

**Calendar No. 188**

105TH CONGRESS }  
*1st Session*

SENATE

{ REPORT  
105-95

INTERMODAL SURFACE TRANSPORTATION  
EFFICIENCY ACT OF 1997

---

REPORT

OF THE

COMMITTEE ON  
ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE

together with

ADDITIONAL VIEWS

TO ACCOMPANY

S. 1173



October 1, 1997.—Ordered to be printed

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## Calendar No. 188

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{ REPORT  
105-95

### INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997

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OCTOBER 1, 1997.—Ordered to be printed

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Mr. CHAFEE, from the Committee on Environment and Public  
Works, submitted the following

### REPORT

together with

### ADDITIONAL VIEWS

[To accompany S. 1173]

The Committee on Environment and Public Works, to which was referred the bill (S. 1173) to reauthorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes, having considered the same, reports favorably thereon with amendments, and recommends that the bill, as amended, do pass.

### GENERAL STATEMENT

#### BACKGROUND

#### *Intermodal Surface Transportation Efficiency Act of 1991*

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) was signed into law by President Bush on December 18, 1991. The Act developed a national intermodal transportation system, authorized funds for the construction of highways, for highway safety programs, and for mass transit programs.

The policy behind the ISTEA was to develop a national intermodal system that is economically efficient and environmentally sound, provides the foundation for the Nation to compete in a global economy, and moves people and goods in an energy efficient manner.

The three principal goals of ISTEA—intermodalism, flexibility and efficiency—were intended to carry out the larger policy goal of a productive and effective national transportation system. The national intermodal transportation system established in ISTEA connects all forms of surface transportation in a unified and integrated manner. It includes the National Highway System, which consists of the Interstate System and those principal arterial roads that are essential for the national defense, intermodal transfer facilities, and international commerce and border crossings. It also provides improved access to ports and airports to increase national and global commerce.

A primary purpose of ISTEA was the efficient movement of passengers and freight. ISTEA emphasized the contributions of the transportation sectors to increased productivity growth. It recognized the external benefits of reduced air pollution, reduced traffic congestion, and other aspects of quality of life. Strategic investment in those components that would make the transportation system run most effectively was the hallmark of ISTEA.

#### *National Highway System Designation Act of 1995*

The National Highway System Designation Act was signed into law by President Clinton on November 28, 1995. The purpose of the NHS Act was to designate the National Highway System, consisting of the Interstate System and those principal arterial routes that are essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities and trade. The NHS Act also amended the Intermodal Surface Transportation Efficiency Act of 1991 to extend additional flexibility to the States on eligible uses of Federal transportation funds and to repeal Federal mandates.

With the completion of the 43,000 mile Interstate System, the Congress recognized that the primary Federal responsibility to ensure adequate mobility on our transportation system for people and goods could be achieved on a larger network of roads. The 161,075-mile National Highway System, which encompasses the Interstate System, is to “provide an interconnected system of principal arterial routes that will serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities, and other major travel destinations; meet national defense requirements and serve interstate and regional traffic.”

The NHS carries more than 40 percent of the Nation’s highway traffic and 70 percent of truck freight traffic. The NHS represents 4 percent of the Nation’s most heavily traveled miles of the four million miles of public roads. Rural roads comprise 75 percent and urban roads comprise 25 percent of the National Highway System.

Americans depend on an efficient NHS that provides critical connections between urban and rural communities. Over 90 percent of the U.S. population lives within 5 miles of an NHS route. Nearly

90 percent of U.S. counties have NHS routes within their jurisdiction. These counties account for 99 percent of all manufacturing jobs and 93 percent of all agricultural jobs.

The further development of and improvement to the National Highway System is a fundamental principal of the Intermodal Surface Transportation Efficiency Act of 1997. ISTEA II will dedicate approximately 50 percent of total annual transportation funds provided in this bill to the maintenance and development of this premiere transportation network. This total funding represents an increase over the nearly 40 percent dedicated to the National Highway System in ISTEA 1991.

*Intermodal Surface Transportation Efficiency Act of 1997*

The Intermodal Surface Transportation Efficiency Act of 1997 continues the transportation policy of the United States to “develop a National Intermodal Transportation System that is economically efficient and environmentally sound, provides the foundation for the Nation to compete in the global economy, and will move people and goods in an energy efficient manner.”

ISTEA II is a comprehensive six-year measure to reauthorize the Nation’s Federal-aid highways, highway safety, and other surface transportation programs. It provides \$145 billion over the next 6 years to ensure that our State transportation partners have the financial resources and administrative flexibility essential to meet diverse regional challenges to the national transportation system.

The funding provided in this legislation represents a 20 percent increase over the funding level authorized in ISTEA 1991. ISTEA II upholds and strengthens the laudable goals of mobility, intermodalism, efficiency and program flexibility that were the hallmarks of ISTEA I.

According to the Bureau of Transportation Statistics, the United States has the largest transportation system in the world—170,000 miles of National Highway System routes, 900,000 miles of other Federal-aid roads, and 3.7 million miles of other public roads. Our national network of highways carries 136 million cars, 58 million light trucks, 6.9 million freight trucks and 686,000 buses. In 1995, cars and light trucks—mostly personal vehicles—were driven 2.2 trillion miles. These figures illustrate that many key components of our highway network are severely strained. From the aging infrastructure in the Northeast, the capacity limitations in the growing South and Southwest, and the expansive rural features in the West, financial investments in transportation are critical to maintain and improve the performance of our national transportation system.

Transportation provides the links between businesses, industries and consumers. The national economic benefits of a healthy and reliable Federal investment in transportation infrastructure are well documented. Transportation and related industries employ 9.9 million people in the United States—slightly more than 7 percent of the total civilian work force. As one of the largest sectors of our economy, transportation accounts for nearly 11 percent of gross domestic product (GDP). Figure 1 below compares the transportation sector to other sectors in the economy.

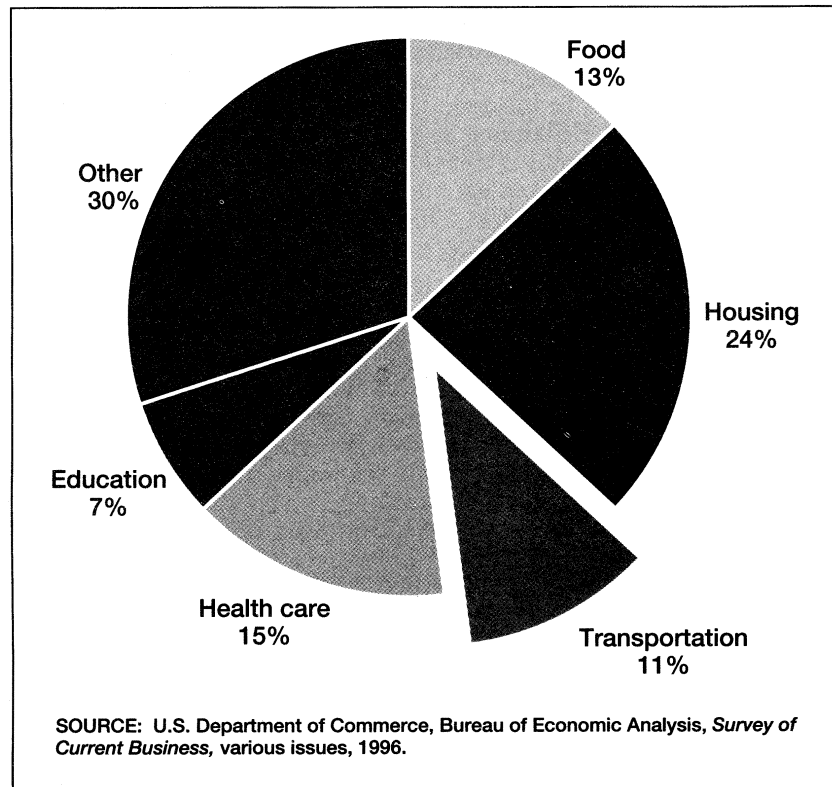


Figure 1. U.S. Gross Domestic Product by major social function, 1995.

Transportation remains a sound investment for the American taxpayer. The Department of Transportation estimates that for every dollar invested, there is an economic return of \$2.60.

The Intermodal Surface Transportation Efficiency Act of 1997 responds to the many competing demands on transportation by ensuring the efficient mobility of people and goods, and improving access to an interconnected, multimodal system in a safe, environmentally responsible manner.

Foremost, ISTEA II provides a Federal investment level of \$145 billion over the next 6 years for highway and highway safety programs that is consistent with our national goals to achieve a balanced budget by the year 2002.

Second, it provides new financing tools and techniques to stimulate partnerships between traditional public resources and the private sector. An expansion and simplification of the State Infrastructure Bank Program and landmark financing options through new Federal secured loans and lines of credit will give our transportation partners new opportunities to finance high cost infrastructure projects. Clearly, many of these important projects promise significant public benefits, but, they are difficult to finance within the limitations of a State's annual Federal apportionment. These financing tools will be beneficial to States with older trans-

portation facilities that require major rehabilitation and to States with significant capacity constraints that cause consumers and freight carriers hours of wasted time and productivity caused by gridlock.

Third, ISTEA II maximizes State and local transportation decisionmaking, with full public participation, through a consolidated and streamlined program that recognizes diverse regional needs. It maintains our national commitment to enhance the development of the National Highway System, ensures the maintenance and preservation of the Interstate System, continues the investment in the Nation's bridges and increases the eligible uses of transportation funds. This expanded eligibility is essential for consumers and commercial truck traffic to realize the advantages of a seamless intermodal transportation system. States will enjoy the full authority, in partnership with local and regional governments, to decide the appropriate level of investment in additional roads, expanded transit services, or Amtrak services to improve mobility, expand access or stimulate economic development.

The bridge program under ISTEA I is integrated as significant factors measuring the condition of bridges on our Interstate System, National Highway System, and other Federal-aid roads. The funding level available to States to address functional or structural deficiencies is increased from approximately \$3 billion per year under ISTEA I to more than \$4 billion in ISTEA II. Requirements that States maintain a level of spending on our Nation's bridges consistent with 1997 apportionments will ensure a continued Federal interest in the preservation of all classes of bridges.

Fourth, ISTEA II takes significant steps forward to address the safety of the traveling public. Accidents involving motor vehicles account for more than 40,000 deaths each year. Many fatalities could be avoided if more drivers, occupants and pedestrians followed well-known safety procedures. Abuse of alcohol remains a dominant factor in 40 percent of highway deaths. Although seat belt use is increasing, many passengers still do not buckle up. According to National Highway Traffic and Safety Administration (NHTSA) estimates, there would be more than 9,000 fewer fatalities if everyone used seat belts. ISTEA II establishes two new programs to encourage States to increase the use of seat belts and to enact minimum penalties for repeat drunk driving offenders. Financial incentives are provided to urge States to carry out these programs aggressively.

Railway-highway grade crossings and hazard elimination programs remain a central feature of safety initiatives to improve our roadways. States are required to continue to dedicate funds to these important activities, but additional flexibility is provided to permit States to use these limited resources to address their individual safety problems.

Fifth, ISTEA II retains a strong commitment of the transportation sector to finance and contribute to the protection of our environment. The Congestion Mitigation and Air Quality improvement program is continued with an increased funding level and expanded assistance for maintenance areas. Funds made available under this program are to be utilized in air quality nonattainment and maintenance areas on projects that will likely produce air

quality benefits. The program is expanded to permit States to enter into partnerships with the private sector on beneficial projects such as alternative fuel vehicles. The enhancements program is continued with a dedicated funding source to ensure that transportation projects of historical, cultural, or environmental significance are fully integrated into the transportation process.

Finally, ISTEA II also recognizes the strategic importance of technology in providing cost-effective solutions to congestion and safety problems of the 21st century. The bill builds on and expands research programs first authorized in ISTEA and encourages further research and demonstration of technology in vehicles, vehicle systems and infrastructure to increase safety, benefit the environment, and increase savings and investment in the use of advanced materials and construction techniques.

#### SUMMARY OF TITLE I—SURFACE TRANSPORTATION

Title I reforms and enhances the Intermodal Surface Transportation Efficiency Act of 1991 in a number of ways. First, it significantly reforms ISTEA's funding formulas to balance the needs of the various regions throughout the Nation. It simplifies and streamlines the number of major program categories from five to three by incorporating the bridge program and the Interstate program into the two of the three other core programs.

Second, title I includes innovative finance measures to maximize limited Federal resources. The bill establishes a new innovative financing program that will provide \$500 million to leverage a \$10 billion dollar Federal line of credit to support new transportation projects. It also expands the State Infrastructure Bank (SIB) program established in the NHS Designation Act.

Third, title I provides increased flexibility and simplicity for States and localities in carrying out the program. It includes more than 20 measures to streamline and improve project approval and planning for surface transportation projects. It expands the eligibility of National Highway System program and Surface Transportation Program funds to increase the ability of States to meet their transportation needs.

Fourth, title I strengthens ISTEA's commitment to the environment. It increases funding for the CMAQ program by an average of 18 percent over the level provided in ISTEA. It provides a 25 percent increase in the funds set-aside for transportation enhancement activities, such as bicycle pedestrian facilities and historic preservation. Title I also establishes a new wetlands restoration pilot program to help offset the loss or degradation of wetlands resulting from highway construction.

Fifth, title I includes provisions to improve safety on the Nation's highways. It increases the funds set-aside for safety programs such as hazard elimination and railway-highway crossings by an average of 56 percent over the level provided in ISTEA. The bill establishes a new safety belt incentive program to provide performance grants to those States that increase their annual seat belt use rate or that surpasses the national average seat belt use rate. It establishes a new program to encourage States to enact laws with minimum penalties to target repeat drunk driving offenders.

Sixth, title I preserves the strong metropolitan and statewide planning provisions of the original ISTEA and retains the set-aside for metropolitan planning. It also establishes a new pilot program to integrate transportation planning and community preservation.

Seventh, title I establishes a trade corridor and border infrastructure, safety and congestion relief program to enhance the global competitiveness of the United States through the more efficient movement of goods.

Finally, title I reauthorizes the Federal lands highway program and allows other Federal land management agencies to help contribute to Federal lands highway projects. It also creates a new cooperative Federal lands program to help improve those roads that provide access to Federal lands.

#### SUMMARY OF TITLE II—RESEARCH AND TECHNOLOGY

Title II includes two components, Research and Training, and Intelligent Transportation Systems. Title II provides contract authority for a comprehensive surface transportation research, development, and technology transfer program. It authorizes a strategic planning process and funds advanced and multimodal research. It requires the Secretary to submit an annual report on the Department's research and development program. Title II also reauthorizes the University Transportation Centers program, the Long Term Pavement Performance program (LTPP), the State Planning and Research program, partnerships to implement the Strategic Highway Research Program (SHRP), and the National Technology Deployment Initiative (NTDI). Title II establishes an innovative bridge program to provide research and demonstration grants on the use of advanced materials, including advanced composites and steel, in bridge construction.

With respect to the Intelligent Transportation Systems (ITS) program, title II has two purposes. The first purpose is to incorporate ITS into mainstream transportation planning and construction processes for all transportation modes at the Federal, State and local levels. The second purpose is to integrate or deploy ITS technologies in the Nation's infrastructure. The ultimate goal is to provide coordinated ITS systems that benefit the safe and efficient movement of both passengers and freight.

#### COMMITTEE CONSIDERATION

On September 12, 1997, Senator Warner, chairman of the Subcommittee on Transportation and Infrastructure of the Committee on Environment and Public Works, introduced S. 1173, the Intermodal Transportation Act of 1997. Senators Chafee, Baucus, Bond, Smith of New Hampshire, Graham, Reid, Kempthorne, Thomas, Allard, Inhofe, Dorgan, Harkin, Grassley, and Johnson were original cosponsors of the legislation.

On September 17, 1997, the Senate Committee on Environment and Public Works conducted a business meeting to consider S. 1173. The bill, as amended, was ordered reported by a vote of 18-0. During the business meeting, the committee adopted an amendment to change the name of the bill to the Intermodal Surface Transportation Efficiency Act of 1997 (ISTEA II).

