is carried out before the end of the useful life of such system; and

“(iii) is cost-effective as compared to alternatives that would meet the conformity requirement of paragraph (1).

“(3) EXCEPTIONS.—Paragraph (1) shall not apply to funds used for operation or maintenance of an intelligent transportation system in existence on the date of enactment of this subtitle.

“(f) SPECTRUM.—The Federal Communications Commission shall consider, in consultation with the Secretary, spectrum needs for the operation of intelligent transportation systems, including spectrum for the dedicated short-range vehicle-to-wayside wireless standard. Not later than January 1, 2000, the Federal Communications Commission shall have completed a rulemaking considering the allocation of spectrum for intelligent transportation systems.

“SEC. 5207. RESEARCH AND DEVELOPMENT.

“(a) IN GENERAL.—The Secretary shall carry out a comprehensive program of intelligent transportation



system research, development and operational tests of intelligent vehicles and intelligent infrastructure systems, and other similar activities that are necessary to carry out this subtitle.

“(b) PRIORITY AREAS.—Under the program, the Secretary shall give higher priority to funding projects that—

“(1) address traffic management, incident management, transit management, toll collection, traveler information, or highway operations systems;

“(2) focus on crash-avoidance and integration of in-vehicle crash protection technologies with other on-board safety systems, including the interaction of air bags and safety belts;

“(3) incorporate human factors research, including the science of the driving process;

“(4) facilitate the integration of intelligent infrastructure, vehicle, and control technologies, including magnetic guidance control systems or other materials or magnetics research; or

“(5) incorporate research on the impact of environmental, weather, and natural conditions on intelligent transportation systems, including the effects of cold climates.

“(c) OPERATIONAL TESTS.—Operational tests conducted under this section shall be designed for the collection of data to permit objective evaluation of the results of the tests, derivation of cost-benefit information that is useful to others contemplating deployment of similar systems, and development and implementation of standards.

“(d) FEDERAL SHARE.—The Federal share of the cost of operational tests and demonstrations under subsection (a) shall not exceed 80 percent.

“SEC. 5208. INTELLIGENT TRANSPORTATION SYSTEM INTEGRATION PROGRAM.

“(a) IN GENERAL.—The Secretary shall conduct a comprehensive program to accelerate the integration and interoperability of intelligent transportation systems in metropolitan and rural areas. Under the program, the Secretary shall select for funding, through competitive solicitation, projects that will serve as models to improve transportation efficiency, promote safety (including safe freight movement), increase traffic flow (including the flow of intermodal travel at ports of entry), reduce emissions of air pollutants, improve traveler information, enhance alternative transportation modes, build on existing intelligent transportation system projects, or promote tourism.

“(b) SELECTION OF PROJECTS.—Under the program, the Secretary shall give priority to funding projects that—

“(1) contribute to national deployment goals and objectives outlined in the National ITS Program Plan under section 5205;

“(2) demonstrate a strong commitment to cooperation among agencies, jurisdictions, and the private sector, as evidenced by signed memoranda of understanding that clearly define the responsibilities and relations of all parties to a partnership arrangement, including institutional relationships and financial agreements needed to support deployment;

“(3) encourage private sector involvement and financial commitment, to the maximum extent practicable, through innovative financial arrangements, especially public-private partnerships, including arrangements that generate revenue to offset public investment costs;

“(4) demonstrate commitment to a comprehensive plan of fully integrated intelligent transportation system deployment in accordance with the national architecture and standards and protocols established under section 5206;

“(5) are part of approved plans and programs developed under applicable statewide and metropolitan transportation planning processes and applicable State air quality implementation plans, as appropriate, at the time at which Federal funds are sought;

“(6) minimize the relative percentage and amount of Federal contributions under this section to total project costs;

“(7) ensure continued, long-term operations and maintenance without continued reliance on Federal funding under this subtitle, as evidenced by documented evidence of fiscal capacity and commitment from anticipated public and private sources;

“(8) demonstrate technical capacity for effective operations and maintenance or commitment to acquiring necessary skills;

“(9) mitigate any adverse impacts on bicycle and pedestrian transportation and safety; or

“(10) in the case of a rural area, meet other safety, mobility, geographic and regional diversity, or economic development criteria as determined by the Secretary.

“(c) FISCAL YEAR LIMITATIONS.—Of the amounts made available to carry out this section for a fiscal year—

“(1) not more than \$15,000,000 may be used for projects in a single metropolitan area;

“(2) not more than \$2,000,000 may be used for projects in a single rural area; and

“(3) not more than \$35,000,000 may be used for projects in a State.

“(d) FUNDING LIMITATIONS.—

“(1) PROJECTS IN METROPOLITAN AREAS.—Funding under this section for intelligent transportation infrastructure projects in metropolitan areas shall be used primarily for activities necessary to integrate intelligent transportation infrastructure elements that are either deployed or to be deployed with other sources of funds.

“(2) OTHER PROJECTS.—For projects outside metropolitan areas, funding provided under this subtitle may also be used for installation of intelligent transportation infrastructure elements.

“(e) FUNDING FOR RURAL AREAS.—The Secretary shall allocate not less than 10 percent of funds authorized by section 5001(c)(4)(A) [112 Stat. 421] in rural areas for intelligent transportation infrastructure deployment activities funded under this section to carry out intelligent transportation infrastructure deployment activities in rural areas.

“(f) FEDERAL SHARE.—

“(1) FUNDS MADE AVAILABLE UNDER THIS SECTION.—The Federal share of the cost of a project payable from funds made available under this section shall not exceed 50 percent.

“(2) FUNDS MADE AVAILABLE FROM ALL FEDERAL SOURCES.—The total Federal share of the cost of a project payable from all eligible sources (including this section) shall not exceed 80 percent.

“(g) CORRIDOR DEVELOPMENT AND COORDINATION.—

“(1) IN GENERAL.—The Secretary shall encourage multistate cooperative agreements, coalitions, or other arrangements intended to promote regional cooperation, planning, and shared project implementation for intelligent transportation system projects.

“(2) GREAT LAKES ITS IMPLEMENTATION.—

“(A) IN GENERAL.—The Secretary shall make grants under this subsection to the State of Wisconsin to continue ITS activities in the corridor serving the Greater Milwaukee, Wisconsin, Chicago, Illinois, and Gary, Indiana, areas initiated under the Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. 102-240, see Tables for classification] and other areas of the State.

“(B) FUNDING.—Of the amounts made available for each of fiscal years 1998 through 2003 under section 5001(c)(4)(A) of this Act, \$2,000,000 per fiscal year shall be available to carry out this paragraph.

“(3) NORTHEAST ITS IMPLEMENTATION.—

“(A) IN GENERAL.—The Secretary shall make grants under this subsection to the States to continue ITS activities in the Interstate Route I-95 corridor in the northeastern United States initiated under the Intermodal Surface Transportation Efficiency Act of 1991.

“(B) FUNDING.—Of the amounts made available for each of fiscal years 1998 through 2003 under section 5001(c)(4)(A) of this Act, \$5,000,000 per fiscal year shall be available to carry out this paragraph.

“SEC. 5209. COMMERCIAL VEHICLE INTELLIGENT TRANSPORTATION SYSTEM INFRASTRUCTURE DEPLOYMENT.

“(a) IN GENERAL.—The Secretary shall carry out a comprehensive program to deploy intelligent transportation systems that—

“(1) improve the safety and productivity of commercial vehicles and drivers; and

“(2) reduce costs associated with commercial vehicle operations and Federal and State commercial vehicle regulatory requirements.

“(b) PURPOSE.—The program shall advance the technological capability and promote the deployment of intelligent transportation system applications to commercial vehicle operations, including commercial vehicle, commercial driver, and carrier-specific information systems and networks.

“(c) PRIORITY AREAS.—In carrying out the program, the Secretary shall give priority to projects that—

“(1) encourage multistate cooperation and corridor development;

“(2)(A) improve the safety of commercial vehicle operations; and

“(B) increase the efficiency of regulatory inspection processes to reduce administrative burdens by advancing technology to facilitate inspections and generally increase the effectiveness of enforcement efforts;

“(3)(A) advance electronic processing of registration information, driver licensing information, fuel tax information, inspection and crash data, and other safety information; and

“(B) promote communication of the information among the States; or

“(4) enhance the safe passage of commercial vehicles across the United States and across international borders.

“(d) LEVERAGING OF FEDERAL FUNDS.—Federal funds used to carry out the program shall, to the maximum extent practicable—

“(1) be leveraged with non-Federal funds; and

“(2) be used for activities not carried out through the use of private funds.

“(e) FEDERAL SHARE.—The Federal share of the cost of the project payable from funds made available to carry out this section shall not exceed 50 percent. The total Federal share of the cost of the project payable from all eligible sources shall not exceed 80 percent.

“SEC. 5210. USE OF FUNDS.

“(a) OUTREACH AND PUBLIC RELATIONS LIMITATION.—

“(1) IN GENERAL.—For each fiscal year, not more than \$5,000,000 of the funds made available to carry out this subtitle shall be used for intelligent transportation system outreach, public relations, displays, scholarships, tours, and brochures.

“(2) APPLICABILITY.—Paragraph (1) shall not apply to intelligent transportation system training or the publication or distribution of research findings, technical guidance, or similar documents.

“(b) INFRASTRUCTURE DEVELOPMENT.—Funds made available to carry out this subtitle for operational tests and deployment projects—

“(1) shall be used primarily for the development of intelligent transportation system infrastructure; and

“(2) to the maximum extent practicable, shall not be used for the construction of physical highway and transit infrastructure unless the construction is incidental and critically necessary to the implementation of an intelligent transportation system project.

“(c) LIFE CYCLE COST ANALYSIS AND FINANCING AND OPERATIONS PLAN.—The Secretary shall require an applicant for funds made available under sections 5208 and 5209 to submit to the Secretary—

“(1) an analysis of the life-cycle costs of operation and maintenance of intelligent transportation system elements, if the total initial capital costs of the elements exceed \$3,000,000; and

“(2) a multiyear financing and operations plan that describes how the project will be cost-effectively operated and maintained.

“(d) USE OF INNOVATIVE FINANCING.—

“(1) IN GENERAL.—The Secretary may use up to 25 percent of the funds made available to carry out this subtitle to make available loans, lines of credit, and loan guarantees for projects that are eligible for assistance under this subtitle and that have significant intelligent transportation system elements.

“(2) CONSISTENCY WITH OTHER LAW.—Credit assistance described in paragraph (1) shall be made available in a manner consistent with the Transportation Infrastructure Finance and Innovation Act of 1998 [see section 1501 of Pub. L. 105-178, set out as a Short Title of 1998 Amendments note under section 101 of this title].

“SEC. 5211. DEFINITIONS.

“In this subtitle, the following definitions apply:

“(1) COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS.—The term ‘Commercial Vehicle Information Systems and Networks’ means the information systems and communications networks that support commercial vehicle operations.

“(2) COMMERCIAL VEHICLE OPERATIONS.—The term ‘commercial vehicle operations’—

“(A) means motor carrier operations and motor vehicle regulatory activities associated with the commercial movement of goods, including hazardous materials, and passengers; and

“(B) with respect to the public sector, includes the issuance of operating credentials, the administration of motor vehicle and fuel taxes, and roadside safety and border crossing inspection and regulatory compliance operations.

“(3) CORRIDOR.—The term ‘corridor’ means any major transportation route that includes parallel limited access highways, major arterials, or transit lines.

“(4) INTELLIGENT TRANSPORTATION INFRASTRUCTURE.—The term ‘intelligent transportation infrastructure’ means fully integrated public sector intelligent transportation system components, as defined by the Secretary.

“(5) INTELLIGENT TRANSPORTATION SYSTEM.—The term ‘intelligent transportation system’ means electronics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

“(6) NATIONAL ARCHITECTURE.—The term ‘national architecture’ means the common framework for interoperability adopted by the Secretary that defines—

“(A) the functions associated with intelligent transportation system user services;

“(B) the physical entities or subsystems within which the functions reside;

“(C) the data interfaces and information flows between physical subsystems; and

“(D) the communications requirements associated with the information flows.

“(7) STANDARD.—The term ‘standard’ means a document that—

“(A) contains technical specifications or other precise criteria for intelligent transportation systems that are to be used consistently as rules, guidelines, or definitions of characteristics so as to ensure that materials, products, processes, and services are fit for their purposes; and

“(B) may support the national architecture and promote—

“(i) the widespread use and adoption of intelligent transportation system technology as a component of the surface transportation systems of the United States; and

“(ii) interoperability among intelligent transportation system technologies implemented throughout the States.

“(8) STATE.—The term ‘State’ has the meaning given the term under section 101 of title 23, United States Code.

“SEC. 5212. PROJECT FUNDING.

“(a) USE OF HAZARDOUS MATERIALS MONITORING SYSTEMS.—

“(1) IN GENERAL.—The Secretary shall conduct research on improved methods of deploying and integrating existing ITS projects to include hazardous materials monitoring systems across various modes of transportation.