## SECTION-BY-SECTION ANALYSIS

## TITLE I—SURFACE TRANSPORTATION

*Section 1. Short Title; Table of Contents.*

This section designates the title of the bill as the “Intermodal Surface Transportation Efficiency Act of 1997,” and lists the table of contents.

*Sec. 2. Definition.*

This section defines the term “Secretary” for the purposes of this Act as the Secretary of Transportation.

*Sec. 1001. Short Title.*

This section designates title I of this bill as the “Surface Transportation Act of 1997.”

*Subtitle A—General Provisions**Sec. 1101. Authorizations.*

## SUMMARY

This section provides contract authority from the Highway Trust Fund for each of fiscal years 1998 through 2003 for the Interstate and National Highway System Program; the Surface Transportation Program; the Congestion Mitigation and Air Quality Improvement Program; and the Federal Lands Highways Program.

Authorizations for other highway trust-funded programs not included in this section are included in the legislative provisions authorizing the programs themselves, such as the Federal Highway Administration’s research and technology and Intelligent Transportation Systems.

## DISCUSSION

The Interstate and National Highway System Program (INHS) is authorized at an average of \$12.1 billion per year over the life of the program. Approximately \$6.1 billion of the INHS program is reserved for the preservation of roads and bridges on the Interstate System. States may spend funds provided under the Interstate maintenance and Interstate bridge components for any eligible project on the Interstate system. There is no individual spending requirement for the Interstate maintenance component or the Interstate bridge component.

An average of almost \$7.2 billion is authorized each year from fiscal years 1998 through fiscal year 2003 for the Surface Transportation Program. Authorizations for the Congestion Mitigation and Air Quality improvement program average almost \$1.2 billion per year over the six-year period. The Federal Lands Highway Program is authorized at \$536 million per year, including \$200 million for Indian Reservation Roads, \$90 million for Parkways and Park Roads, \$172 million for Public Lands Highways, and \$74 million for the Cooperative Federal Lands Transportation Program.



*Sec. 1102. Apportionments.*

## SUMMARY

This section provides the basis for distributing apportioned funds among the States. It includes provisions for apportioning funds to the following programs: Interstate and National Highway System, Congestion Mitigation and Air Quality, Surface Transportation Program funds and other apportionment adjustments, using current indicators to measure the needs, extent, use, and condition of the Federal-aid highway System, and air quality severity in non-attainment and maintenance areas.

## DISCUSSION

The section replaces the apportionment formulas provided in ISTEA with apportionments based on current transportation measurements in each State. By contrast, ISTEA apportioned a majority of funds to the States based on each State's historical share of apportionments received in 1987 through 1991.

To ensure an efficient and competitive transportation system into the 21st century, this section provides for the use of indicators that measure the needs, condition, extent and use of the Nation's transportation network today. Many apportionment factors used in this section draws upon the suggested alternatives of the General Accounting Office report, "Highway Funding, Alternatives for Distributing Federal Funds," November 1995.

The Interstate and National Highway System (INHS) program funds are apportioned in three components. The Interstate maintenance component of INHS is apportioned based on a State's share of total Interstate lane miles and total Interstate vehicle miles traveled within the State. The Interstate bridge component of the INHS program is distributed according to the State's share of total square footage of structurally deficient and functionally obsolete Interstate bridges within the State. The National Highway System component of the INHS program is distributed based on a State's share of: (1) total lane miles of principal arterial routes (excluding Interstate lane miles), (2) total vehicle miles traveled on principal arterials (excluding Interstate lane miles), (3) total square footage of deficient bridges on principal arterials (excluding Interstate routes), (4) diesel fuel use, and (5) total lane miles of principal arterials per capita. Each State is guaranteed a minimum  $\frac{1}{2}$  of 1 percent of funds apportioned under the INHS program.

This section also preserves the basic structure of the current formula for the Congestion Mitigation and Air Quality (CMAQ) improvement program, using population and the severity of air pollution as the key apportionment factors. The apportionment formula for CMAQ adds a weighting for carbon monoxide nonattainment and maintenance areas, ozone maintenance areas, and submarginal ozone nonattainment areas. These areas were added because they are required under the Clean Air Act to adhere to maintenance plans in meeting air quality requirements. As in current law, each State is guaranteed a minimum share of  $\frac{1}{2}$  of 1 percent of total annual CMAQ apportionments.

The Surface Transportation Program (STP) funds are apportioned based on a State's share of the following: (1) total Federal-

aid highway lane miles, (2) total vehicle miles traveled on Federal-aid highways, (3) total square footage of deficient bridges on Federal-aid highways (excluding deficient bridges on the Interstate and other principal arterials); and (4) contributions into the Highway Account of the Highway Trust Fund. Each State is guaranteed a minimum  $\frac{1}{2}$  of 1 percent of funds apportioned under the STP program.

This section replaces the existing five apportionment adjustments with two apportionment adjustments, the ISTEA transition and the Minimum Guarantee. The ISTEA transition adjustment provides a ceiling (a “maximum transition”) and a floor (a “minimum transition”) for this adjustment. The maximum transition provides that a State’s apportionments under this section may not increase by more than a specified percentage (e.g., 45 percent in 1998) over its ISTEA average funding level. The minimum transition adjustment ensures that a State’s apportioned funds will either: (1) increase by a specified percentage (e.g., at least 7 percent in fiscal year 1998) from the average of its apportioned programs under ISTEA (excluding funds apportioned for Interstate Construction, Interstate Substitution, the so-called “Hold Harmless” program and Federal Lands) or (2) be equal to at least the amount that a State received in fiscal year 1997 from all apportioned programs in ISTEA, excluding Hold Harmless and demonstration projects.

The other apportionment adjustment provides a Minimum Guarantee based on total apportioned funds. This Minimum Guarantee is divided into two components. The first component provides that a State will receive a minimum share of total apportioned funds equal to 90 percent of its share of contributions into the Highway Account of the Highway Trust Fund. Although similar to the 90 percent Minimum Allocation program under current law, it differs in several significant ways from current law.

First, the Minimum Guarantee applies to 100 percent of apportioned funds rather than to only a portion of apportioned funds. The Minimum Allocation under current law only applied to less than 80 percent of apportioned funds in ISTEA, leaving some States to receive a percentage equal to 70–80 percent of their share of contributions. Second, the calculation is reformed so that the 90 percent guarantee is actually achieved. Even if the current Minimum Allocation calculation was modified to apply to all apportioned funds, States will come close to reaching a 90 percent guarantee, but will not reach a 90 percent guarantee, because the 90 percent Minimum Allocation received by one State dilutes the percentage for all other States. The 90 percent guarantee calculation in ISTEA II eliminates this problem and achieves at least a 90 percent guarantee for all States.

The amount apportioned to each State under the first component of the Minimum Guarantee calculation will vary as each State’s share of contributions varies from year to year.

The second component of the Minimum Guarantee provides a minimum share for States listed in the table in the new section 105 (a)(2) of title 23. This calculation applies to States with unique characteristics such as low population density or small land areas.

This section also continues the 1 percent set-aside for metropolitan planning that is consistent with current law. The purpose of the set-aside for metropolitan planning is to assist metropolitan areas with the metropolitan planning requirements continued from current law.

In all cases, the factors to be used in the apportionment formulas are to be based on the latest available data and are to be updated each year.

*Sec. 1103. Obligation Ceiling.*

SUMMARY

This section sets the annual obligation limitation for the Federal-aid highway program, specifies the programs that are exempt from the obligation limitation, and includes the process for distributing the annual obligation limitation.

DISCUSSION

For fiscal years 1998 through 2003, the obligation limitation for Federal-aid highways is as follows: for fiscal year 1998, \$21,800,000,000; for fiscal year 1999, \$22,768,000,000; for fiscal year 2000, \$22,901,000,000; for fiscal year 2001, \$23,070,000,000; for fiscal year 2002, \$23,511,000,000; and for fiscal year 2003, \$24,259,000,000.

Consistent with current law, this section continues the exemptions for programs that were exempt from the obligation limitation under ISTEA. This exemption includes the Emergency Relief program, unobligated balances for demonstration projects that were already exempt from the limitation in ISTEA, and funds apportioned under subsection (a) of the Minimum Guarantee adjustment.

This section also continues the practice that directs the Secretary to distribute the annual obligation limitation imposed on the Federal-aid highway program. Consistent with current law, the Secretary will distribute the annual obligation authority to the States in the ratio that the total of Federal-aid highway funds and highway safety funds for each State bears to the total of Federal-aid highway funds and highway safety funds for all the States. After August 1 of each fiscal year, the Secretary is required to distribute the additional obligation authority from States unable to use their obligation authority by the end of the fiscal year to those States able to obligate the unused obligation authority.

*Sec. 1104. Obligation Authority Under Surface Transportation Program.*

SUMMARY

This section continues current procedures in section 133(f) of title 23, United States Code, regarding the sub-allocation of Surface Transportation Program (STP) funds to urbanized areas. The purpose of this requirement is to ensure that the obligation rate of the STP funds for urbanized areas within a State is consistent with the larger obligation rate for all Federal-aid highway apportionments within the State. This section amends current law to require States to comply with obligation rates over two equal three-year periods,

as opposed to the existing requirement of complying over a single six-year period.

#### DISCUSSION

This change will strengthen the obligation rate requirements for the urban sub-allocation, ensuring that urban areas receive a pro-rata portion of funds throughout the six-year authorization.

#### *Sec. 1105. Emergency Relief.*

#### SUMMARY

This section restates the eligibility for highway and bridge projects and the funding requirements for the emergency relief (ER) program. ER funds can be used only for emergency repairs done to restore essential highway traffic, to minimize the extent of damage, or to protect the remaining facility, resulting from a natural disaster or catastrophic failure. The Secretary is also authorized to obligate amounts necessary from any program under title 23 for emergency relief work. These additional funds shall be reimbursed with future ER appropriations. This section also makes ER funds available until expended, an increase from the 2 years provided under current law.

This section clarifies eligibility under the ER program for a 600-foot bypass for Route 1, south of San Francisco, in San Mateo County, which was and still is subject to periodic landslides and closures.

#### DISCUSSION

This section continues the requirements of the Emergency Relief program.

#### *Sec. 1106. Federal Lands Highway Program.*

#### SUMMARY

This section retains the structure of the Federal Lands Highway Program (FLHP). The process for inclusions of FLHP projects in the Statewide and Metropolitan planning process has been streamlined.

This section also allows Federal land management agencies to use their program funds to provide the non-Federal share for FLHP projects. FLHP project funds may be used to provide the non-Federal share for other title 23 projects undertaken on projects providing access to Federal lands.

#### DISCUSSION

The streamlining of the planning process under this section should be implemented through the notice, comment and rule-making process. Because many FLHP projects are constructed, improved on or maintained by the States, the views of the States are to be considered in this process.

Eligibility of FLHP funds is extended to include transit facilities found within public lands. This expanded eligibility is important, as bus systems can reduce congestion and other negative impacts

of passenger vehicle traffic within our national parks and other Federal lands.

*Sec. 1107. Recreational Trails Program.*

SUMMARY

This section incorporates the existing Recreational Trails Program into the Federal-aid Highway Program. The Recreational Trails Program will now be funded through contract authority from the Highway Trust Fund. The Federal share payable for projects under the Recreational Trails Program is increased from 50 percent to 80 percent. In addition to the Department of Transportation, other Federal agencies may contribute additional funds for a Recreational Trails project. However, the Federal share from the Department for such projects shall not exceed 80 percent and the combined Federal share shall not exceed 95 percent.

This section retains the current requirement regarding the States' use of annual apportionments: at least 30 percent of funds must be used to facilitate nonmotorized recreation and 30 percent of the funds must be used for motorized recreational purposes. A State shall use the remaining funds for diverse recreational purposes, including both motorized and nonmotorized recreational trail use.

This section provides contract authority from the Highway Trust Fund for the Recreational Trails program as follows: \$17,000,000 for fiscal year 1998; \$20,000,000 for fiscal year 1999; \$22,000,000 for fiscal year 2000; \$23,000,000 for fiscal year 2001; \$24,000,000 for fiscal year 2002; and \$25,000,000 for fiscal year 2003.

DISCUSSION

This section continues the Recreational Trails program and increases the Federal share payable on each project to 80 percent. The Federal share for this program is consistent with the Federal share available for other Federal-aid projects. Experience with implementing Recreational Trails projects in the past has shown that project sponsors for nonmotorized trail projects were significantly disadvantaged in meeting the higher non-Federal matching requirements.

*Sec. 1108. Value Pricing Pilot Program.*

SUMMARY

This section changes the name of the congestion pricing pilot program in current law to the value pricing pilot program. The number of pilot programs eligible for funding under this section is increased from 5 to 15. A total of \$8 million in contract authority is made available for this program for each of the fiscal years 1998 through 2003. Funds shall remain available for 3 years after the last day of the fiscal year in which the funds are authorized.

DISCUSSION

A number of States and localities have used funds provided under ISTEA to complete feasibility studies and implementation of value pricing projects. This section provides funding and additional

flexibility to allow these areas to continue value pricing projects and to allow additional areas to pursue these projects.

Under the program, eligibility for value pricing program funds is extended to all preimplementation and design costs to give States more flexibility to study options for different types of value pricing projects.

This section also includes an exemption from the high occupancy vehicle (HOV) requirement of subsection 102(b) of title 23, which will permit single occupancy vehicles to operate in high occupancy vehicle lanes if such vehicles are part of a value pricing program. High Occupancy Vehicle (HOV) lanes are required generally to have two occupants per vehicle.

It is expected that all of the projects undertaken through funds provided under this section will include a thorough evaluation component that will evaluate the projects effects, including its impacts on congestion, air quality, transit usage, and socioeconomic effects.

*Sec. 1109. Highway Use Tax Evasion Projects.*

#### SUMMARY

This section eliminates two tax evasion study requirements in current law. First, it eliminates requirements for the Secretary of Transportation to report annually to Congress on motor fuel tax enforcement activities. The Department has found other methods of reporting program successes, such as Congressional hearings, an effective means of communicating this information to Congress. Second, it deletes out-of-date requirements that the Secretary, in consultation with the Internal Revenue Service (IRS), report to Congress on the feasibility and desirability of using dye and markers to aid in motor fuel tax enforcement activities.

This section provides \$5 million in contract authority, for each of fiscal years 1998 through 2003 to continue joint FHWA-IRS-State motor fuel tax compliance projects across the Nation, as established in section 1040 of ISTEA. The Federal share of the cost of tax evasion projects shall be 100 percent. This section also authorizes appropriations for an additional \$8 million for the Secretary to enter into a memorandum of understanding with the Commissioner of the IRS for the purpose of the IRS' developing and maintaining an excise fuel reporting system (ExFIRs). The MOU shall require that the IRS develop and maintain the system, and that the system be under control of the IRS. The MOU also shall specify that the system is made available for use by appropriate State and Federal revenue tax or law enforcement authorities. Another \$2 million for each of fiscal years 1998 through 2003 is authorized to be appropriated for the operation and maintenance of the system.

#### DISCUSSION

This section codifies and expands the successful tax evasion program in section 1040 of ISTEA. In addition to these provisions, the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) resulted in additional successes. OBRA 1993 required the dyeing of untaxed diesel fuel to differentiate it from taxed fuel. To supplement the roadside inspection program, the IRS entered into an interagency agreement with FHWA to distribute nearly \$4 million in IRS funds

to States willing to conduct roadside diesel fuel inspections on behalf of the IRS. More than 25 States are participating in this initiative. In 1994, the Highway trust fund revenue from diesel fuel tax was increased more than \$1 billion compared to 1993, with as much as \$700 million attributed to improved compliance. The multi-State nature of the enforcement and uniformity efforts first developed under ISTEA has been important to its effectiveness.

In addition, the committee is providing a one-time authorization of appropriations to complete the development of an excise fuel reporting system and an annual amount for the operation and maintenance of the system. This system will provide essential information regarding data on import and refinery production of motor fuel to compare with terminal fuel receipts and fuel deliveries. This new program, along with the continuing program, is necessary to help ensure that the successful, coordinated regional and national approach to combat fuel tax fraud can continue and improve.