“(2) FUNDING.—Of the amounts made available for each of fiscal years 1998 through 2003 by section 5001(a)(6) of this Act [112 Stat. 420], \$1,500,000 per fiscal year shall be available to carry out this paragraph.

“(b) OUTREACH AND TECHNOLOGY TRANSFER ACTIVITIES.—

“(1) IN GENERAL.—The Secretary shall continue to support the Urban Consortium’s ITS outreach and technology transfer activities.

“(2) FUNDING.—Of the amounts made available for each of fiscal years 1998 through 2003 by section 5001(a)(5) of this Act [112 Stat. 420], \$500,000 per fiscal year shall be available to carry out this paragraph.

“(c) TRANSLINK.—

“(1) IN GENERAL.—The Secretary shall make grants to the Texas Transportation Institute to continue the Translink Research program.

“(2) FUNDING.—Of the amounts allocated for each of fiscal years 1999 through 2001 by section 5001(a)(6) of this Act, \$1,300,000 per fiscal year shall be available to carry out this paragraph.

“SEC. 5213. REPEAL.

“The Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. 102-240] is amended by striking part B [§§ 6051-6059] of title VI (23 U.S.C. 307 note; 105 Stat. 2189).”

#### RESEARCH ADVISORY COMMITTEE

Pub. L. 102-240, title VI, § 6011, Dec. 18, 1991, 105 Stat. 2179, provided that:

“(a) ESTABLISHMENT.—Not later than 180 days after the date of transmittal of the report to Congress under section 6010 [of Pub. L. 102-240, formerly set out as a note under section 307 of this title], the Secretary shall establish an independent surface transportation research advisory committee (hereinafter in this section referred to as the ‘advisory committee’).

“(b) PURPOSES.—The advisory committee shall provide ongoing advice and recommendations to the Secretary regarding needs, objectives, plans, approaches, content, and accomplishments with respect to short-term and long-term surface transportation research and development. The advisory committee shall also assist in ensuring that such research and development is coordinated with similar research and development being conducted outside of the Department of Transportation.

“(c) MEMBERSHIP.—The advisory committee shall be composed of not less than 20 and not more than 30 members appointed by the Secretary from among individuals who are not employees of the Department of Transportation and who are specially qualified to serve on the advisory committee by virtue of their education, training, or experience. A majority of the members of the advisory committee shall be individuals with experience in conducting surface transportation research and development. The Secretary in appointing the members of the advisory committee shall ensure that representatives of Federal, State, and local governments, other public agencies, colleges and universities, public, private, and nonprofit research organizations, and organizations representing transportation providers, shippers, labor, and the financial community are represented on an equitable basis.

“(d) CHAIRMAN.—The chairman of the advisory committee shall be designated by the Secretary.

“(e) PAY AND EXPENSES.—Members of the advisory committee shall serve without pay, except that the Secretary may allow any member, while engaged in the business of the advisory committee or a subordinate committee, travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

“(f) SUBORDINATE COMMITTEES.—The Secretary shall establish a subordinate committee to the advisory committee to provide advice on advanced highway vehicle technology research and development, and may establish other subordinate committees to provide advice on specific areas of surface transportation research and development. Such subordinate committees shall be subject to subsections (e), (g), and (i) of this section.

“(g) ASSISTANCE OF SECRETARY.—Upon request of the advisory committee, the Secretary shall provide such information, administrative services, support staff, and supplies as the Secretary determines to be necessary for the advisory committee to carry out its functions.

“(h) REPORTS.—The advisory committee shall, within 1 year after the date of establishment of the advisory committee, and annually thereafter, submit to the Congress a report summarizing its activities under this section.

“(i) TERMINATION.—Section 14 of the Federal Advisory Committee Act [5 App. U.S.C.] shall not apply to the advisory committee established under this section.”

#### FUNDAMENTAL PROPERTIES OF ASPHALTS AND MODIFIED ASPHALTS

Pub. L. 102-240, title VI, § 6016, Dec. 18, 1991, 105 Stat. 2182, provided that:

“(a) STUDIES.—The Administrator of the Federal Highway Administration (hereinafter in this section referred to as the ‘Administrator’) shall conduct studies of the fundamental chemical property and physical property of petroleum asphalts and modified asphalts used in highway construction in the United States. Such studies shall emphasize predicting pavement performance from the fundamental and rapidly measurable properties of asphalts and modified asphalts.

“(b) CONTRACTS.—To carry out the studies under subsection (a), the Administrator shall enter into contracts with the Western Research Institute of the University of Wyoming in order to conduct the necessary technical and analytical research in coordination with existing programs which evaluate actual performance of asphalts and modified asphalts in roadways, including the Strategic Highway Research Program.

“(c) ACTIVITIES OF STUDIES.—The studies under subsection (a) shall include the following activities:

“(1) Fundamental composition studies.

“(2) Fundamental physical and rheological property studies.

“(3) Asphalt-aggregate interaction studies.

“(4) Coordination of composition studies, physical and rheological property studies, and asphalt-aggregate interaction studies for the purposes of predicting pavement performance, including refinements of Strategic Highway Research Program specifications.

“(d) TEST STRIP.—

“(1) IMPLEMENTATION.—The Administrator, in coordination with the Western Research Institute of the University of Wyoming, shall implement a test strip for the purpose of demonstrating and evaluating the unique energy and environmental advantages of using shale oil modified asphalts under extreme climatic conditions.

“(2) FUNDING.—For the purposes of construction activities related to this test strip, the Secretary and the Director of the National Park Service shall make up to \$1,000,000 available from amounts made available from the authorization for parkroads and parkways.

“(3) REPORT TO CONGRESS.—Not later than November 30, 1995, the Administrator shall transmit to Congress as part of a report under subsection (e) the Administrator’s findings on activities conducted under this subsection, including an evaluation of the test strip implemented under this subsection and recommendations for legislation to establish a national program to support United States transportation and energy security requirements.

“(e) ANNUAL REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act

[Dec. 18, 1991], and on or before November 30th of each year beginning thereafter, the Administrator shall transmit to Congress a report of the progress made in implementing this section.

“(f) AUTHORIZATION OF APPROPRIATIONS.—The Secretary shall expend from administrative and research funds deducted under section 104(a) of this title at least \$3,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996 to carry out subsection (b).”

STUDY OF FACTORS AFFECTING SAFE AND EFFICIENT OPERATION OF BRIDGES, TUNNELS AND ROADS WITHIN UNITED STATES

Pub. L. 95-599, title I, §166, Nov. 6, 1978, 92 Stat. 2722, provided that: “The Secretary of Transportation shall make a full and complete investigation and study of all those factors affecting the safe and efficient operation of bridges, tunnels, and roads within the United States, including, but not limited to, structural, operational, environmental, and civil disturbance factors.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 151 of this title.

**§ 503. Technology deployment**

(a) TECHNOLOGY DEPLOYMENT INITIATIVES AND PARTNERSHIPS PROGRAM.—

(1) ESTABLISHMENT.—The Secretary shall develop and administer a national technology deployment initiatives and partnerships program.

(2) PURPOSE.—The purpose of the program shall be to significantly accelerate the adoption of innovative technologies by the surface transportation community.

(3) DEPLOYMENT GOALS.—

(A) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this section, the Secretary shall establish not more than 5 deployment goals to carry out paragraph (1).

(B) DESIGN.—Each of the goals and the program developed to achieve the goals shall be designed to provide tangible benefits, with respect to transportation systems, in the areas of efficiency, safety, reliability, service life, environmental protection, and sustainability.

(C) STRATEGIES FOR ACHIEVEMENT.—For each goal, the Secretary, in cooperation with representatives of the transportation community such as States, local governments, the private sector, and academia, shall use domestic and international technology to develop strategies and initiatives to achieve the goal, including technical assistance in deploying technology and mechanisms for sharing information among program participants.

(4) INTEGRATION WITH OTHER PROGRAMS.—The Secretary shall integrate activities carried out under this subsection with the efforts of the Secretary to disseminate the results of research sponsored by the Secretary and to facilitate technology transfer.

(5) LEVERAGING OF FEDERAL RESOURCES.—In selecting projects to be carried out under this subsection, the Secretary shall give preference to projects that leverage Federal funds with other significant public or private resources.

(6) CONTINUATION OF SHRP PARTNERSHIPS.—Under the program, the Secretary shall con-

tinue the partnerships established through the strategic highway research program established under section 307(d) (as in effect on the day before the date of enactment of this section).

(7) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—Under the program, the Secretary may make grants and enter into cooperative agreements and contracts to foster alliances and support efforts to stimulate advances in transportation technology, including—

(A) the testing and evaluation of products of the strategic highway research program;

(B) the further development and implementation of technology in areas such as the Superpave system and the use of lithium salts and other alternatives to prevent and mitigate alkali silica reactivity;

(C) the provision of support for long-term pavement performance product implementation and technology access; and

(D) other activities to achieve the goals established under paragraph (3).

(8) REPORTS.—Not later than 18 months after the date of enactment of this section, and biennially thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the progress and results of activities carried out under this section.

(9) ALLOCATION.—To the extent appropriate to achieve the goals established under paragraph (3), the Secretary may further allocate funds made available to carry out this section to States for their use.

(b) INNOVATIVE BRIDGE RESEARCH AND CONSTRUCTION PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish and carry out a program to demonstrate the application of innovative material technology in the construction of bridges and other structures.

(2) GOALS.—The goals of the program shall include—

(A) the development of new, cost-effective innovative material highway bridge applications;

(B) the reduction of maintenance costs and life-cycle costs of bridges, including the costs of new construction, replacement, or rehabilitation of deficient bridges;

(C) the development of construction techniques to increase safety and reduce construction time and traffic congestion;

(D) the development of engineering design criteria for innovative products and materials for use in highway bridges and structures;

(E) the development of cost-effective and innovative techniques to separate vehicle and pedestrian traffic from railroad traffic;

(F) the development of highway bridges and structures that will withstand natural disasters, including alternative processes for the seismic retrofit of bridges; and

(G) the development of new nondestructive bridge evaluation technologies and techniques.

## (3) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—

(A) IN GENERAL.—Under the program, the Secretary shall make grants to, and enter into cooperative agreements and contracts with—

- (i) States, other Federal agencies, universities and colleges, private sector entities, and nonprofit organizations to pay the Federal share of the cost of research, development, and technology transfer concerning innovative materials; and
- (ii) States to pay the Federal share of the cost of repair, rehabilitation, replacement, and new construction of bridges or structures that demonstrate the application of innovative materials.

(B) APPLICATIONS.—To receive a grant under this subsection, an entity described in subparagraph (A) shall submit an application to the Secretary. The application shall be in such form and contain such information as the Secretary may require. The Secretary shall select and approve the applications based on whether the project that is the subject of the grant meets the goals of the program described in paragraph (2).

(4) TECHNOLOGY AND INFORMATION TRANSFER.—The Secretary shall take such action as is necessary to ensure that the information and technology resulting from research conducted under paragraph (3) is made available to State and local transportation departments and other interested parties as specified by the Secretary.

(5) FEDERAL SHARE.—The Federal share of the cost of a project under this section shall be determined by the Secretary.

(Added Pub. L. 105-178, title V, §5103, June 9, 1998, 112 Stat. 427.)

## REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a)(3)(A), (6), (8), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

## PRIOR PROVISIONS

A prior section 503, added Pub. L. 90-495, §30, Aug. 23, 1968, 82 Stat. 831, related to administration of highway relocation assistance program, prior to repeal by Pub. L. 91-646, title II, §220(a)(10), Jan. 2, 1971, 84 Stat. 1903.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 5505.

**§ 504. Training and education**

(a) NATIONAL HIGHWAY INSTITUTE.—

(1) IN GENERAL.—The Secretary shall operate in the Federal Highway Administration a National Highway Institute (in this subsection referred to as the “Institute”). The Secretary shall administer, through the Institute, the authority vested in the Secretary by this title or by any other law for the development and conduct of education and training programs relating to highways.

(2) DUTIES OF THE INSTITUTE.—In cooperation with State transportation departments, United States industry, and any national or international entity, the Institute shall de-

velop and administer education and training programs of instruction for—

- (A) Federal Highway Administration, State, and local transportation agency employees;
- (B) regional, State, and metropolitan planning organizations;
- (C) State and local police, public safety, and motor vehicle employees; and
- (D) United States citizens and foreign nationals engaged or to be engaged in surface transportation work of interest to the United States.

(3) COURSES.—The Institute may develop and administer courses in modern developments, techniques, methods, regulations, management, and procedures relating to surface transportation, environmental mitigation and compliance, acquisition of rights-of-way, relocation assistance, engineering, safety, construction, maintenance and operations, contract administration, motor carrier safety activities, inspection, and highway finance.