*Sec. 1110. Bicycle Transportation and Pedestrian Walkways.*

SUMMARY

This section amends section 217 of title 23, United States Code, to include the construction of pedestrian walkways as an eligible use of a State's National Highway System (NHS) apportionments under the same criteria by which bicycle transportation facilities currently are eligible. This section eliminates the restriction on the use of NHS funds for the construction of bicycle transportation facilities on land adjacent to the Interstate System and amends current law to allow the safe accommodation of bicycles on highway bridges located on fully access-controlled highways, if the bridge is being replaced or rehabilitated with Federal funds.

The planning provisions in sections 134 and 135 of title 23 are amended to provide that bicyclists and pedestrians shall be given consideration in the comprehensive Statewide and metropolitan planning processes, and that the inclusion of bicycle and pedestrian facilities shall be considered, where appropriate and permitted, in conjunction with all new construction and reconstruction of transportation facilities.

DISCUSSION

The Intermodal Surface Transportation Efficiency Act of 1991 made progress to encourage bicycling and walking as alternative modes of transportation. This section builds on ISTEA by expanding the amount of funds available to be used for these purposes. The Department should work with the States to ensure that bicycling and pedestrian interests are represented in State and MPO decisionmaking.

*Sec. 1111. Disadvantaged Business Enterprises.*

SUMMARY

This section continues the provisions in current law regarding the disadvantaged businesses enterprise (DBE) program. The DBE program, which originated in the Surface Transportation Assistance Act of 1982, requires that 10 percent of the funds provided

under title I of this Act be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals, except to the extent that the Secretary of Transportation determines otherwise.

#### DISCUSSION

In 1995, the Supreme Court decided *Adarand v Peña*, which heightened the standard of judicial review applicable to Federal affirmative action programs. The case involved a Caucasian subcontractor who submitted a low bid on a Federal lands highway construction contract, but lost to a company that was certified as “disadvantaged.” Adarand filed suit, alleging that he was denied the equal protection guaranteed by the Fifth amendment. The Court agreed in a 5–4 decision that Federal race classifications, such as the DBE program, must be subject to strict scrutiny. In other words, the program must: (1) serve a compelling government interest, and (2) be narrowly tailored to address that compelling interest, which in this case is fighting discrimination.

It is important to note that the Supreme Court did not strike down the DBE program or any other Federal affirmative action program. That means that if the program in question meets the new test outlined by the Court, it is Constitutional and may continue to exist. In the case of the DBE program, the Department of Transportation has determined that the Constitutional concerns can be addressed through changes in the Department’s regulations. To that end, the Department has proposed a number of regulations intended to address the “narrow tailoring” requirements of “strict scrutiny” by (1) giving priority to race-neutral measures in meeting program goals, and (2) limiting the potential adverse effects of the program on other parties.

*Sec. 1112. Federal Share Payable.*

#### SUMMARY

This section amends section 120 of title 23, United States Code, to allow a State, if it chooses, to reduce the Federal share of a Federal-aid highway project. This section also codifies a provision established in ISTEA, which allows States to apply toll revenues used for specified capital improvements to their non-Federal share requirement for title 23 projects.

#### DISCUSSION

Nothing in this section is intended to require a State to lower the Federal share payable on any project funded under this title.

*Sec. 1113. Studies and Reports.*

#### SUMMARY

This section includes a requirement for the General Accounting Office to complete certain program evaluations, and for the Secretary of Transportation to report to the Congress on obligations under the Federal-aid highway program.



## DISCUSSION

This section requires the General Accounting Office (GAO) to report to Congress on the Department's methodology for determining highway needs using the Highway Economic Requirement System (HERS). HERS is a computer program developed to use economic criteria and engineering criteria in estimating highway investment requirements. The HERS selects the "best" set of highway improvements to satisfy economically sound highway performance objectives. The GAO is required to provide Congress with an assessment of the extent to which the model is useful in estimating an optimal level of highway infrastructure investment.

The HERS approach, upon which analysis of the Economic Efficiency scenario is based, relies on Benefit/Cost Analysis to evaluate the attractiveness of potential highway improvements. The model will implement only those projects for which benefits exceed the initial cost of improvement.

Since the HERS model is now the Department's primary tool for recommending to the Congress appropriate investment levels for highway needs, it is important that an evaluation be conducted by an independent entity on the reliability and accuracy of the model as a policy tool for determining infrastructure investment levels. The Comptroller General is encouraged to build upon the Department's own evaluation of this new investment analysis tool.

This section also requires the Comptroller General to submit a report to the Congress on the International Roughness Index (IRI) that is being used currently to measure the pavement quality of the Federal-aid highway system. Concerns have been raised as to the reliability of the IRI measurement across different manufacturers and types of pavements. The IRI is one of the inputs used in the HERS model discussed above. The IRI study shall indicate usage of this index and the extent to which the IRI measurement is reliable.

This section also requires the Secretary to report annually on the rates of obligation of funds apportioned under Federal-aid highway programs. The report shall include information regarding funding category or subcategory, type of improvement, and substate geographic area. The report should provide a meaningful comparison of obligation rates and overall contract authority. No additional information is necessary from the States because of this reporting requirement on the Secretary.

*Sec. 1114. Definitions.*

This section provides definitions for the terms "Federal-aid highway funds" and "Federal-aid highway program."

## DISCUSSION

These phrases are used throughout title 23, but are not defined in current law. The addition of these clarifying definitions is not intended to change the implementation of any section under current law.

*Sec. 1115. Cooperative Federal Lands Transportation Program.*

## SUMMARY

This section establishes a new section 207 in chapter 2 of title 23, United States Code, which provides a funding source for public roads or bridges owned by States or their political subdivisions that crosses, are adjacent to, or provide access to, Federal lands and Indian reservations (including reservoirs owned by the Army Corps of Engineers). These roads help provide adequate and safe transportation and supplement the efforts of the Federal Government in developing and maintaining roads or bridges that serve federally owned land and Indian reservations (including reservoirs owned by the Army Corps of Engineers).

States with more than 4.5 percent of their State land held in trust or owned by the Federal government are eligible to receive funding under this program. Funds provided under the program are to be used for improvements to roads and bridges providing access to Federal lands. Contract authority of \$74 million per year is provided for this program.

## DISCUSSION

The Cooperative Federal Lands Transportation Program ensures that funding will be provided for projects in States with sizeable Federal lands holdings. Different from the regular Federal lands program, the Cooperative Federal Lands Transportation program provides funds directly to these States for projects that provide access to Federal lands and Indian reservations. Roads and bridges may be owned or maintained by the State or their political subdivisions.

This program will help local jurisdictions maintain public roads that serve Indian reservations and are used by school buses to transport children to or from school or a Headstart program. Such jurisdictions, which comprise mostly Federal or tribal land, and may not do not have sufficient tax bases to support the maintenance of roads on these Federal lands.

This section is not intended to replace any funding that a State may receive or seek from the Public Lands discretionary program. Funding provided under this section is intended to supplement efforts by States and Federal lands management agencies to meet the tremendous backlog of transportation projects in their jurisdictions. This section is to have a neutral impact on funding decisions made by the Federal lands management agencies in determining their priorities under the Federal Lands Highway Program.

*Sec. 1116. Trade Corridors and Border Crossing Planning.*

## SUMMARY

This section authorizes the Secretary of Transportation to provide grants for planning and project implementation to improve the freight movement at international border crossings with Mexico and Canada, and along significant transportation trade corridors. Planning and implementation grants may be awarded to eligible States or metropolitan planning organizations.

The section provides \$1.4 million in contract authority for each fiscal years 1998 through 2003 for annual incentive grants to eligible States and metropolitan planning organizations for joint transportation planning to foster efficient and timely movement of goods at border gateways. An additional \$3.0 million in contract authority is made available for of each fiscal years 1998 through 2003 for grants to States who engage in cooperative, multistate corridor planning to promote the safe and efficient movement of goods along international trade corridors.

A total of \$125 million is authorized to be appropriated for each of fiscal years 1998 through 2003 for grants to States to help carry out transportation projects that will accommodate increased commercial traffic through border crossings, State ports of entry, and international trade corridors.

The Federal share payable for grants awarded under this section shall not exceed 80 percent.

The General Services Administration is the lead Federal agency in the planning and development of border stations. The Secretary, upon receiving a request from the Administrator of General Services and the U.S. Attorney General, is authorized to transfer up to \$10 million in each of fiscal years 1998 through 2003 to the General Services Administration for the purposes of constructing transportation facilities that are necessary for law enforcement in border States.

#### DISCUSSION

The growth in international trade following the implementation of the North American Free Trade Agreement (NAFTA) in 1994 and other trade agreements is straining key components of the transportation system in the United States.

States along the Mexican and Canadian border have witnessed substantial increases in international commercial freight traffic exceeding the design capacity of State highway routes and city streets that can serve as the primary trade routes. For example, according to the Bureau of Transportation Statistics, truck freight movements have increased by 24 percent from 1994 to 1996. Increased trade traffic also have placed heavy burdens on trade corridors connecting border locations and other ports of entry with major trade centers in the interior United States.

Accordingly, a coordinated policy between Federal, State and local governments is needed to assimilate this growing trade into the national transportation system. Access must be improved to gateway facilities; the impacts of congestion must be reduced; creative alternatives to limited and costly physical infrastructure improvements must be addressed; and safety, environmental and commerce regulations must be enforced. Improvements in these areas will promote the efficient movement of goods and will reduce the environmental impacts associated with this increased trade.

The Secretary may consider the State's own effort in providing improvements to border crossing facilities in awarding grants under this section.

The funds provided in this section will assist States and metropolitan planning organizations with coordinated planning and infrastructure improvements in border communities with the highest

percentage of commercial vehicle traffic. States with significant trade corridors also will receive planning and infrastructure assistance to facilitate the coordinated development of trade corridors with neighboring States.

States along a trade corridor are encouraged to work in close cooperation with one another to ensure continuity in the planning of the corridor. The Secretary is to consider the use of the corridor by neighboring States when awarding a grant under this section.

*Sec. 1117. Appalachian Development Highway System.*

SUMMARY

This section provides funds to assist with the continued construction of the Appalachian Development Highway System located in regions of the 13 States that comprise the Appalachian Regional Commission. A total of \$40 million for each of fiscal years 1998 through 2000; \$50 million for fiscal year 2001; \$60 million for fiscal year 2002; and \$70 million for 2003 is authorized.

The Federal share payable for pre-financing costs for Appalachian Development Highway projects is increased from 70 percent to 80 percent.

The Appalachian Development Highway System map is revised to substitute the Virginia portion of Corridor H with the Virginia portion of the Coalfields Expressway authorized in the National Highway System Designation Act of 1995.

DISCUSSION

The Appalachian Development Highway System was authorized in 1965 for the purpose of stimulating economic development in the geographically isolated Appalachian region. The system was designed primarily to provide efficient connections and access for the region to the Interstate system.

The Appalachian Development Highway System consists of 3,025 miles in areas of the 13 States which comprise the Appalachian Regional Commission. Today, 2,219 miles of the system are completed and another 137 miles are under construction. A total of 669 miles in each of the 13 Appalachian States remains to be constructed to complete the system. Funds provided under this section will be distributed by the Appalachian Regional Commission to individual States based on the cost to complete remaining segments.

In a report prepared by the Federal Highway Administration and the 13 Appalachian States entitled "Appalachian Development Highway System 1997 Costs to Complete Report," the estimated Federal share of the cost to complete the remaining segments is \$6.8 billion.

*Sec. 1118. Interstate 4R and Bridge Discretionary Program.*

SUMMARY

This section authorizes \$140 million to be obligated at the discretion of the Secretary to States for the resurfacing, restoration, rehabilitation or reconstruction of any route on the Interstate system or for the replacement, rehabilitation or seismic retrofit of a highway bridge.

The Secretary may award funds under this program for Interstate 4R projects to those States the Secretary determines: (1) have needs that exceed the apportionments provided under the Interstate components of the Interstate and National Highway System program; and (2) will obligate funds provided under the Interstate and National Highway System program in the fiscal year for which a grant application is submitted.

The Secretary may award funds under this program to States for bridge projects that exceed \$10 million in costs or represent costs which exceed twice the amount of funds that States are required to reserve under section 144 (c).

The Secretary, using funds provided under this section, is required to allocate \$20 million each year to any State that receives less in the bridge apportionment factors used in the Interstate and National Highway System program and the Surface Transportation Program compared with the funds a State received under the bridge program in 1997. States that have transferred more than 10 percent of the funds apportioned under the bridge program in 1995 through 1997 to other Federal-aid transportation projects are not eligible for an allocation from this program.

The seismic retrofit of the Golden Gate Bridge in California is eligible for funds under this section.

#### DISCUSSION

The Interstate 4R and Bridge Discretionary Program will provide \$140 million each fiscal year to the Secretary to assist States with high cost Interstate and bridge needs. The continuation of this discretionary program recognizes that States are challenged with individual high cost projects that are critical to maintaining the Interstate system or for the overall connectivity of our Nation's transportation system.

*Sec. 1119. Magnetic Levitation Transportation Technology Deployment Program.*

#### SUMMARY

This section amends chapter 3 of title 23, United States Code, to add a new section 322, establishing the Magnetic Levitation transportation technology deployment program. The Secretary shall provide financial assistance, which shall not exceed two-thirds of total costs for eligible projects, which include: guideway, stations, vehicles and appurtenant facilities and equipment.

For the MAGLEV program, this section provides a total of \$10 million for fiscal year 1999 and \$20 million for fiscal year 2000 in contract authority from the Highway Trust Fund for planning grants. This section also authorizes appropriations from the Highway Trust Fund of \$200 million for each of fiscal years 2000 and 2001; \$250 million for fiscal year 2002; and \$300 million for fiscal year 2003. In addition, a State may use a portion of its Federal-aid highway funds made available under the CMAQ program or the STP program, to pay a portion of its share of MAGLEV project costs.

## DISCUSSION

MAGLEV (Magnetic Levitation) is the first new transportation technology envisioned since the development of aviation in the early 1900s, and its adoption represents an opportunity for dramatic national gains in transportation efficiency and economic growth. This legislation proposes to demonstrate the feasibility of MAGLEV by authorizing limited Federal participation in financing one or more MAGLEV projects in the U.S.

MAGLEV is an advanced technology in which magnetic forces lift, propel, and guide a vehicle over a guideway. Utilizing state-of-the-art electric power and control systems, this configuration eliminates the need for wheels and many other mechanical parts, thereby minimizing friction and permitting cruising speeds of 300 miles per hour or more three times the speed of conventional American train technology. Because of its high speeds and modest right-of-way requirements, MAGLEV offers significant advantages over auto, rail, and aviation modes in 40-to 600-mile travel markets. MAGLEV is also a very safe technology. When properly designed, MAGLEV is virtually impossible to derail.

*Sec. 1120. Woodrow Wilson Memorial Bridge.*

## SUMMARY

This section amends title IV of the National Highway System Designation Act of 1995 to require the Secretary to execute an agreement with the Woodrow Wilson Memorial Bridge Authority or any Capital Region jurisdiction, Virginia, Maryland or the District of Columbia before funds made available under this section are available for construction of the replacement bridge.

The agreement is required to identify whether the Authority or an individual entity will accept ownership of the new facility, and to include a financial plan that identifies the total cost, schedule and source of funds necessary to complete the project. The Secretary is authorized to use the funds made available under this section for rehabilitation of the existing Woodrow Wilson Bridge and for the engineering, design, and construction of the replacement bridge.

The definition of the project is modified to require that the replacement bridge will be the preferred alternative identified in the record of decision in compliance with the National Environmental Policy Act.

This section authorizes \$100 million for each of fiscal years 1998 and 1999; \$125 million for fiscal year 2000; \$175 million for fiscal year 2001; and, \$200 million for each of fiscal years 2002 and 2003.

## DISCUSSION

The construction of the 6-lane Woodrow Wilson Memorial Bridge was authorized by Congress in 1954 to provide an interstate highway connection between Maryland and Virginia across the Potomac River. As owner of the bridge, the Federal government is responsible for annual rehabilitation costs to ensure that the bridge meets Federal safety standards. Since 1961, Virginia, Maryland and the

District of Columbia have financed the annual operation and maintenance costs.