(4) SET-ASIDE; FEDERAL SHARE.—Not to exceed ½ of 1 percent of the funds apportioned to a State under section 104(b)(3) for the surface transportation program shall be available for expenditure by the State transportation department for the payment of not to exceed 80 percent of the cost of tuition and direct educational expenses (excluding salaries) in connection with the education and training of employees of State and local transportation agencies in accordance with this subsection.

(5) FEDERAL RESPONSIBILITY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), education and training of employees of Federal, State, and local transportation (including highway) agencies authorized under this subsection may be provided—

- (i) by the Secretary at no cost to the States and local governments if the Secretary determines that provision at no cost is in the public interest; or
- (ii) by the State through grants, cooperative agreements, and contracts with public and private agencies, institutions, individuals, and the Institute.

(B) PAYMENT OF FULL COST BY PRIVATE PERSONS.—Private agencies, international or foreign entities, and individuals shall pay the full cost of any education and training received by them unless the Secretary determines that a lower cost is of critical importance to the public interest.

(6) TRAINING FELLOWSHIPS; COOPERATION.—The Institute may—

- (A) engage in training activities authorized under this subsection, including the granting of training fellowships; and
- (B) carry out its authority independently or in cooperation with any other branch of the Federal Government or any State agency, authority, association, institution, for-profit or nonprofit corporation, other national or international entity, or other person.

(7) COLLECTION OF FEES.—

(A) GENERAL RULE.—In accordance with this subsection, the Institute may assess and collect fees solely to defray the costs of the Institute in developing or administering education and training programs under this subsection.

(B) LIMITATION.—Fees may be assessed and collected under this subsection only in a manner that may reasonably be expected to result in the collection of fees during any fiscal year in an aggregate amount that does not exceed the aggregate amount of the costs referred to in subparagraph (A) for the fiscal year.

(C) PERSONS SUBJECT TO FEES.—Fees may be assessed and collected under this subsection only with respect to—

- (i) persons and entities for whom education or training programs are developed or administered under this subsection; and
- (ii) persons and entities to whom education or training is provided under this subsection.

(D) AMOUNT OF FEES.—The fees assessed and collected under this subsection shall be established in a manner that ensures that the liability of any person or entity for a fee is reasonably based on the proportion of the costs referred to in subparagraph (A) that relate to the person or entity.

(E) USE.—All fees collected under this subsection shall be used to defray costs associated with the development or administration of education and training programs authorized under this subsection.

(8) RELATION TO FEES.—The funds made available to carry out this subsection may be combined with or held separate from the fees collected under paragraph (7).

(b) LOCAL TECHNICAL ASSISTANCE PROGRAM.—

(1) AUTHORITY.—The Secretary shall carry out a local technical assistance program that will provide access to surface transportation technology to—

(A) highway and transportation agencies in urbanized areas with populations of between 50,000 and 1,000,000 individuals;

(B) highway and transportation agencies in rural areas; and

(C) contractors that do work for the agencies.

(2) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—The Secretary may make grants and enter into cooperative agreements and contracts to provide education and training, technical assistance, and related support services to—

(A) assist rural, local transportation agencies and tribal governments, and the consultants and construction personnel working for the agencies and governments, to—

- (i) develop and expand their expertise in road and transportation areas (including pavement, bridge, concrete structures, safety management systems, and traffic safety countermeasures);
- (ii) improve roads and bridges;
- (iii) enhance—

(I) programs for the movement of passengers and freight; and

(II) intergovernmental transportation planning and project selection; and

(iv) deal effectively with special transportation-related problems by preparing and providing training packages, manuals, guidelines, and technical resource materials;

(B) develop technical assistance for tourism and recreational travel;

(C) identify, package, and deliver transportation technology and traffic safety information to local jurisdictions to assist urban transportation agencies in developing and expanding their ability to deal effectively with transportation-related problems;

(D) operate, in cooperation with State transportation departments and universities—

(i) local technical assistance program centers designated to provide transportation technology transfer services to rural areas and to urbanized areas with populations of between 50,000 and 1,000,000 individuals; and

(ii) local technical assistance program centers designated to provide transportation technical assistance to Indian tribal governments; and

(E) allow local transportation agencies and tribal governments, in cooperation with the private sector, to enhance new technology implementation.

(c) RESEARCH FELLOWSHIPS.—

(1) GENERAL AUTHORITY.—The Secretary, acting either independently or in cooperation with other Federal departments, agencies, and instrumentalities, may make grants for research fellowships for any purpose for which research is authorized by this chapter.

(2) DWIGHT DAVID EISENHOWER TRANSPORTATION FELLOWSHIP PROGRAM.—The Secretary shall establish and implement a transportation research fellowship program for the purpose of attracting qualified students to the field of transportation. The program shall be known as the “Dwight David Eisenhower Transportation Fellowship Program”.

(Added Pub. L. 105–178, title V, §5104, June 9, 1998, 112 Stat. 429.)

#### PRIOR PROVISIONS

A prior section 504, added Pub. L. 90–495, §30, Aug. 23, 1968, 82 Stat. 831, related to Federal reimbursement for highway relocation assistance, prior to repeal by Pub. L. 91–646, title II, §220(a)(10), Jan. 2, 1971, 84 Stat. 1903.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 204 of this title; title 49 section 5505.

### § 505. State planning and research

(a) GENERAL RULE.—Two percent of the sums apportioned to a State for fiscal year 1998 and each fiscal year thereafter under section 104 (other than sections 104(f) and 104(h)) and under section 144 shall be available for expenditure by the State, in consultation with the Secretary, only for the following purposes:

(1) Engineering and economic surveys and investigations.

(2) The planning of future highway programs and local public transportation systems and the planning of the financing of such programs and systems, including metropolitan and statewide planning under sections 134 and 135.

(3) Development and implementation of management systems under section 303.

(4) Studies of the economy, safety, and convenience of surface transportation systems and the desirable regulation and equitable taxation of such systems.

(5) Research, development, and technology transfer activities necessary in connection with the planning, design, construction, management, and maintenance of highway, public transportation, and intermodal transportation systems.

(6) Study, research, and training on the engineering standards and construction materials for transportation systems described in paragraph (5), including the evaluation and accreditation of inspection and testing and the regulation and taxation of their use.

(b) **MINIMUM EXPENDITURES ON RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—**

(1) **IN GENERAL.**—Subject to paragraph (2), not less than 25 percent of the funds subject to subsection (a) that are apportioned to a State for a fiscal year shall be expended by the State for research, development, and technology transfer activities described in subsection (a), relating to highway, public transportation, and intermodal transportation systems.

(2) **WAIVERS.**—The Secretary may waive the application of paragraph (1) with respect to a State for a fiscal year if the State certifies to the Secretary for the fiscal year that total expenditures by the State for transportation planning under sections 134 and 135 will exceed 75 percent of the funds described in paragraph (1) and the Secretary accepts such certification.

(3) **NONAPPLICABILITY OF ASSESSMENT.**—Funds expended under paragraph (1) shall not be considered to be part of the extramural budget of the agency for the purpose of section 9 of the Small Business Act (15 U.S.C. 638).

(c) **FEDERAL SHARE.**—The Federal share of the cost of a project carried out using funds subject to subsection (a) shall be 80 percent unless the Secretary determines that the interests of the Federal-aid highway program would be best served by decreasing or eliminating the non-Federal share.

(d) **ADMINISTRATION OF SUMS.**—Funds subject to subsection (a) shall be combined and administered by the Secretary as a single fund and shall be available for obligation for the same period as funds apportioned under section 104(b)(1).

(Added Pub. L. 105-178, title V, §5105, June 9, 1998, 112 Stat. 432.)

**PRIOR PROVISIONS**

A prior section 505, added Pub. L. 90-495, §30, Aug. 23, 1968, 82 Stat. 831, related to highway relocation assistance payments, prior to repeal by Pub. L. 91-646, title II, §220(a)(10), Jan. 2, 1971, 84 Stat. 1903.

**ALASKA HIGHWAY STUDY**

Pub. L. 87-866, §13, Oct. 23, 1962, 76 Stat. 1149, as amended by Pub. L. 97-449, §2(a), Jan. 12, 1983, 96 Stat. 2439, provided that:

“(a) The Secretary of Transportation, in cooperation with the State of Alaska, is hereby authorized to make engineering studies and estimates and planning surveys relative to a highway construction program for the State of Alaska, and, in accordance with treaties or other agreements to be negotiated with Canada by the Secretary of State in consultation with the Secretary of Transportation, engineering studies, estimates, and planning surveys relative to connecting Alaskan roads with Canadian roads at the International boundary.

“(b) On or before May 15, 1964, the Secretary of Transportation shall submit a report to the Congress which shall include—

“(1) an analysis of the adequacy of the Federal-aid highway program to provide for a satisfactory program in both the populated and the undeveloped areas in Alaska;

“(2) specific recommendations as to the construction of roads through undeveloped areas of Alaska and connection of such roads with Canadian roads at the International boundary; and

“(3) a feasible program for implementing such specific recommendations, including cost estimates, recommendations as to the sharing of cost responsibilities, and other pertinent matters.

“(c) From time to time, either before or after submission of the report provided for in subsection (b) of this section, the Secretary of Transportation may submit recommendations to the Congress with respect to the construction of particular highways to carry out the purposes of this section.

“(d) Nothing in this section shall be construed as creating any obligation in the Congress, express or implied, to carry out the recommendations referred to in subsections (b) and (c).

“(e) There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to be available until expended, the sum of \$800,000 for the purpose of making the studies, surveys, and report authorized by subsections (a) and (b) hereof.”

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 115, 135, 506 of this title; title 49 section 5505.

**§ 506. International highway transportation outreach program**

(a) **ESTABLISHMENT.**—The Secretary may establish an international highway transportation outreach program—

(1) to inform the United States highway community of technological innovations in foreign countries that could significantly improve highway transportation in the United States;

(2) to promote United States highway transportation expertise, goods, and services in foreign countries; and

(3) to increase transfers of United States highway transportation technology to foreign countries.

(b) **ACTIVITIES.**—Activities carried out under the program may include—

(1) development, monitoring, assessment, and dissemination in the United States of information about highway transportation innovations in foreign countries that could significantly improve highway transportation in the United States;

(2) research, development, demonstration, training, and other forms of technology transfer and exchange;

(3) informing foreign countries about the technical quality of United States highway transportation goods and services through participation in trade shows, seminars, exhibitions, and other such activities;

(4) offering technical services of the Federal Highway Administration that cannot be readily obtained from United States private sector firms to be incorporated into the proposals of United States private sector firms undertaking highway transportation projects outside the United States if the costs of such services will be recovered under the terms of the project;

(5) conducting studies to assess the need for or feasibility of highway transportation improvements in countries that are not members of the Organization for Economic Cooperation and Development, as of December 18, 1991, and in Greece and Turkey; and

(6) gathering and disseminating information on foreign transportation markets and industries.

(c) COOPERATION.—The Secretary may carry out this section in cooperation with any appropriate Federal agency, State or local agency, authority, association, institution, corporation (profit or nonprofit), foreign government, multinational institution, or other organization or person.

(d) FUNDS.—

(1) CONTRIBUTIONS.—Funds available to carry out this section shall include funds deposited by any cooperating organization or person into a special account of the Treasury established for this purpose.

(2) ELIGIBLE USES OF FUNDS.—The funds deposited into the account and other funds available to carry out this section shall be available to cover the cost of any activity eligible under this section, including the cost of promotional materials, travel, reception and representation expenses, and salaries and benefits.

(3) REIMBURSEMENTS FOR SALARIES AND BENEFITS.—Reimbursements for salaries and benefits of Department of Transportation employees providing services under this section shall be credited to the account.

(e) ELIGIBLE USE OF STATE PLANNING AND RESEARCH FUNDS.—A State, in coordination with the Secretary, may obligate funds made available to carry out section 505 for any activity authorized under subsection (a).

(Added Pub. L. 105-178, title V, §5106, June 9, 1998, 112 Stat. 433.)

#### PRIOR PROVISIONS

A prior section 506, added Pub. L. 90-495, §30, Aug. 23, 1968, 82 Stat. 832; amended Pub. L. 91-605, title I, §137, Dec. 31, 1970, 84 Stat. 1735, related to replacement housing, prior to repeal by Pub. L. 91-646, title II, §220(a)(10), Jan. 2, 1971, 84 Stat. 1903.

### § 507. Surface transportation-environment cooperative research program

(a) IN GENERAL.—The Secretary shall establish and carry out a surface transportation-environment cooperative research program.

(b) CONTENTS.—The program to be carried out under this section shall include research designed—

(1) to develop more accurate models for evaluating transportation control measures and transportation system designs that are appropriate for use by State and local governments, including metropolitan planning organizations, in designing implementation plans to meet Federal, State, and local environmental requirements;

(2) to improve understanding of the factors that contribute to the demand for transportation, including transportation system design, demographic change, land use planning, and communications and other information technologies;

(3) to develop indicators of economic, social, and environmental performance of transportation systems to facilitate analysis of potential alternatives;

(4) to study the relationship between highway density and ecosystem integrity, including the impacts of highway density on habitat integrity and overall ecosystem health, and develop a rapid assessment methodology for use by transportation and regulatory agencies in determining the relationship between highway density and ecosystem integrity; and

(5) to meet additional priorities as determined by the advisory board established under subsection (c), including recommendations of the National Research Council in the report entitled "Environmental Research Needs in Transportation".