The Woodrow Wilson Memorial Bridge is the only segment of the 44,000 mile Interstate System that is owned by the Federal government. Today, the bridge carries 175,000 vehicles per day, more than twice its structural design capacity.

Congress has recognized the responsibility of Federal ownership of the bridge and has provided funding for rehabilitation, restoration, and resurfacing work. The Federal-Aid Highway Act of 1981 provided funds for the Department of Transportation to undertake a major resurfacing and redecking project. During the redecking work, the Department recognized that significant rehabilitation work was necessary for the bridge to meet Federal safety standards. A 1994 study commissioned by the Federal Highway Administration to assess the current condition of the bridge confirmed that annual repairs were failing to extend the useful life of the facility and were no longer cost-effective. The report concluded that unless a new facility was constructed within 7 years, possible vehicle weight restrictions may be imposed to address safety hazards.

Since 1991, the Federal Highway Administration has analyzed alternatives to provide for the replacement of the Woodrow Wilson Memorial Bridge under the authority of the Woodrow Wilson Memorial Bridge Coordination Committee. The Coordination Committee consists of 14 elected officials from State and local governments in the metropolitan Washington region and State and Federal government officials. The Committee was formed by the Federal Highway Administration to identify a bridge replacement alternative, consistent with the NEPA process, to enhance mobility, and to address to community and environmental issues.

The preferred alternative recommends side-by-side drawbridges to be built near the existing bridge on the current alignment. This section provides funds for the implementation of the project. The Secretary and Capital region jurisdictions are required to reach agreement on identified issues before funds provided under this section are available for construction.

The Secretary and the Capital Region jurisdictions are to use the funds made available under this section for the construction of the bridge component of the project.

*Sec. 1121. National Highway System Components.*

SUMMARY

This section establishes the National Highway System (NHS) as those routes and transportation facilities depicted on maps submitted by the Secretary with the report "Pulling Together: The National Highway System and its Connections to Major Terminals."

DISCUSSION

ISTEA of 1991 required the Secretary to submit a proposal for the National Highway System that consisted of the current Interstate system and additional roads functionally classified as principal arterials. The National Highway System Designation Act of 1995 designated the NHS and required the Secretary to submit a

proposal for NHS connectors. ISTEA II authorizes the designation of the connectors depicted on the afore mentioned map.

*Sec. 1122. Highway Bridge Replacement and Rehabilitation.*

SUMMARY

This section addresses highway bridge replacement and rehabilitation requirements. While the bridge program authorized in ISTEA is eliminated in the bill, it is replaced with a requirement that States maintain their current funding levels for bridges on the Federal-aid system. States must spend at least an amount equivalent to the funding a State received under the bridge program in fiscal year 1997 for bridges on either the Interstate, the National Highway System or other Federal-aid roads.

States may meet this "level-of-effort" requirement annually or over a 4-year period.

This requirement is extended to off-system bridges as well. An amount equivalent to at least 15 percent of a State's fiscal year 1997 bridge apportionment must be expended on bridges off the Federal-aid system.

The current requirement that States with Indian reservations reserve 1 percent of their bridge program funds for Indian reservation bridges is replaced with a \$9 million national program to fund improvements to Indian bridges.

This section also makes eligible the cost to convert an historic bridge for alternative transportation purposes.

This section amends section 144 of title 23, United States Code, to provide for a definition for bridge rehabilitation to include work necessary to address structural deficiencies, functional limitations and safety defects, including seismic deficiencies.

The Secretary, in consultation with the States, is to inventory all bridges on public roads, including historic bridges on Indian reservation roads and park roads. The inventory will classify bridges based on safety and serviceability and assign each bridge a priority for replacement or rehabilitation.

DISCUSSION

States are not required to meet the spending requirements of this section by expending certain levels on any particular functional classification of bridges other than the spending requirement for the bridges off the Federal-aid system. Funds expended by a State on Interstate, NHS or Federal-aid system bridges will be credited toward the State's level of effort requirement. States may meet this requirement on a cumulative basis, including the spending requirement for off-system bridges.

*Sec. 1123. Congestion Mitigation and Air Quality Improvement Program.*

SUMMARY

This section continues the Congestion Mitigation and Air Quality Improvement (CMAQ) program and maintains the basic eligibility criteria for this program. As in current law, only those projects or programs that the Secretary, in consultation with the EPA Admin-



istrator, determines are likely to contribute to the attainment of a national ambient air quality standard or the maintenance of such a standard are eligible for CMAQ funds.

This section amends current section 149(b) to extend the eligibility for CMAQ funding to include: (1) carbon monoxide nonattainment areas; (2) all carbon monoxide and ozone maintenance areas; (3) areas classified as submarginal ozone nonattainment areas; and (4) extreme cold start programs.

Subsection (c) strikes current section 149(c) and inserts a new section that modifies the eligibility of CMAQ funds. Consistent with current law, a State that does not have and never has had a nonattainment area may use its CMAQ funds for any project eligible for Surface Transportation Program (STP) funds. A State with a nonattainment area or maintenance area that received the minimum apportionment from section 104(b)(2) can use that amount of its apportionment that is not attributable to its nonattainment or maintenance area population on any project in the State eligible for STP funds.

Subsection (d) amends section 120(c) of title 23 to exclude projects funded with CMAQ apportionments from the list of safety projects eligible for 100 percent Federal participation. As a result, the standard 80 percent Federal share provision of section 120(c) that applies to all other CMAQ projects would apply to these projects as well.

#### DISCUSSION

The purpose of the Congestion Mitigation and Air Quality program, which was established in ISTEA, is to help States meet their air quality conformity requirements under the Clean Air Act. One of the major unintended consequences of motor vehicle transportation is its negative impact on air quality. The costs of air pollution that can be attributed to cars and trucks have been estimated to range from \$30 billion to \$200 billion per year. This program is intended to relieve a portion of those costs.

This section continues the air quality emphasis of the current CMAQ program. CMAQ funds may be used on a wide array of purposes designed to improve air quality, including improvements to transit systems, capital improvements to Intelligent Transportation Systems (ITS) projects, bicycle and pedestrian facilities, traffic flow improvements, alternative fuels, inspection and maintenance programs, and shared ride services.

This section includes several changes in eligibility of CMAQ funds to give the States more flexibility to decide where CMAQ funds are spent. Extreme cold start programs, which are a traffic control measure identified in the 1990 amendments to the Clean Air Act, are added as eligible for CMAQ funds. Also, to better reflect the air quality needs of the Nation, carbon monoxide nonattainment areas, carbon monoxide and ozone maintenance areas, and ozone submarginal areas are added to the areas currently eligible for CMAQ funds.

*Sec. 1124. Safety Belt Use Law Requirements.*

## SUMMARY

This section modifies section 355 of the National Highway System Designation Act of 1995 to permit New Hampshire to meet the safety belt use law required under section 153 of title 49, United States Code, through a performance requirement.

## DISCUSSION

Through the end of fiscal year 2000, New Hampshire is deemed to have met the safety belt use requirements of section 153 upon certification by the Secretary that the State has achieved: (1) a safety belt use rate in each of fiscal years 1997 through 2000 of not less than 50 percent; and (2) a safety belt use rate in each succeeding fiscal year thereafter of not less than the national average safety belt use rate.

*Sec. 1125. Sense of the Senate Concerning Reliance on Private Enterprise.*

## SUMMARY

This section expresses the sense of the Senate that Federal agencies receiving funds under this Act, in expending funds or providing assistance, should rely on the private sector to provide goods and services.

## DISCUSSION

Funds provided in this Act shall not be used by government entities to duplicate or compete with the private sector. Since 1955, it has been Federal policy that, “\* \* \* the Federal Government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary business channels.” (Office of Management and Budget Circular A-76)

This section reaffirms this longstanding Federal policy. Whether it is construction, engineering, surveying, mapping, aerial photography, paving, maintenance, or of other activities that go into successful transportation programs, there are many private firms, many of them small businesses, that can do this work at equal or higher quality and at lower prices.

*Sec. 1126. Using Uniformed Police Officers on Federal-Aid Highway Construction Projects.*

## SUMMARY

This section requires the Secretary of Transportation to conduct a study on the extent and effectiveness of the use by various States of uniformed police officers on Federal-aid highway construction projects.

## DISCUSSION

Some States use police officers very extensively on their highway construction projects, while other States use virtually no police officers for work zone traffic control. Work zone safety has been a high

priority issue for the Federal Highway Administration (FHWA), traffic engineering professionals, and highway agencies. This section requires the Department of Transportation to submit a report to Congress on the results of the study not later than 2 years after the effective date of this section.

*Sec. 1127. Contracting for Engineering and Design Services.*

SUMMARY

This section requires the engineering and design services for projects on the Federal-aid system, to be awarded and performed under the qualifications-based selection (QBS) procedures that utilize the Federal Acquisitions Regulations (FAR) process. The Secretary is to establish a certificate procedure to ensure that any legislation enacted by a State since November 28, 1995 as a substitute for the FAR contract administrative and audit complies with the substantive criteria law.

DISCUSSION

This section clarifies the intent of Congress regarding the QBS process to be used by the States. Use of this process will lead to more efficient estimates, accounting and administrative practices.

*Subtitle B—Program Streamlining and Flexibility*

CHAPTER 1—GENERAL PROVISIONS

*Sec. 1201. Administrative Expenses.*

SUMMARY

This section strikes and replaces subsection 104(a) of title 23, United States Code, which requires the Secretary to deduct funds from certain Federal-aid highway apportionments to administer the Federal-aid highway program. It reduces the current  $3\frac{3}{4}$  percent administrative takedown, which has been used to administer the program and to fund other expenses and activities. Under this provision, the Secretary shall deduct a sum in an amount not to exceed  $1\frac{1}{2}$  percent of such apportionments to administer the Federal-aid highway program.

DISCUSSION

Under ISTEA of 1991, activities other than administrative activities were paid for with the administrative takedown. The committee has provided these non-administrative items, such as research and intelligent transportation system activities, with separate funding elsewhere. This modification in the administrative takedown will provide a clear distinction between the Department's administrative expenses and its research activities and other expenses.

*Sec. 1202. Real Property Acquisition and Corridor Preservation.*

SUMMARY

This section amends section 108 of title 23, United States Code, to expand the flexibility provided to State and local governments

to compete for land resources. It provides for the advanced acquisition of real property not only for highway projects, but for all transportation improvements under title 23. This section removes restrictive language and outdated programs, revises language, and adds opportunities for States and local governments to utilize early property acquisition when necessary, while retaining maximum flexibility to leverage the use of Federal funds. section 323 of title 23 is amended to provide a credit based on the value of publicly owned lands incorporated within a federally funded project. This provision is consistent with the credits already permitted for donated real property and services.

#### DISCUSSION

The committee understands that development, when not coordinated with transportation needs, can often foreclose options available to transportation officials to avoid environmentally sensitive sites. Often in such cases, early planning and acquisition is an effective way to assure that lands can be purchased and reserved for future use. The changes made by this section will increase the flexibility for local and State governments to take action necessary to implement advanced planning and corridor preservation.

*Sec. 1203. Availability of Funds.*

#### SUMMARY

This section removes an outdated provision from section 118 of title 23, United States Code and replaces it with a provision that permits obligations incurred in prior fiscal years released in a current fiscal year to be made available for re-obligation.

*Sec. 1204. Payments to States for Construction.*

#### SUMMARY

This section amends section 121 of title 23, United States Code to remove a restriction that applies the Federal/non-Federal matching share requirement to each payment a State receives. The revised section 121 makes the requirement applicable to total project costs rather than to individual voucher payments.

#### DISCUSSION

The increased flexibility provided by these changes will result in a simplified program that is easier for State departments of transportation to administer. The changes recognize that the important restriction is that the total project meets the Federal share requirement. The changes also make the Federal-aid highway program more compatible with other Federal programs, particularly the Federal mass transportation program, where projects are often administered jointly by FHWA and Federal Transit Administration.

*Sec. 1205. Proceeds from the Sale or Lease of Real Property.*

#### SUMMARY

Current section 156 of title 23, United States Code, requires States to charge fair market value for the use of airspace acquired

in connection with a federally funded project. This section expands the requirement in section 156 to apply to the net income generated by a State's lease, sale, or other use of all real property acquired with Federal financial assistance. The revised section applies the same standard to all real property interests acquired with Federal-aid highway funds.

#### DISCUSSION

This section will reduce a State transportation department's administrative overhead relating to property management practices. It will simplify such practices by applying the same standard to all real property interests acquired with Federal-aid highway funds.

*Sec. 1206. Metric Conversion at State Option.*

#### SUMMARY

Section 205 of the National Highway System Designation Act of 1995 states that the Secretary shall not require States to use or plan to use the metric system before September 30, 2000.

#### DISCUSSION

This section revises section 205 of the NHS Act, giving States the flexibility to choose when and if to implement the metric system with respect to designing, advertising, or preparing plans, specifications, timetables, or other documents, for a Federal-aid highway project. This section does not require any State to modify its current use of the metric system for Federal-aid highway projects.

*Sec. 1207. Report on Obligations.*

This section amends section 104 of title 23, United States Code, to require the Secretary to submit to Congress an annual, rather than monthly, report on States' obligations for Federal-aid highways, highway safety construction programs, and unobligated balances.

*Sec. 1208. Terminations.*

This section terminates the following obsolete or outdated provisions: (1) The right-of-way revolving fund, which is revised in section 108(c) of title 23, to provide an expiration and closeout period for obligations already authorized from the fund. This program was terminated as a revolving loan fund because of the new rules required of all credit programs in the Credit Reform Act of 1990. Credits based on conversion or reimbursements are to be applied to the Highway Trust Fund rather than to the revolving fund. Twenty-three States currently have active right-of-way revolving fund projects. This section provides for a 20-year close out period from the date that right-of-way funds were advanced to give these States sufficient time to complete these unfinished projects. (2) A tolling pilot program that has accomplished its intended purpose. Pilot toll agreements that were executed under subsection 129(k) of title 23 are still valid. (3) The National Recreational Trails Advisory committee, established in ISTEA, was tasked to review the allocation and utilization of moneys under the Recreational Trails

program, establish some review criteria for trail-side and trail-head facilities, and recommend changes in Federal policy to advance the purposes of the program. The advisory committee has completed these tasks. Although the national committee is terminated in this section, the State advisory committees responsible for implementing the Recreational Trails program in each State are retained. (4) The 1962 Bridge Commission Act, which provides Federal approval of bridge commission memberships. Today, only one of the original five commissions established in 1962 remains, the White County Bridge Commission, which operates the New Harmony Bridge across the Wabash River between Indiana and Illinois.

*Sec. 1209. Interstate Maintenance.*

#### SUMMARY

This section amends section 119 of title 23, United States Code, to (1) change the eligible uses of funds apportioned for the Interstate Maintenance component of the INHS program and (2) change the rules regarding the ability to transfer these funds to other Federal-aid highway programs and to use a portion of these funds for the construction of single occupant vehicle lanes.

#### DISCUSSION

Current law allows a State to transfer up to 20 percent of its Interstate Maintenance apportionment to other program categories without the Secretary's approval. Transfers above the 20 percent amount need to be approved by the Secretary. Section 1209 would increase the percentage of funds that a State may transfer from the Interstate components of the INHS program to 30 percent. Section 1209 also provides that if a State certifies to the Secretary that the sums apportioned to it for the Interstate component of the INHS program are in excess of its Interstate needs, it may transfer an additional 20 percent of its Interstate component funds to its apportionments under the NHS or STP program.

This section outlines the activities eligible to receive funds apportioned under the Interstate components, including intelligent transportation systems (ITS) capital improvements.

In general, this section continues the prohibition against using apportionments provided under the Interstate components of the INHS program for the construction of new travel lanes that are not high-occupancy-vehicle (HOV) lanes. This section does allow, however, a State to use 30 percent of its funds apportioned on single-occupant vehicle capacity expansion. States are permitted to use a total of 30 percent of their funds apportioned under the Interstate components of the INHS program to be used either for new capacity projects or may be transferred to other program categories. This provision was added to allow Interstate reconstruction projects that may involve increased capacity to be managed as one contract rather than as two separate contracts, as may be required under some cases in current law.

## CHAPTER 2—PROJECT APPROVAL

*Sec. 1221. Transfer of Highway and Transit Funds.*

This section adds a new subsection to section 104 of title 23, United States Code, to provide for the program-wide, rather than project-by-project, transfer and administration of transit funds made available for highway projects and highway funds made available for transit projects. This revision will streamline the administration of highway and transit funds by State departments of transportation.

This section requires the Secretary to administer funds made available under title 23 or chapter 53 of title 49 and transferred to Amtrak in accordance with Subtitle V of title 49. Funds made available under title 23 or chapter 53 of title 49 and transferred to other eligible passenger rail projects and activities shall be administered as the Secretary determines appropriate. The non-Federal share provisions in title 23 or chapter 53 of title 49 will continue to apply to the transferred funds.

*Sec. 1222. Project Approval and Oversight.*

## SUMMARY

This section amends section 106 of title 23, United States Code, which addresses Federal and State responsibilities for surface transportation projects. It retitles section 106 from “Plans, Specifications, and Estimates” to “Project Approval and Oversight” to reflect the greater scope of this section, as revised.

This section eliminates the current 15 percent limit on construction engineering. Repeal of this restriction will permit States to be reimbursed for their actual costs of construction engineering for each project without compiling the costs of construction engineering in an annual accounting to determine if the costs are, on average, within the 15 percent limitation.

This section also combines the current two-step process for project plans, specification, and engineering and the execution of a project agreement into a one-step process.

This section permits the Secretary to discharge to the States with their approval the Secretary’s responsibilities under title 23 for the design, plans, specifications, estimates, contract awards, and inspection of projects on the National Highway System (NHS). Under current law, States voluntarily oversee such activities for projects carried out with Surface Transportation Program (STP) funds, but not for NHS projects.

## DISCUSSION

Extension of this State authority to NHS projects will give significant flexibility to the States and the Secretary to discuss and determine mutually the appropriate balance between State and Federal (FHWA) oversight for Federal-aid highway projects, taking into account overall needs and resources. A threshold of responsibility for the States is ensured by providing that the Secretary’s responsibilities under this provision shall be no greater than they are under current law, unless a different agreement is reached by the Secretary and the State. In discharging responsibilities to the

States under new section 106, the Secretary is discharging only those title 23 responsibilities listed in this section.

To ensure greater accountability for large projects, this section includes a new provision that the Secretary shall require a financial plan for any project with an estimated total cost of \$1 billion or more.

*Sec. 1223. Surface Transportation Program.*

SUMMARY

Subsection (a) of this section amends section 133 of title 23, United States Code, to require States to set-aside 8 percent of their Surface Transportation Program (STP) funds for transportation enhancement activities. This is a reduction from current law which requires a 10 percent set-aside.

Paragraph (2)(A) of subsection (a) allows the Secretary to advance transportation enhancement funds without State certification of its public outreach and involvement process associated with transportation enhancement projects. Paragraph (2) (B) codifies the Department of Transportation's current administrative policy regarding innovative financing methods and mechanisms applicable to transportation enhancement projects. It allows the States to calculate their non-Federal share for enhancements projects in several ways; on a project, multiple project, or program basis.

Subsection (b) of this section amends section 133 of title 23 to reduce the current quarterly, project-by-project State certification and notification requirements to annual, program-wide approval of each State's project agreement. The current requirement that payments made by the Secretary to the States under section 133 could not exceed the Federal share of costs incurred as of the date the State requested payment is eliminated.

DISCUSSION

Transportation enhancements were established in ISTEA as a 10 percent set-aside of a State's Surface Transportation Program (STP) funds. The purpose of the transportation enhancements set-aside is to make the Nation's roads blend with and preserve the natural, social, and cultural environment. The transportation enhancements program has offered an opportunity for States and localities to use their Federal transportation dollars to preserve and create more livable communities. This section continues the current enhancements program as an 8 percent set-aside of a State's STP funds. The adjustment in the set-aside percentage reflects the growth in STP funds over the next 6 years. The result is that actual funding for transportation enhancement activities increases by almost 25 percent from the level provided in ISTEA.

This section includes two new provisions to make the enhancements program less of a burden for State departments of transportation to administer. These modifications reduce the delays experienced by project sponsors in advancing the selection and completion of enhancements projects. States will be able to advance funds for enhancements activities without the current requirement that a State certify a public outreach and involvement processes before funds are advanced.



Second, it codifies the Department of Transportation's current administrative policy regarding innovative financing mechanisms applicable to transportation enhancement projects. Innovative financing techniques will give States additional flexibility by allowing them to calculate the non-Federal share for enhancements projects on either a project, multiple project, or program basis. A State's average annual non-Federal share of transportation enhancement projects must be at least 20 percent. A single project however may have a 100 percent Federal share, but each State's annual enhancements programs must comply with the 20 percent non-Federal match requirement.

The section also clarifies that a State may allocate its enhancements funds to municipalities and nonprofit organizations for the restoration and historic preservation of recently acquired lighthouse facilities. The historic preservation of lighthouses and the conversion of historic buildings into transportation-related facilities has been and continues to be an activity that is eligible for enhancements funds. The construction of public walkways adjacent to transportation facilities that give the public access to scenic or historic sites, also remain eligible for transportation enhancements funding.

*Sec. 1224. Design-Build Contracting.*

SUMMARY

This section provides authority for States to use design-build contracting for Federal-aid highway projects meeting minimum criteria specified in this section. Current law does not allow States to use design-build contracting. This section provides authority, after 3 years of enactment of this Act, for State departments of transportation to use the design-build approach for construction of eligible project segments that exceed \$50 million in costs.

DISCUSSION

Design-build is an innovative method of highway contracting. It differs from traditional contracting in that it combines, rather than separates, responsibility for the design and construction phases of a highway project. The benefits of the design-build approach include greater accountability for quality and costs, less time spent coordinating designer and builder activities, firmer knowledge of project costs, and a reduced burden in administering contracts. Design-build is particularly advantageous for accelerating project delivery. For example, a study of 11 design-build projects in Florida found that this innovative contracting method produced significant improvements in project performance as compared to non-design-build projects. The average design-build construction time was 21.1 percent shorter than the average for non design-build projects. In addition, actual design-build procurement times were 54 percent less than the normal design procurement time allocated for projects using traditional contracting methods. The design-build projects also produced a 4.7 percent reduction in after-bid changes to the contract.

Despite the potential advantages of design-build, it is not an appropriate method for carrying out every highway project. Therefore,

this section includes minimum cost requirements. To qualify for the award of a design-build contract, the cost of each usable segment of a highway project must be at least \$50 million. For an Intelligent Transportation Systems project, the total cost of the project must exceed \$5 million.

*Sec. 1225. Integrated Decisionmaking Process.*

SUMMARY

Section 1225 requires the Secretary to develop an integrated decisionmaking process for surface transportation projects that encompasses both transportation and environmental requirements. It requires the Secretary to integrate requirements of transportation planning and decisionmaking with requirements of the National Environmental Policy Act (NEPA) and other environmental requirements. The process for complying with NEPA is to be used as a comprehensive decisionmaking process to address environmental and transportation requirements concurrently.

Section 1225 includes the following specific provisions:

- When a surface transportation project is selected for study by a State, the Secretary of Transportation is responsible for notifying all Federal agencies that may be required to participate in the integrated decisionmaking process on the project within 60 days.
- The Secretary is required to afford State, regional, tribal and local governments with the opportunity to serve as cooperating agencies.
- The Secretary is responsible for bringing together all the relevant transportation and environmental decisionmakers as soon as practicable in the process.
- Existing, relevant data and analysis are required to be used, to the maximum extent possible, to meet all applicable requirements.
- Federal transportation funds made available to the States are authorized to be used to help permitting agencies conduct their reviews so they stay on the same schedule for making their decisions as the transportation agencies.
- A process for avoiding potential conflicts and resolution of conflicts that may arise among participating agencies is established. This process includes time frames for field level officers and agency heads to resolve conflicts. If these time frames are not met, unresolved issues are elevated and then ultimately referred to the Council on Environmental Quality for resolution.

DISCUSSION

Despite many successes and administrative initiatives by the U.S. Department of Transportation, the transportation decisionmaking and NEPA processes have not realized the full potential to integrate and unify all Federal, State and local decisionmaking and environmental reviews. Project decisions and environmental reviews are still duplicative, wasteful, and result in project delays and increased costs. Frequently, interagency coordination reviews are the basis for disputes and unresolved issues. The results often do not achieve the best overall public interest decisions.

Section 1225 addresses these concerns with the current decision-making process for surface transportation projects. For transportation projects, including highway construction and capital projects, the Secretary of Transportation, in consultation with the Council on Environmental Quality, will develop a process for integrated decisionmaking that comprehensively addresses transportation and environmental requirements concurrently, rather than sequentially. This process must be consistent with the requirements of NEPA and other applicable laws.

#### CHAPTER 3—ELIGIBILITY AND FLEXIBILITY

##### *Sec. 1231. Definition of Operational Improvement.*

This section revises the definition of “operational improvement” found in section 101(a) of title 23, United States Code, to include the installation, operation, or maintenance of certain Intelligent Transportation Systems infrastructure projects. The installation, operation or maintenance of communications systems, roadway weather information and prediction systems, and other improvements designated by the Secretary that enhance roadway safety during adverse weather are also incorporated into the revised definition.

##### *Sec. 1232. Eligibility of Ferry Boats and Ferry Terminal Facilities.*

This section clarifies that the construction of ferry boats and ferry terminal facilities are eligible uses of National Highway System (NHS), Surface Transportation Program (STP), and Congestion Mitigation and Air Quality Improvement program (CMAQ) funds. This clarification in eligibility does not amend any of the underlying eligibility requirements of the NHS, STP, or CMAQ programs.

##### *Sec. 1233. Flexibility of Safety Programs.*

#### SUMMARY

This section amends subsection 133(d) of title 23, United States Code, and requires each State to set aside 2 percent of its Surface Transportation Program (STP) apportionment for railway-highway crossings; 2 percent of its STP funds for hazard elimination activities; and 6 percent of its STP funds for railway-highway crossings or hazard elimination activities.

Additional discretion is given to each State to transfer up to 100 percent of its 6 percent STP safety set-aside funds to its section 402 safety program or to its Motor Carrier Safety program allocation. The requirement that half the funds authorized and expended under section 130 be available for installation of protective devices at railway-highway crossings is eliminated. The revised section, however, retains this use as an eligible activity.

#### DISCUSSION

It is a national priority to eliminate roadside hazards and to reduce dangers at railway-highway crossings. This section, therefore, provides dedicated funding for these important priorities. The committee also understands that States have different needs. To accommodate the various needs throughout the Nation, this section

allows a State to transfer its 2 percent set-aside for railway-highway crossings to hazard elimination activities if it certifies to the Secretary that the railway-highway funds are in excess of its railway-highway needs. The committee has not provided a parallel transfer of hazard elimination funds to railway-highway crossings because installing protective devices at railway-highway crossings is already an eligible use of hazard elimination funds under section 152(b).

*Sec. 1234. Eligibility of Projects on the National Highway System.*

SUMMARY

This section amends section 103 of title 23, United States Code, to include publicly owned intra city or intercity passenger rail capital projects, including Amtrak, as an eligible activity for National Highway System (NHS) program funds under the same criteria that apply currently to transit and non-NHS highway projects. NHS funding eligibility is amended also to include natural habitat enhancement and mitigation under the same circumstances in which wetlands mitigation is currently eligible for funding under section 103.

This section also adds the following new items to the list of projects eligible for NHS funding: (1) publicly owned intra city or intercity passenger rail or bus terminals, including those owned by Amtrak; (2) publicly owned intermodal surface freight transfer facilities, other than seaports and airports located at, or adjacent to, the NHS or connections to the NHS; (3) infrastructure-based Intelligent Transportation Systems capital improvements; and (4) publicly owned components of magnetic levitation (MAGLEV) systems.

This section also adds to the list of eligible NHS projects a paragraph applicable only to projects on the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, permitting these territories to use their NHS apportionments for any STP-eligible project, any airport, and any seaport.

DISCUSSION

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) was a landmark law in that it gave the States unprecedented flexibility in spending their Federal-aid highway funds. This section increases the flexibility of the original ISTEA by allowing States to use their NHS funds on passenger rail, intermodal freight transfer facilities, natural habitat mitigation, capital costs of ITS improvements, and publicly owned components of magnetic levitation (MAGLEV) systems.

This section recognizes the diversity and uniqueness of the Nation and all of its transportation needs. The demands of the various regions throughout the United States are different. In the South and Southwest, the sharp growth in population continues to put a strain on that area's transportation infrastructure. In the Northeast, older infrastructure and acute congestion increases the need for non-highway modes such as transit and Amtrak. Many Western States, by contrast, with their low population density and the great distances involved in travel, rely on highways as their major mode

of transportation. The flexibility provided in this section will permit States to use transportation funds to meet their diverse needs.

*Sec. 1235. Eligibility of Projects Under the Surface Transportation Program.*

SUMMARY

This section amends section 133 of title 23, United States Code, to clarify that the eligibility for publicly or privately owned vehicles and facilities used to provide intercity passenger service by bus or rail under the STP program parallels the eligibility of such vehicles and facilities under chapter 53 of title 49, as revised by this Act. It clarifies that the current eligibility under the STP program of highway and transit safety improvements generally includes non infrastructure highway safety improvements. This section also amends paragraph 133(b)(3) to make clear that STP funds may be used to fund the modification of existing public sidewalks to comply with the requirements of the Americans with Disabilities Act.

The following new items are added to the list of projects eligible for STP funds: (1) publicly owned intercity passenger rail infrastructure, including Amtrak; (2) publicly or privately owned passenger rail vehicles, including Amtrak; (3) infrastructure-based intelligent transportation systems capital improvements; and (4) publicly owned magnetic levitation transportation systems. This section expands STP funding eligibility to include natural habitat mitigation under the same circumstances in which wetlands mitigation is currently eligible for STP funds.

DISCUSSION

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) was a landmark law in that it gave the States unprecedented flexibility in spending their Federal-aid highway funds. This section increases the flexibility of the original ISTEA by allowing States to use their STP funds on publicly or privately owned passenger rail, including Amtrak, intermodal freight transfer facilities, natural habitat mitigation, capital costs of ITS improvements, and publicly owned components of magnetic levitation (MAGLEV) systems.

This section recognizes the diversity and uniqueness of the Nation and all of its transportation needs. The demands of the various regions throughout the United States are different. In the South and Southwest, the sharp growth in population continues to put a strain on that area's transportation infrastructure. In the Northeast United States, older infrastructure and acute congestion increases the need for non-highway modes such as transit and Amtrak. Many of the Western States, by contrast, with their low population density and the great distances involved in travel, rely on highways as their major mode of transportation. The flexibility provided in this section will permit States to use transportation funds to meet their diverse needs.

*Sec. 1236. Design Flexibility.*

## SUMMARY

This section clarifies section 109 of title 23, United States Code, regarding planned future traffic needs and the Secretary's responsibilities in reviewing State plans for proposed highway projects. This modification eliminates the requirement that the Secretary ensure that a State plan for a highway project must accommodate future traffic demands. The revised section only requires that the Secretary ensure that future traffic needs were considered.

## DISCUSSION

This change gives States and localities additional flexibility in designing and constructing highway projects under this title.

*Subtitle C—Finance*

## CHAPTER 1—GENERAL PROVISIONS

A considerable gap exists between transportation infrastructure needs and available Federal resources. It is important that national transportation policy anticipate the future and reach out for ideas on creative ways to finance our infrastructure needs. The programs provided in this subtitle will increase the strategic investment in transportation infrastructure.

*Sec. 1301. State Infrastructure Bank Program.*

## SUMMARY

This section codifies the State Infrastructure Bank (SIB) Pilot Program authorized in the NHS Designation Act of 1995.