(c) ADVISORY BOARD.—

(1) ESTABLISHMENT.—In consultation with the Secretary of Energy, the Administrator of the Environmental Protection Agency, and the heads of other appropriate Federal departments and agencies, the Secretary shall establish an advisory board to recommend environmental and energy conservation research, technology, and technology transfer activities related to surface transportation.

(2) MEMBERSHIP.—The advisory board shall include—

(A) representatives of State transportation and environmental agencies;

(B) transportation and environmental scientists and engineers; and

(C) representatives of metropolitan planning organizations, transit operating agencies, and environmental organizations.

(d) NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to the research, technology, and technology transfer activities described in subsection (b) as the Secretary determines appropriate.

(Added Pub. L. 105-178, title V, §5107, June 9, 1998, 112 Stat. 434.)

#### PRIOR PROVISIONS

A prior section 507, added Pub. L. 90-495, §30, Aug. 23, 1968, 82 Stat. 832, related to expenses incidental to transfer of property, prior to repeal by Pub. L. 91-646, title II, §220(a)(10), Jan. 2, 1971, 84 Stat. 1903.

#### TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year pe-



riod beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

**§ 508. Surface transportation research strategic planning**

(a) IN GENERAL.—The Secretary shall—

(1) establish a strategic planning process, consistent with section 306 of title 5 for the Department of Transportation to determine national transportation research and technology development priorities related to surface transportation;

(2) coordinate Federal surface transportation research and technology development activities;

(3) measure the results of those activities and how they impact the performance of the surface transportation systems of the United States; and

(4) ensure that planning and reporting activities carried out under this section are coordinated with all other surface transportation planning and reporting requirements.

(b) IMPLEMENTATION.—The Secretary shall—

(1) provide for the integrated planning, coordination, and consultation among the operating administrations of the Department of Transportation, all other Federal agencies with responsibility for surface transportation research and technology development, State and local governments, institutions of higher education, industry, and other private and public sector organizations engaged in surface transportation-related research and development activities;

(2) ensure that the surface transportation research and technology development programs of the Department do not duplicate other Federal, State, or private sector research and development programs; and

(3) provide for independent validation of the scientific and technical assumptions underlying the surface transportation research and technology development programs of the Department.

(c) SURFACE TRANSPORTATION RESEARCH AND TECHNOLOGY DEVELOPMENT STRATEGIC PLAN.—

(1) DEVELOPMENT.—The Secretary shall develop an integrated surface transportation research and technology development strategic plan.

(2) CONTENTS.—The plan shall include—

(A) an identification of the general goals and objectives of the Department of Transportation for surface transportation research and development;

(B) a description of the roles of the Department and other Federal agencies in achieving the goals identified under subparagraph (A), in order to avoid unnecessary duplication of effort;

(C) a description of the overall strategy of the Department, and the role of each of the operating administrations of the Depart-

ment, in carrying out the plan over the next 5 years, including a description of procedures for coordination of the efforts of the Secretary with the efforts of the operating administrations of the Department and other Federal agencies;

(D) an assessment of how State and local research and technology development activities are contributing to the achievement of the goals identified under subparagraph (A);

(E) details of the surface transportation research and technology development programs of the Department, including performance goals, resources needed to achieve those goals, and performance indicators as described in section 1115(a) of title 31, United States Code, for the next 5 years for each area of research and technology development;

(F) significant comments on the plan obtained from outside sources; and

(G) responses to significant comments obtained from the National Research Council and other advisory bodies, and a description of any corrective actions taken pursuant to such comments.

(3) NATIONAL RESEARCH COUNCIL REVIEW.—The Secretary shall enter into an agreement for the review by the National Research Council of the details of each—

(A) strategic plan or revision required under section 306 of title 5;

(B) performance plan required under section 1115 of title 31; and

(C) program performance report required under section 1116,

with respect to surface transportation research and technology development.

(4) PERFORMANCE PLANS AND REPORTS.—In reports submitted under sections 1115 and 1116 of title 31, the Secretary shall include—

(A) a summary of the results for the previous fiscal year of surface transportation research and technology development programs to which the Department of Transportation contributes, along with—

(i) an analysis of the relationship between those results and the goals identified under paragraph (2)(A); and

(ii) a description of the methodology used for assessing the results; and

(B) a description of significant surface transportation research and technology development initiatives, if any, undertaken during the previous fiscal year that were not in the plan developed under paragraph (1), and any significant changes in the plan from the previous year's plan.

(d) MERIT REVIEW AND PERFORMANCE MEASUREMENT.—Not later than 1 year after the date of enactment of this section, the Secretary shall transmit to Congress a report describing competitive merit review procedures for use in selecting grantees and contractors in the programs covered by the plan developed under subsection (c) and performance measurement procedures for evaluating the programs.

(e) PROCUREMENT PROCEDURES.—The Secretary shall—

(1) develop model procurement procedures that encourage the use of advanced technologies; and

(2) develop model transactions for carrying out and coordinating Federal and State surface transportation research and technology development activities.

(f) CONSISTENCY WITH GOVERNMENT PERFORMANCE AND RESULTS ACT OF 1993.—The plans and reports developed under this section shall be consistent with and incorporated as part of the plans developed under section 306 of title 5 and sections 1115 and 1116 of title 31.

(Added Pub. L. 105–178, title V, §5108, June 9, 1998, 112 Stat. 435.)

#### REFERENCES IN TEXT

Section 1116, referred to in subsec. (c)(3)(C), probably is a reference to section 1116 of Title 31, Money and Finance. No section 1116 of this title has been enacted.

The date of enactment of this section, referred to in subsec. (d), is the date of enactment of Pub. L. 105–178, which was approved June 9, 1998.

The Government Performance and Results Act of 1993, referred to in subsec. (f), is Pub. L. 103–62, Aug. 3, 1993, 107 Stat. 285, which enacted sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, section 306 of Title 5, Government Organization and Employees, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

#### PRIOR PROVISIONS

Sections 508 to 512 of this title were repealed by Pub. L. 91–646, title II, §220(a)(10), Jan. 2, 1971, 84 Stat. 1903.

Section 508, added Pub. L. 90–495, §30, Aug. 23, 1968, 82 Stat. 833, related to highway relocation services.

Section 509, added Pub. L. 90–495, §30, Aug. 23, 1968, 82 Stat. 833, related to relocation assistance programs on Federal highway projects.

Section 510, added Pub. L. 91–605, title I, §117(b), Dec. 31, 1970, 84 Stat. 1724, related to construction of replacement housing.

Section 511, formerly 510, added Pub. L. 90–495, §30, Aug. 23, 1968, 82 Stat. 834; renumbered §511, Pub. L. 91–605, title I, §117(a), Dec. 31, 1970, 84 Stat. 1724, related to authority of Secretary.

Section 512, formerly 511, added Pub. L. 90–495, §30, Aug. 23, 1968, 82 Stat. 834; renumbered §512, Pub. L. 91–605, title I, §117(a), Dec. 31, 1970, 84 Stat. 1724, related to definitions for chapter.

#### SURFACE TRANSPORTATION RESEARCH AND DEVELOPMENT PLANNING

Pub. L. 102–240, title VI, §6009, Dec. 18, 1991, 105 Stat. 2175, as amended by Pub. L. 104–59, title III, §338(c)(1), Nov. 28, 1995, 109 Stat. 604, provided that:

“(a) FINDINGS.—Congress finds that—

“(1) despite an annual expenditure in excess of \$10,000,000,000 on surface transportation and its infrastructure, the Federal Government has not developed a clear vision of—

“(A) how the surface transportation systems of the 21st century will differ from the present;

“(B) how they will interface with each other and with other forms of transportation;

“(C) how such systems will adjust to changing American population patterns and lifestyles; and

“(D) the role of federally funded research and development in ensuring that appropriate transportation systems are developed and implemented;

“(2) the population of the United States is projected to increase by over 30,000,000 people within the next 20

years, mostly in existing major metropolitan areas, which will result in increased traffic congestion within and between urban areas, more accidents, loss of productive time, and increased cost of transportation unless new technologies are developed to improve public transportation within cities and to move people and goods between cities;

“(3) 18,000,000 crashes, 4,000,000 injuries, and 45,000 fatalities each year on the Nation’s highways are intolerable and substantial research is required in order to develop safer technologies in their most useful and economic forms;

“(4) current research and development funding for surface transportation is insufficient to provide the United States with the technologies essential to providing its own advanced transportation systems in the future and, as a result, the United States is becoming increasingly dependent on foreign surface transportation technologies and equipment to meet its expanding surface transportation needs;

“(5) a more active, focused surface transportation research and development program involving cooperation among the Federal Government, United States based industry, and United States universities should be organized on a priority basis;

“(6) intelligent transportation systems represent the best near-term technology for improving surface transportation for public benefit by providing equipment which can improve traffic flow and provide for enhanced safety;

“(7) research and development programs related to surface transportation are fragmented and dispersed throughout government and need to be strengthened and incorporated in an integrated framework within which a consensus on the goals of a national surface transportation research and development program must be developed;

“(8) the inability of government agencies to cooperate effectively, the difficulty of obtaining public support for new systems and rights-of-way, and the high cost of capital financing discourage private firms from investing in the development of new transportation equipment and systems; therefore, the Federal Government should sponsor and coordinate research and development of new technologies to provide safer, more convenient, and affordable transportation systems for use in the future; and

“(9) an effective high technology applied research and development program should be implemented quickly by strengthening the Department of Transportation research and development staff and by contracting with private industry for specific development projects.

“(b) SURFACE TRANSPORTATION RESEARCH AND DEVELOPMENT PLAN.—

“(1) DEVELOPMENT.—The Secretary shall develop an integrated national surface transportation research and development plan (hereinafter in this subsection referred to as the ‘plan’).

“(2) FOCUS.—The plan shall focus on surface transportation systems needed for urban, suburban, and rural areas in the next decade.

“(3) CONTENTS.—The plan shall include the following:

“(A) Details of the Department’s surface transportation research and development programs, including appropriate funding levels and a schedule with milestones, preliminary cost estimates, appropriate work scopes, personnel requirements, and estimated costs and goals for the next 3 years for each area of research and development.

“(B) A 10-year projection of long-term programs in surface transportation research and development and recommendations for the appropriate source or mechanism for surface transportation research and development funding, taking into account recommendations of the Research and Development Coordinating Council of the Department of Transportation and the plan of the National Council on Surface Transportation Research.

“(C) Recommendations on changes needed to assure that Federal, State, and local contracting procedures encourage the adoption of advanced technologies developed as a consequence of the research programs in this Act [Pub. L. 102-240, see Tables for classification].

“(4) OBJECTIVES.—The plan shall provide for the following:

“(A) The development, within the shortest period of time possible, of a range of technologies needed to produce convenient, safe, and affordable modes of surface transportation to be available for public use beginning in the mid-1990’s.

“(B) Maintenance of a long-term advanced research and development program to provide for next generation surface transportation systems.

“(5) COOPERATION WITH INDUSTRY.—A primary component of the plan shall be cooperation with industry in carrying out this part [part A (§§ 6001-6024) of title VI of Pub. L. 102-240, enacting sections 325 and 326 of this title, sections 3711b and 3711c of Title 15, Commerce and Trade, section 111 of Title 49, Transportation, and section 1625 of former Title 49, Transportation, amending sections 204, 307, and 321 of this title, section 5316 of Title 5, Government Organization and Employees, sections 3708 and 3712 to 3715 of Title 15, sections 101 and 301 of Title 49, and sections 1607c and 1608 of former Title 49, enacting provisions set out as notes under sections 101, 112, and 307 of this title and sections 111 and 301 of Title 49, and amending provisions set out as notes under section 1608 of

former Title 49] and strengthening the manufacturing capabilities of United States firms in order to produce products for surface transportation systems.

“(6) CONFORMANCE WITH PLAN.—All surface transportation research and development within the Department of Transportation shall be included in the plan and shall be evaluated in accordance with the plan.

“(7) COORDINATION.—In developing the plan and carrying out this part, the Secretary shall consult with and, where appropriate, use the expertise of other Federal agencies and their laboratories.

“(8) TRANSMITTAL.—On or before January 15, 1993, and annually thereafter, the Secretary shall transmit the plan to Congress, together with the Secretary’s comments and recommendations. The Secretary shall review and update the plan before each transmittal under this paragraph.

“(9) RECOMMENDATIONS FOR ALTERNATIVES.—In the event a different technology or alternative program can be identified that would accomplish the same or better results than those described in this part, the Secretary may make recommendations for an alternative, and shall promptly report such alternative recommendations to Congress.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 502 of this title; title 49 section 5505.