## DISCUSSION

This section includes modifications to increase the flexibility of the SIB program. The current 10-State limit on the number of participants in the SIB program is eliminated, thus enabling any State to establish a State Infrastructure Bank. The percentage limitation regarding funds a State can transfer to use State infrastructure banks is eliminated. The need to maintain separate highway and transit accounts within a SIB is also terminated.

The 10-state limit unnecessarily restricted States from pursuing this financial mechanism and the percentage limitation unnecessarily limits States' use of this mechanism. The need to maintain separate highway and transit accounts also imposed an accounting burden on States that was inconsistent with financial flexibility desired in a financing entity such as a State Infrastructure Bank.

## CHAPTER 2—TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION

## SUMMARY

This chapter establishes a Federal credit program for surface transportation, entitled the "Transportation Infrastructure Finance and Innovation Act." The program is designed to provide funding for large projects with their own revenue streams, which can obtain

and leverage substantial private capital with a limited Federal investment.

#### DISCUSSION

This program offers the sponsors of major transportation projects a new tool to enhance limited Federal resources, stimulate additional investment in our Nation's infrastructure, and encourage greater private sector participation in meeting our transportation needs.

The TIFIA program is targeted toward projects that have been difficult to finance through traditional means due to their scale and complexity. Projects must be designated by the Secretary as "regionally" or "nationally" significant, and they must have the potential to be self-supporting from user charges or other non-Federal dedicated funding sources. In addition, eligible projects must cost more than \$100 million or represent an amount greater than 50 percent of a State's annual apportionment. For ITS projects, the cost must be at least \$30 million.

Forms of assistance that can be provided under this program include loans, loan guarantees, and lines of credit. In all cases the Federal participation will be as a minor investor. Federal participation is limited to 33 percent of total project costs. The \$530 million total program over the six-year authorization can leverage total Federal assistance of up to \$10.6 billion in loans and lines of credit.

This new credit assistance program is a limited, six-year pilot program. The ultimate objective of the program is to phase out Federal participation in these large projects and encourage private capital investment to fulfill this function.

The provision allows the Secretary to provide to all title 23-eligible projects (including highways, transit, high speed rail, railroad highway crossing projects, and others) Federal credit assistance if the projects meet the eligibility criteria outlined in the provision.

For example, some States are pursuing major initiatives to establish high speed rail systems. The State of Florida reports that its proposed high speed rail project would require Federal credit assistance financing support. The 320-mile system from Miami to Orlando to Tampa would introduce 200 mile-per-hour trains to the United States and operate on right-of-way exclusively reserved for its trains. The State of Florida plans to allocate funds from its transportation trust fund over a 40-year period for this project. This investment will establish an innovative partnership with the private sector that is contributing significant equity to the project and is intending to operate the system over a 40-year period. Such projects that demonstrate new technology in the United States marketplace and are financed with significant private sector capital comprise the types of projects envisioned to receive credit assistance authorized under this provision.

As introduced, the bill also contained two provisions expressly applying the "Davis-Bacon" prevailing wage requirement to funds made available under this chapter and to projects assisted with those funds: Section 1314(c)(1) would have applied the provisions of title 23, United States Code, section 113, thereby expressly applying the prevailing wage requirement to highway projects undertaken under TIFIA; section 1314(c)(5) would have applied the pro-

visions of title 49, United States Code, section 5333, thereby expressly applying the prevailing wage requirement to mass transportation projects undertaken under TIFIA. These two provisions were deleted from the reported bill. For highway projects, the provision applying title 23, United States Code, section 113 was considered redundant, because section 113 already applies by its own terms. For mass transportation projects, the committee deferred consideration of the application of title 49, United States Code, section 5333 to the Committee on Banking, Housing, and Urban Affairs, which has jurisdiction over mass transportation projects.

*Sec. 1311. Short Title.*

This section identifies a new Federal credit assistance program for surface transportation facilities as the “Transportation Infrastructure Finance and Innovation Act of 1997.”

*Sec. 1312. Findings.*

This section recites Congressional findings that a comprehensive surface transportation infrastructure system is crucial to the economic health of the Nation and that traditional methods of funding transportation projects, including Federal grants, are insufficient to meet the Nation’s infrastructure investment needs.

*Sec. 1313. Definitions.*

This section sets forth the definitions for terms used in this chapter, including “project,” “eligible project costs,” “obligor,” “local servicer,” and “substantial completion.”

*Sec. 1314. Determination of Eligibility and Project Selection.*

This section defines the threshold eligibility criteria for a project to receive Federal credit assistance and outlines the basis upon which the Secretary will select among potential candidates. The Secretary’s determination of a project’s eligibility will be based on both quantitative and qualitative factors, including State and local support, project size, whether the project has a revenue stream, and whether the project is of national or regional significance.

*Sec. 1315. Secured Loans.*

This section establishes a temporary lending program whereby the Secretary may make direct Federal loans or guarantee loans from private lenders in fiscal years 1998 through 2003 to demonstrate to the capital markets the viability of making transportation infrastructure investments where returns depend on excess project cash flows. It is intended to help the capital markets develop the capability to replace the role of the Federal government by the end of the authorization period in helping finance the costs of large projects of national significance.

*Sec. 1316. Lines of Credit.*

This section authorizes the Secretary to enter into agreements to make direct loans to projects at future dates upon certain conditions occurring. Such agreement would be in the form of a standby line of credit.



*Sec. 1317. Project Servicing.*

The program will use State or local governmental agencies to assist the Secretary in servicing each credit instrument. The State may designate its State infrastructure bank or another public agency to serve as the local servicing agent for the credit instrument.

*Sec. 1318. Office of Infrastructure Finance.*

This section adds a new section to chapter 1 of title 49, requiring the Secretary to establish an Office of Infrastructure Finance to manage the credit program and provide related technical and educational assistance.

*Sec. 1319. State and Local Permits.*

This section states that this title in no way supersedes any existing State or local laws, regulations, or project approval requirements.

*Sec. 1320. Regulations.*

This section provides that the Secretary can issue regulations that are appropriate concerning this chapter.

*Sec. 1321. Funding.*

This section provides contract authority to fund the budgetary or subsidy costs of the Federal credit instruments. Subsidy costs, which are defined in and required to be funded by budget authority under the Federal Credit Reform Act of 1990, represent the present value of expected cash flows for each credit instrument, taking into account the default risk as well as any interest rate subsidy. Since this title requires all secured loans to be made at a rate equal to the comparable term U.S. Treasury rate, there will be no interest subsidy element. A total of \$60 million for each of fiscal years 1998 and 1999; \$90 million for each of fiscal years 2000 and 2001; and \$115 million for each of fiscal years 2002 and 2003 is authorized under this title. The contract authority would remain available until expended and would be derived from the Highway Trust Fund.

The bill caps the nominal amount of credit instruments supported by this contract authority at \$1.2 million for each of fiscal years 1998 and 1999; \$1.8 million for fiscal years 2000 and 2001; and \$2.0 million for fiscal years 2002 and 2003.

*Sec. 1322. Report to Congress.*

This section requires the Secretary to summarize the activities and results of the assistance programs and mechanisms provided under this title, including whether they are succeeding in encouraging the private capital markets to invest in large transportation infrastructure projects. The report shall be made within 4 years of enactment of the subtitle and include recommendations on whether the program should be continued or phased out by the end of the authorization period as planned.

*Subtitle D—Safety**Sec. 1401. Operation Lifesaver.*

## SUMMARY

A total of \$500,000 for each of fiscal years 1998 through 2003 is required to be set-aside by the Secretary from Surface Transportation Program funds. The funds shall be used for public education programs designed to reduce the number of accidents, deaths and injuries at highway-rail intersections and within railroad rights-of-way.

## DISCUSSION

This section continues funding for the Operation Lifesaver program that is jointly sponsored by Federal, State and local government agencies, highway safety organizations and the Nation's railroads.

*Sec. 1402. Railway-Highway Crossing Hazard Elimination in High Speed Rail Corridors.*

## SUMMARY

This section authorizes \$5 million to be set-aside from Surface Transportation Program funds in each of fiscal years 1998 to 2003 to be allocated by the Secretary to address railway-highway crossing hazards in five existing high speed rail passenger corridors.

This section also gives the Secretary authority to select an additional three high-speed rail corridors. In designating three additional corridors, the Secretary is to consider ridership volume, maximum speeds, benefits to nonriders such as congestion relief, State and local financial support and the cooperation of the owner of the right-of-way.

## DISCUSSION

The Secretary is provided \$5 million each year to continue to address rail-highway crossing hazards in high speed rail passenger corridors. This section allows the Secretary to continue the five previously selected rail corridors under the program: (1) San Diego to Sacramento, CA; (2) Detroit, MI to Milwaukee, WI; (3) Miami to Tampa, FL; (4) Washington, D.C. to Charlotte, NC; (5) Vancouver, B.C. to Eugene, OR.

The Secretary is also permitted to select another three corridors based on criteria provided in this section. In selecting railway corridors for inclusion in this program, the Secretary shall consider the New York City-Albany-Buffalo high speed Empire Corridor as an example of a project that meets the intent of this section because of its current travel at high rates of speed and its level of ridership.

*Sec. 1403. Railway-Highway Crossings.*

## SUMMARY

This section amends section 130 of title 23 United States Code, and expands the eligibility of railway-highway funds to include

trespassing countermeasures in the vicinity of the crossing, safety education, enforcement of traffic laws and publicly sponsored projects at privately owned railway-highway crossings. States are required to report to the Department on completed crossing projects funded under this subsection for inclusion in the DOT/American Association of Railroads National Grade Crossing Inventory.

This section eliminates the requirement that half the funds authorized under section 130 be available for installation of protective devices at railway-highway crossings. These activities remain eligible for funding under this section

#### DISCUSSION

This section expands the eligible uses of funds for additional projects that have a public benefit.

It also continues the report, based on information from the States, on the progress being made to implement the railway-highway grade crossing program and the effectiveness of such improvements. The purpose of this program is to continue to address the high number of deaths from accidents at railway-highway crossings. In 1996, 30 children died and 133 children were injured as a result of mostly preventable highway-rail crossing accidents.

*Sec. 1404. Hazard Elimination Program.*

#### SUMMARY

This section expands the eligibility of the current hazard elimination program to include projects that would remove road hazards to bicyclists. This section also makes traffic calming measures eligible for hazard elimination funds. The prohibition on States using hazard elimination funds to correct hazards on routes on the Interstate system is eliminated.

#### DISCUSSION

Providing additional protection for bicyclists is important, particularly for bicyclists riding near the Interstate and on highway bridges. A full range of safety improvements for bicyclists and pedestrians, including multimodal and community safety programs, and spot improvement programs for rapid-response of low costs hazards, such as potholes, roadway and trail debris, and unsafe drainage gates is eligible for funding under this program. This section also revises the reference to "highway safety improvement project" in subsection 152(b) to read "safety improvement project" to reflect the multimodal focus of the hazard elimination program.

*Section 1405. Minimum Penalties for Repeat Offenders for Driving While Intoxicated or Driving Under the Influence*

#### SUMMARY

This section establishes a new program to address the growing problem of repeat, hardcore drunk drivers with high alcohol concentrations. The section requires States to enact and enforce penalties for drunk drivers who have an alcohol concentration of .15 or greater, and who have been convicted of a second or subsequent

drunk driving offense within 5 years. Minimum penalties shall include a license suspension of not less than 1 year, an assessment of the individual's abuse of alcohol and recommended treatment regimes as appropriate, and either an assignment of 30 days community service or 5 days of imprisonment.

States failing to enact or enforce the described minimum penalties for repeat drunk drivers with high alcohol concentrations by fiscal year 2000, will have 1½ percent of their INHS and STP funds transferred to fund alcohol-impaired driving programs. For fiscal year 2002 and 2003, States that have failed to enact or enforce a repeat intoxicated driver law will be required to transfer 3 percent of their NHS and STP funds for alcohol-impaired driving programs.

#### DISCUSSION

This section addresses the problem that hardcore drunk drivers continue to account for a disproportionate share of the alcohol-related injuries and fatalities that occur on our highways each year. According to the National Highway Traffic and Safety Administration's (NHTSA) Fatal Accident Reporting System, 54 percent of the drivers involved in alcohol-related traffic fatalities had measured alcohol concentrations greater than .15, the latest available data year.

This section does not address the appropriate alcohol concentration that a State should adopt to determine when a driver who drinks alcohol is intoxicated.

*Sec. 1406. Safety Belt Incentive Grants for Use of Seat Belts.*

#### SUMMARY

This section establishes a new program to encourage States to promote and increase seat belt usage in passenger motor vehicles. This new program provides incentive grants to States that either obtain a State seat belt use rate above the national average, or increase the State seat belt usage. The Secretary shall determine annually: 1) those States that achieved a usage rate higher than the national average, and the amount of Federal government budget savings from Federal medical insurance programs associated with the higher seat belt usage rate; or 2) those States that realized an increase in the seat belt rate compared with the State's base rate, and the resulting Federal government budget savings from Federal medical insurance programs.

Under this section, the Secretary is required to allocate to each State in fiscal years 1999 through 2003, the amount of Federal medical savings that resulted from either increases in seat belt usage over the national average or increases over the State's base rate. This section provides \$60 million for fiscal year 1999; \$70 million for fiscal year 2000; \$80 million for fiscal year 2001; and \$100 million for each of fiscal years 2002 and 2003.

#### DISCUSSION

According to the National Highway Traffic Safety Administration (NHTSA), seat belt usage is by far the most important step that

vehicle occupants can take to protect themselves in the event of a crash. Wearing these devices increases a person's chance of surviving a crash by 45 percent, and of avoiding a serious injury by 50 percent. Deaths and injuries that could have been prevented by employing seat belts cost society billions of dollars annually in economic consequences including lost wages, medical expenses, insurance costs and other costs. The Federal and State governments pick up a total of 10.1 percent and 4.6 percent, respectively, of all injury-related crash costs incurred by individual motor vehicle crash victims. Federal and State medical costs represent 2.6 percent and 1.77 percent of these total costs, respectively.

This new provision will reward States that increase their seat belt usage rate either over the national average or over their base rate, regardless of what measures the State has employed to realize these increases. The amount of the incentive grant that a State receives is linked to the amount of Federal budget savings related to medical costs from the increase in seat belt usage achieved. Not only will successful States receive this incentive grant, but also they will realize reduced State-related medical costs, productivity losses, insurance administration costs, as well as other costs.

*Sec. 1407. Automatic Crash Protection Unbelted Standard.*

SUMMARY

This section ensures that the current testing standard for air bags is based on the simultaneous use of the air bag or supplemental restraint system and a manual seat belt.

DISCUSSION

This section changes current Federal regulations that govern safety standards of supplemental restraint systems, commonly known as air bags, installed in motor vehicles.

The current standard requires that the automatic occupant crash protection system for passengers sitting in the front seat of all vehicles (including trucks, buses and multipurpose vehicles) with a gross weight of less than 8,500 pounds must be an inflatable restraint complying with the occupant protection requirements under section 4.1.2.1 of the standard. Section 4.1.2.1 requires that all air bags must be designed to deploy at a force great enough to protect an average sized male not wearing his seat belt.

The current standard protects adults who deliberately choose not to obey seat belt laws while it jeopardizes the lives of children, and small statured adults. This is an unacceptable policy choice. Although it is estimated that passenger side air bags deployed in crashes have saved about 200 people, it is a fact that 45 children and three adults have been killed by overly aggressive air bags. A Federal policy that kills one person for every four lives saved is unacceptable. Because the current Federal policy requires air bags to protect adult males who do not wear seat belts, air bags are treated as primary restraint systems. Air bags, however, are supposed to be, and are in fact called, supplemental restraint systems, not primary restraint systems.

Section 1407 restores the automatic restraint system to its intended role as a supplemental restraint device. It affirms that air

bags do not substitute for lap and shoulder belts and that all occupants should always wear lap and shoulder belts regardless of whether there is an inflatable restraint in the vehicle. The section requires that beginning on the date of the enactment of this Act, manufacturers of motor vehicles shall be deemed to be in compliance with applicable performance standards for occupant crash protection if the motor vehicle meets the applicable requirements for testing with the simultaneous use of both an automatic restraint system and a manual seat belt. The Secretary of Transportation is directed to issue revised standards that are consistent with this section.

*Subtitle E—Environment*

*Sec. 1501. National Scenic Byways Program.*

SUMMARY

This section codifies the National Scenic Byways program as a new section 163 of title 23, United States Code. Subsection (a) directs the Secretary to carry out the National Scenic Byways program and designate roads having outstanding scenic, historic, cultural, natural or archaeological qualities as National Scenic Byways or All-American Roads. Criteria for designation have been defined in an FHWA interim policy notice, which was published in the Federal Register in May 1995.

Subsection (b) directs the Secretary to make grants and provide technical assistance to the States to implement National Scenic Byways, State scenic byways, and All-American Roads projects and to plan, design, and develop State scenic byways programs. Subsection (c) lists the eight categories of projects eligible for scenic byways funding under this section. Subsection (d) allows the Secretary to authorize scenic byways funds only for projects that protect the scenic, historic, recreational cultural, natural and archaeological integrity of a highway and adjacent areas.

Subsection (e) provides that the Federal share payable on account of any project under this section shall be 80 percent, except that, for projects on Federal or Indian Lands, a Federal land management agency may contribute the non-Federal share payable on such projects. Subsection (f) provides contract authority from the Highway Trust Fund of \$17 million in each of fiscal years 1998 and 1999; \$19 million for each of fiscal years 2000 and 2001; \$21 million for fiscal year 2002; and \$23 million for fiscal year 2003.

DISCUSSION

The National Scenic Byways Program established in ISTEA has successfully combined economic development with the conservation of important scenic, historic, natural and other resources.

The Federal Highway Administration should implement aggressive technical assistance and outreach efforts. These efforts should educate citizens and communities about this program and aid them in accomplishing their conservation and economic development goals along scenic byways.

The criteria used by the Secretary for the designation of a scenic byway by a Federal land management agency should include con-

sideration of the support or lack thereof by a State or States within which the road lies. The nomination for designation of a road by a Federal land management agency should not override or disrupt the transportation planning of a State.

*Sec. 1502. Public-Private Partnerships.*

SUMMARY

This section amends section 140 of title 23, United States Code, by adding a new subsection (e) to allow a metropolitan planning organization (MPO), State department of transportation, or other project sponsor to enter into agreements with any public, private, or nonprofit entity to cooperatively implement any project carried out under the Congestion Mitigation and Air Quality Improvement (CMAQ) program. Paragraph (e)(2) lists forms of participation into agreements which can be entered.

Paragraph (e)(4) specifies that those eligible activities for projects using alternative fuels by privately owned vehicles or vehicle fleets shall include costs of vehicle refueling infrastructure and other capital investments associated with the project that would not be borne or otherwise offset under any other Federal, State, or local program. A public-private partnership may not use CMAQ funds for any activity required by the Clean Air Act or any other Federal law.

DISCUSSION

As another means to further the goals of environmental protection and improved air quality, this section authorizes States or MPOs to enter into public-private partnerships using CMAQ funds. Expanding the use of CMAQ dollars will allow Federal dollars to leverage private sector dollars. This seed money will produce public benefits not only by increasing overall available funding but also by broadening participation and support for government activities that promote clean air.

Examples of public-private or public-non-profit partnerships eligible under this section include public-access refueling and recharging facilities for alternative fuel vehicles; redevelopment projects at rail and subway stops; people movers and infrastructure that promote pedestrian and bicycle access to mass transit, reducing the cost of alternative fuel vehicles; jitneys and private rail stops, public or private passenger rail projects, telecommuting projects, remote vehicle sensing programs; remote vehicle sensing programs; and other innovative programs.

This provision also prohibits States from using CMAQ funds to enter into a partnership with a private entity for projects already required under Federal law and requires the private sector entity to participate through cost-sharing, management, in-kind services or other participation approved by the Secretary.

*Sec. 1503. Wetland Restoration Pilot Program.*

SUMMARY

This section authorizes the Secretary to establish a national wetland restoration pilot program. Subsection (b) establishes the dis-

cretionary pilot program to fund restoration projects to offset the degradation of wetlands resulting from highway construction projects carried out before December 27, 1977. Subsection (c) lists the components of applications States are to submit to the Secretary to qualify for funds provided in this section.

Subsection (d) requires the Secretary to select projects, in consultation with the Secretary of the Army, the Secretary of the Interior, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency. This subsection also sets forth the criteria to be addressed in States' applications for funds provided in this section, including project description, estimated project cost, description of a State's level of commitment to the project, and the expected benefits of the project.

Subsection (e) requires the Secretary to submit every 3 years a report on the results of the program. Subsection (f) provides contract authority in the amount of \$12 million for fiscal year 1998; \$13 million for fiscal year 1999; \$14 million for fiscal year 2000; \$17 million for fiscal year 2001; \$20 million for fiscal year 2002; and \$24 million for fiscal year 2003 to carry out this program.

#### DISCUSSION

The role of wetlands in providing habitat for fish and wildlife, water purification, groundwater recharge, and flood control is well established. This provision is about transportation impacts on wetlands.

The purpose of the new pilot program created in this section is to fund projects to offset the loss or degradation of wetlands resulting from surface transportation projects carried out before the passage of the Clean Water Act amendments in 1977. This section is devoted to historic losses of wetlands only. Funds provided in this program are not intended to reward State departments of transportation for knowingly degrading wetlands through highway construction. Therefore, the funds provided in this section are not to be used to mitigate wetlands losses from current and future highway projects or from projects carried out after December 1977.

#### *Subtitle F—Planning*

##### *Sec. 1601. Metropolitan Planning.*

#### SUMMARY

This section retains the current structure and most of the metropolitan planning provisions found in section 134 of title 23. It retains the current project selection process set forth in ISTEA. This section makes the following substantive changes to current law. First, this section streamlines the 16 metropolitan planning factors found in current law into seven broader issues to be considered in the planning process. Second, it gives States flexibility to move projects within a 3-year Transportation Improvement Program without FHWA approval or action if the Governor and metropolitan planning organization agree. Third, it eliminates the requirement that transportation improvement programs must identify the source of funds for individual projects by Federal funding category. Fourth, this section adds freight shippers to the list of stakeholders



to be given opportunities to comment on plans and transportation improvement programs (TIPs). Finally, it provides that, for urbanized areas designated after the enactment of this Act, metropolitan planning area boundaries shall cover at least the urbanized area and the area expected to become urbanized within the 20-year forecast period and shall require the agreement of the Governor and MPO. Nevertheless, such boundaries are not required to include the entire ozone or carbon monoxide nonattainment, as identified under the Clean Air Act.

#### DISCUSSION

The committee believes that the metropolitan planning provisions established in ISTEA of 1991 have been extremely successful in practice. When ISTEA was enacted in 1991, transportation decisions became part of a larger planning process that recognized how transportation touches every corner of our lives. The metropolitan planning requirements have yielded high returns by bringing all interests to the table and increasing the public's input into the decisionmaking process.

Finding the right solutions for our transportation infrastructure needs requires a comprehensive and strategic policy at all levels of government. ISTEA of 1991 created a real partnership among the Federal, State and local governments and the public in transportation decisionmaking. The committee intends for this partnership to be continued and strengthened through the six-year life of ISTEA II.

#### *Sec. 1602. Statewide Planning.*

#### SUMMARY

This section retains the current structure and most of the statewide planning provisions found in section 135 of title 23. It retains the current project selection process set forth in ISTEA. This section makes the following substantive changes to current law. First, it streamlines the 20 statewide planning factors found in current law into seven broader issues to be considered in the planning process. Second, it gives States flexibility to move projects within a 3-year Transportation Improvement Program (TIP) without FHWA approval or action if the Governor and metropolitan planning organization agree. Third, it eliminates the requirement that transportation improvement programs must identify the source of funds for individual projects by Federal funding category. Finally, this section adds freight shippers to the list of stakeholders to be given opportunities to comment on plans and statewide transportation improvement programs (STIPs).

#### DISCUSSION

The committee believes that the metropolitan planning provisions established in ISTEA of 1991 have been extremely successful in practice. When ISTEA was enacted in 1991, transportation decisions became part of a larger planning process that recognized how transportation touches every corner of our lives. The metropolitan planning requirements have yielded high returns by bringing all in-

terests to the table and increasing the public's input into the decisionmaking process.

Finding the right solutions for our transportation infrastructure needs requires a comprehensive and strategic policy at all levels of government. ISTEA of 1991 created a real partnership among the Federal, State and local governments and the public in transportation decisionmaking. The committee intends for this partnership to be continued and strengthened through the six-year life of ISTEA II.

*Sec. 1603. Advanced Travel Forecasting Procedures Program.*

SUMMARY

This section establishes a new program, the purpose of which is to provide for the completion of Advanced Travel Forecasting Procedures (ATFP), formerly known as the Transportation Analysis Simulation System (TRANSIMS), and to provide support for early deployment of ATFP programs to State governments, metropolitan planning organizations, and other transportation management areas. The ATFP model is a large-scale travel simulation that will provide a practical mechanism for transportation planning, particularly with respect to congestion, air quality and safety, including crash prevention. A total of \$4 million for fiscal year 1998; \$3 million for fiscal year 1999; \$6.5 million for fiscal year 2000; \$5 million for fiscal year 2001; \$4 million for fiscal year 2002; and \$2.5 million for fiscal year 2003 in contract authority is provided for this section.

DISCUSSION

The ATFP model is a large-scale vehicle-specific travel simulation that overcomes many problems with current models. It provides a more detailed level of information and updates that data every second. It provides the opportunity to understand and to mitigate congestion and reduce air pollution, and information on how some traffic accidents emerge. This analytic tool will provide practical apparatus for transportation planning by advancing the underlying science to improve transportation products and address objectives of ISTEA and the Clean Air Act Amendments. It also will enhance partnerships involving national laboratories, universities, States, MPOs, and the private sector. Formerly funded from the administrative takedown, the committee has provided the ATFP model contract authority to reflect its potential. Funds are to be allocated to no more than 12 entities that represent a diversity of populations and geographic regions.

*Sec. 1604. Transportation and Community and System Preservation Pilot Program.*

SUMMARY

This section authorizes a new Transportation and Community and System Preservation Pilot Program to investigate and address the relationships between transportation projects, community preservation and the environment. The Pilot Program consists of three parts: 1) a comprehensive research program; 2) a planning assist-

ance program to provide funding to States, metropolitan planning organizations (MPOs), and local governments that want to begin integrating their transportation planning with community preservation, environmental protection and land use policies; and 3) an implementation assistance program to provide funding to States, MPOs and local governments that have developed state-of-the-art approaches to integrate their transportation plans and programs with their community preservation, and environmental planning programs.

The research program established by subsection (b) examines the experiences of communities in uniting transportation, community preservation, and environmental goals with decisionmaking processes. As part of this research, projects carried out with planning or implementation assistance funds made available by this section are monitored and analyzed.

The planning assistance authorized in subsection (c) is intended to provide financial resources to States and communities that wish to explore integrating their transportation programs with community preservation, and environmental programs. In providing this planning assistance, the Secretary is directed to give priority consideration to applicants that demonstrate commitments to public involvement and to bring non-Federal resources to the proposed projects.

The implementation assistance authorized in subsection (d) provides financial resources to States and communities that have established community preservation programs to enable them to carry out projects that address transportation efficiency while meeting community preservation, and environmental goals. Any activities eligible for funding under title 23 or chapter 53 of title 49 would be eligible for assistance under this program, including corridor preservation activities necessary to carry out transit-oriented development plans or traffic calming measures.

#### DISCUSSION

The Transportation and Community and System Preservation Pilot Program is authorized as part of the committee's overall effort to recognize the potential value of innovation for surface transportation systems. This pilot program will explore the potential for integrated transportation, community preservation and environmental programs to meet these goals at lower cost and with reduced environmental impacts. The committee expects this pilot program will increase significantly the knowledge at the Federal level about the feasibility and desirability of coordinated transportation, environmental and land use programs, the cost and benefits of different approaches, and the implications for Federal transportation and environmental policies.

The research component of this program will identify benchmarks for measuring the performance of communities' experiences in integrating transportation, community and system preservation goals. Performance indicators to be considered include the ability to meet access needs with lower environmental impacts, improvements in transportation efficiency, lower infrastructure construction and maintenance costs, and public attitudes toward transportation systems and their community and environmental impacts.

The committee also expects that the initiatives applicants undertake through participation in this planning assistance program will enable them to be eligible in the future for consideration by the Secretary to receive implementation grants authorized by subsection (d).

In providing implementation assistance under subsection (d), the Secretary is directed to give priority consideration to applicants that have instituted policies such as directing funds to high growth areas, urban growth boundaries to guide metropolitan expansion, and “green corridors” programs. Funds allocated under this section are to be distributed in an equitable manner by diversity of population and geographical region.

#### *Subtitle G—Technical Corrections*

##### *Sec. 1701. Federal-aid Systems.*

###### SUMMARY

This section updates section 103 of title 23 to reflect that the National Highway System, including its connectors to intermodal terminals, has been designated by Congress and that the Interstate Construction program has been completed. Section 103, as revised by this section, defines both the National Highway System and the Interstate System, and includes processes for modifying either system. The revised section 103 incorporates language regarding designations of Interstates and future Interstates from the current section 139. This section also addresses unobligated balances of Interstate Construction funds and interstate substitute funds, as these programs are not continued.

###### DISCUSSION

The revised section 103 does not make substantive changes to the processes for modifying the Interstate or National Highway Systems.

##### *Sec. 1702. Miscellaneous Technical Corrections.*

###### SUMMARY

This section makes a number of technical corrections to title 23, eliminating outdated provisions, definitions, and programs. It replaces “Federal-aid systems” with “Federal-aid highways,” “municipality” and “county or municipality” with “jurisdiction,” and strikes “he” when referencing the Secretary of Transportation and replaces with “the Secretary.” It removes provisions to reflect the fact that the Interstate system is complete, and that the surface transportation system has been established. It also strikes outdated apportionment formulas contained in subsection 130(f) and 152(e). It amends section 116 to clarify when a State’s duty to maintain a Federal-aid highway shall cease, but does not impose any additional requirement on the State to maintain a highway nor does it relieve any maintenance requirements in current law. It simply clarifies existing policy.

## DISCUSSION

These changes are technical amendments and involve no policy implications.

*Sec. 1703. Nondiscrimination.*

## SUMMARY

This section moves the section in current law on nondiscrimination on the basis of sex, to section 140 of title 23, which concerns all nondiscrimination.

## DISCUSSION

This change was made simply to consolidate these sections. No substantive changes are made to this section. No policy implications are intended.

*Sec. 1704. State Transportation Department.*

This section makes technical corrections and changes the term “State highway department” to “State transportation department” to emphasize and reflect the intermodal focus of these departments.

*Subtitle H—Miscellaneous Provisions*

*Sec. 1801. Designation of Portion of State Route 17 in New York and Pennsylvania as Interstate Route 86.*

## SUMMARY

This section designates the portion of State Route 17 between the junction of State Route 17 and Interstate Route 87 in Harriman, New York, and the junction of State Route 17 and Interstate Route 90 near Erie, Pennsylvania, as Interstate Route 86. However, each segment not meeting specified criteria on the date of the Act is designated as a future Interstate System route, until upgraded substantially to meet Interstate System design standards.

## TITLE II—RESEARCH AND TECHNOLOGY

*Subtitle A—Research and Training*

Subtitle A of title II provides contract authority from the Highway Trust Fund to conduct a comprehensive surface transportation research, development, deployment, and technology transfer program. A carefully delineated strategic planning process and segregated funds for advanced and multimodal research is authorized. These initiatives will address the concerns raised by the General Accounting Office in its 1997 report on the Department’s surface transportation research and development program. The bill requires the Secretary to submit annually to Congress a report on strategic plans, goals, and milestones to help guide research, development, and technology transfer activities during a five-year period beginning on the date of the report. The preparation and implementation of this report will ensure continuity of research, stimulate appropriate Departmental management of the research and development (R&D) process, more closely couple R&D planning and

management with the budget process, and allow for effective congressional oversight of the use of research and technology contract funds.

One of the strengths of the Federally-supported surface transportation research and technology program is the diversity of approaches used to achieve national goals and the diversity of organizations participating in these activities. To this end, the committee has reauthorized such programs as the University Transportation Centers, the Long-Term Pavement Performance Program, the State Planning and Research Program, as well as continuation of partnerships to implement the technologies originally developed by the Strategic Highway Research Program.

As soon as feasible, the FHWA Administrator and the Director of the Intelligent Transportation System (ITS) Joint Program Office will seek to expand rapidly the number of States deploying the Commercial Vehicle Information Systems and Networks (CVISN), rather than concentrating assistance in those States now participating in the pilot and prototype tests.

*Sec. 2001. Strategic Research Plan.*

This section adds a new chapter 52 to subtitle III of title 49, United States Code. The authority provided in this section, however, is not new, as the Department is already carrying out strategic research and planning.

*49 U.S.C. § 5201. Definitions*

Section 5201 provides definitions for terms used in this chapter.

*49 U.S.C. § 5211. Transactional Authority*

This section authorizes the Secretary to enter into grants, cooperative agreements, and other transactions with States, industry, educational or other nonprofit institutions, and other entities to further strategic research and planning under this chapter.

*49 U.S.C. § 5221. Strategic Planning*

This section requires the Secretary to establish a strategic planning process to determine national priorities for transportation research and development, coordinate Federal activities in the area, and evaluate the impact of the Federal investment in research. The Secretary also is required to submit to Congress a report on strategic plans, goals, and milestones to help guide research, development, and technology transfer activities during a five-year period beginning on the date of the report. The preparation and implementation of this report will ensure continuity of research, stimulate vigorous Departmental management of the research and development (R&D) process, more closely tie this management process to the budget process, and allow for effective congressional oversight on the use of research and technology contract funds.

*49 U.S.C. § 5222. Authorization of Contract Authority*

This section provides \$1.5 million in contract authority from the Highway Trust Fund for strategic planning for each fiscal years 1998 through 2003.

*Sec. 2002. Multimodal Research and Development Program.*

49 U.S.C. § 5231. Multimodal Transportation Research and Development Program

This section establishes the multimodal transportation research and development program to recognize the need for research and technology development for intermodal or multimodal projects. It requires the Secretary to consult among the Administrators of the operating administrations of the Department and other Federal officials with research responsibilities to establish program priorities. These monies will be used for research important to more than one mode of transportation.

*49 U.S.C. § 5232. Authorization of Contract Authority*

This section provides \$2.5 million in contract authority from the Highway Trust Fund for each of fiscal years 1998 through 2003 to carry out this program.

*Sec. 2003. National University Transportation Centers.*

This section consolidates and modifies two current programs: the University Research Institutes program and the University Transportation Centers program. It retains the ten currently existing regional university transportation centers. It also designates six university transportation institutes: the Mack-Blackwell National Rural Transportation Study Center; the National Center for Transportation and Industrial Productivity; the Institute for Surface Transportation Policy Studies; the Urban Transit Institute at the University of South Florida; the National Center for Advanced Transportation Technology; and the University of Alabama Transportation Research Center. The Secretary is authorized to fund up to four additional national centers to address transportation issues specifically identified in this section. A total of \$12 million in contract authority is provided for each of fiscal years 1998 through 2003 to carry out this section.

*Sec. 2004. Bureau of Transportation Statistics.*

This section expands the list of topics to be covered by the Bureau of Transportation Statistics (BTS) to include transportation-related variables influencing global competitiveness, the impact of international trade on the Nation's economy and on domestic transportation facilities and services, and transportation's impact on the ability of domestic U.S. businesses to reach foreign markets. This section also requires the BTS Director to coordinate responsibilities for long-term data collection with other efforts to implement the Government Performance and Results Act (GPRA).

This section codifies the following existing BTS initiatives: (1) the BTS' Transportation Data Base, including various data on competing and complementary modes of transportation, intermodal combinations, international movement, and local and intercity movements; (2) the BTS' National Transportation Library; and (3) the general content of the BTS' National Transportation Atlas Data Base (NTAD). This section requires the Director of BTS to study freight factors, such as diesel fuel data and miles of international trade traffic. The BTS Director also is required to report to Con-

gress and to recommend what improvements are needed in such data collection for use in the highway apportionment formula.

This section authorizes the BTS to establish grants and enter into cooperative agreements with public and nonprofit organizations to conduct research and development for BTS' major activities. Contract authority of \$26 million for fiscal year 1998; \$27 million for fiscal year 1999; \$28 million for fiscal year 2000; \$29 million for fiscal year 2001; \$30 million for fiscal year 2002; and \$31 million for fiscal year 2003 is provided for BTS activities.

*Sec. 2005. Research and Technology Program.*

This section amends title 23 by adding a new chapter, "Chapter 5—Research and Technology," and provides a definition for the term "safety." It also authorizes the Secretary to carry out research, development, and technology transfer activities with respect to motor carrier transportation and all phases of highway planning and development. It requires the Secretary to develop and carry out programs to facilitate the application of products that will improve the safety, efficiency, and effectiveness of the Nation's transportation system. Mandatory elements of the research program are delineated and appropriate reporting requirements are specified.

*Sec. 2006. Advanced Research Program.*

This section requires the Secretary to establish a program to address longer-term, higher-risk research that will result in potential benefits for improving the durability, mobility, efficiency, environmental impact, productivity, and safety of transportation systems. The Secretary shall attempt to develop partnerships with the public and private sectors to carry out this program. A total of \$5 million for fiscal year 1998; \$7 million for fiscal year 1999; \$9 million for fiscal year 2000; and \$10 million for each of fiscal years 2001 through 2003 in contract authority from the Highway Trust Fund is provided for activities under this program. In coordinating and managing this program, the Administrator of the Federal Highway Administration will ensure that research concerning human factors and materials sciences is considered.

*Sec. 2007. Long-Term Pavement Performance Program.*

This section directs the Secretary to complete the Long Term Pavement Performance (LTPP) program, now at the midpoint of its 20-year schedule, and it provides \$15 million in contract authority from the Highway Trust Fund for fiscal years 1998 through 2003 for LTPP. One key purpose of the LTPP program is to extend the life of highway pavements by developing improved pavement design methodologies and strategies for the rehabilitation of existing pavements.

*Sec. 2008. State Planning and Research Program (SP&R).*

This section continues the provision under current law that directs 2 percent of certain categories of funds apportioned to the States for each fiscal year to be available to fund planning and research.



*Sec. 2009. Education and Training.*

This new section consolidates the legal authority for various technology transfer programs and activities, including education and training efforts. The Secretary is authorized to make grants and enter into cooperative agreements and contracts: (1) to assist rural local transportation agencies, tribal governments, and consultants; (2) to deliver transportation technology and traffic safety information to local jurisdictions; (3) to operate local technical assistance program centers; and (4) to allow local transportation agencies and tribal governments to enhance new technology implementation. A total of \$7 million for fiscal years 1998 through 2000 and \$8 million for fiscal years 2001 through 2003 in contract authority from the Highway Trust Fund is provided. Up to  $\frac{1}{4}$  of 1 percent (up from  $\frac{1}{16}$  of 1 percent in current law), of all funds apportioned to a State for the STP program may be available for the State transportation agencies' payment for up to 80 percent of the cost of their employees' educational expenses.

This section requires the Secretary to continue to operate the National Highway Institute (NHI) within the FHWA, and lists the duties and programs of the NHI, the purpose of which is to develop and administer education and training programs. A total of \$5 million for fiscal years 1998 through 2000 and \$6 million for fiscal years 2001 through 2003 in contract authority from the Highway Trust Fund is provided for the NHI.

This section continues the authority of the Secretary to make grants for research fellowships under the Dwight David Eisenhower Transportation Fellowship Program to attract qualified college and graduate students to the field of transportation. A total of \$2 million in contract authority from the Highway Trust Fund is provided for each of fiscal years 1998 through 2003 for the Eisenhower Fellowship program.

This section continues to allow the Secretary to develop and administer highway construction and technology training programs and permissive authority to develop and fund the Summer Transportation Institutes. This section allows the Secretary to deduct up to \$10 million each year before making apportionments under section 104(b) for these programs. In developing and administering these training programs, the Secretary may reserve training positions for individuals who receive welfare assistance from a State.

*Sec. 2010. International Highway Transportation Outreach.*

This section continues the current authorization for the Secretary to conduct activities aimed at improving U.S. firms' access to foreign markets. This section also adds a new provision to enable States to use their State Planning and Research Program funds for international highway transportation activities.

*Sec. 2011. National Technology Deployment Initiatives and Partnership Program.*

SUMMARY

This section directs the Secretary to develop and administer a National Technology Deployment Initiatives (NTDI) program to significantly expand the adoption of innovative technologies by the

surface transportation community to increase the efficiency and durability and improve the safety of the Nation's transportation system. The Secretary shall continue deployment partnerships established through the strategic highway research program (SHRP). A total of \$50 million in contract authority from the Highway Trust Fund is provided for each of the fiscal years 1998 through 2003 for the NTDI program and continuation of the SHRP partnerships.

#### DISCUSSION

In carrying out this section the Secretary should promote the demonstration and deployment of technologies identified through the Strategic Highway Research Program, including the use of the Superpave system and other long-term pavement technologies, as well as the use of lithium salts to mitigate alkali silica reactivity.

##### *Sec. 2012. Infrastructure Investment Needs Report.*

This section continues the requirement under current law that the Secretary submit a report every 2 years to Congress on estimates of the future highway and bridge needs of the Nation. These reports are due on January 31, beginning in 1999.

##### *Sec. 2013. Innovative Bridge Research and Construction Program.*

This section requires the Secretary to establish and carry out a new program to demonstrate the application of innovative technology in the construction of bridges and other structures. Entities are required to submit an application to receive a grant under this program. A total of \$10 million for fiscal year 1998; \$15 million for fiscal year 1999; \$17 million for fiscal year 2000; and \$20 million for each of the fiscal years 2001 through 2003 in contract authority from the Highway Trust Fund is provided for this program.

##### *Sec. 2014. U.S. Bureau of Indian Affairs Administrative Funds.*

This section corrects a section reference.

##### *Sec. 2015. Study of Future Strategic Highway Research Program.*

This section requires the Secretary to enter into grants, cooperative agreements or contracts with the National Academy of Sciences to carry out a study on the goals, purposes and needs for a new Strategic Highway Research program and shall report on the results of its study to Congress. In conducting the study, the Board shall consult with the American Association of State Highway and Transportation Officials (AASHTO) and other entities as the Board determines is necessary.

##### *Sec. 2016. Joint Partnerships for Advanced Vehicles, Components, and Infrastructure Program.*

#### SUMMARY

This section requires the Secretary, in coordination with government agencies and private consortia, to promote the research, development and deployment of advanced vehicle transportation technologies. The Secretary is required to report to Congress annually on projects undertaken by eligible consortia and progress made

under this section. Funds from the General Treasury are authorized to carry out the requirements set forth in this section.

#### DISCUSSION

The committee has included this provision to continue support for the advanced transportation technology consortia program, which was first established in ISTEA. The program develops advanced transportation technologies to help reduce vehicle emissions, enhance U.S. competitiveness, and decrease the Nation's reliance on foreign fuel.

*Sec. 2017. Transportation and Environment Cooperative Research Program.*

#### SUMMARY

This section establishes a Transportation and Environment Cooperative Research Program. Five million dollars per year is authorized to be appropriated for this program.

Under this section, the Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, will establish an Advisory Board that will recommend environmental and energy conservation research, technology and technology transfer activities related to surface transportation. The section directs the Secretary to enter into cooperative agreements with the National Academy of Sciences to carry out the activities as determined by the Advisory Board. Priority is given to researching and reporting on the relationship between highway density and ecosystem integrity, and in developing a methodology for transportation managers and regulatory agencies to allow for integration of the report in the planning and development of solutions and alternatives for transportation needs.

#### DISCUSSION

The program allows DOT to work with researchers and scientists outside the Department, to consider the relationship between transportation and the environment. As transportation significantly affects the environment, it is important to develop objective scientific bases on which to better understand the effects of transportation -- modes, designs, materials, emissions -- on the environment. This program will allow the Department to work cooperatively with scientists and researchers outside the Department on these important topics.

*Sec. 2018. Conforming Amendments.*

This section repeals sections 307, 321 and 326 of title 23, which have been incorporated elsewhere in this title.

#### *Subtitle B—Intelligent Transportation Systems*

This subtitle builds upon the goals established in the Intelligent Transportation Systems Act of 1991 (23 U.S.C. 307 note; 105 Stat. 2189) and the progress achieved over the past 6 years in the emerging field of Intelligent Transportation Systems (ITS). The title provides sufficient, sustained funding and strong pro-

grammatic direction to the ITS Joint Program Office in the U.S. Department of Transportation. With this direction, the Federal government will continue to provide the leadership in advancing technologies that improve transportation safety and in ensuring compatibility with the established ITS national architecture. Intelligent Transportation Systems provide cost-effective ways to achieve the Nation's transportation goals of mobility, efficiency, national and international productivity, safety and environmental protection. The goals of the subtitle are twofold: 1) to incorporate ITS into mainstream transportation planning and construction processes for all modes at the local, State and Federal levels; and 2) to integrate—or deploy—ITS technologies in the Nation's infrastructure, resulting in coordinated ITS systems that benefit the safe and efficient movement of both passengers and freight in localities, States, regions and corridors.

Intelligent Transportation Systems (ITS) are groups of technologies that use sensors, computer networks, and related information/communications systems that work together to improve surface transportation and safety. State and local governments, the U.S. Department of Transportation and over 200 companies have participated in over 240 ITS projects. This initiative is providing the technologies, institutional framework and experience needed to make the Nation's surface infrastructure easier to use and more efficient. Evaluations of many projects indicate that ITS locations reduce traffic congestion, improve transit services, decrease the number of traffic accidents, or reduce emissions and conserve fuel. While the more than 6 years of effort have shown progress in advancing ITS technologies beyond the research arena toward deployment, many institutional and financial challenges continue to constrain the widespread integration of current systems.

The Secretary is provided authority to utilize 25 percent of the funds authorized for various ITS activities to provide credit assistance toward title 23-eligible projects with significant ITS elements consistent with provisions of title I, subchapter C, chapter 2 of this bill. The ITS elements authorized may be applicable to highways, transit, rail or other projects.

The purpose of this provision is to allow the Secretary to advance ITS implementation by taking advantage of the ability of many ITS projects to support credit assistance in lieu of grant assistance. ITS has been used with facilities that generate project revenue sufficient to repay bonds and loans, such as toll roads. Other types of projects contain significant ITS elements and promise to generate project revenue sufficient to repay loans or support lines of credit or loan guarantees.

By utilizing ITS funds to provide credit assistance to ITS projects, the Secretary would be able to support significantly more ITS development than with grant funds alone. Under this provision, assuming the same degree of leveraging consistent with the Transportation Infrastructure Finance and Innovation program, the Secretary could provide up to \$10 billion in credit assistance versus \$500 million in grants by utilizing the full flexibility provided in this provision. The Secretary will also be able to use credit assistance under this section to support projects also receiving as-

sistance provided through the Transportation Infrastructure Finance and Innovation program provisions of this bill.

Sections 2101 through 2104 replace sections 6051 through 6059 of title VI, Part B of the Intermodal Surface Transportation Efficiency Act of 1991 (“ITS Act of 1991”). The ITS program is a key forward-looking initiative of ISTEA that continues to serve an integral role in enhancing traffic safety and efficiency. ITS technologies provide new options for transportation planners to address safety and capacity concerns without the negative environmental and social effects of expanding the physical footprint of a highway. Notable ITS technologies include in-vehicle navigation systems, traffic and incident management systems, and “fast toll” technologies.

*Sec. 2101. Short Title.*

This subsection designates the name of subtitle B of chapter 5 as the “Intelligent Transportation Systems Act of 1997” (ITS Act).

*Sec. 2102. Findings.*

This section lists Congress’ findings with respect to the ITS program.

*Sec. 2103. Intelligent Transportation Systems.*

*23 U.S.C. § 521. Purposes*

SUMMARY

This section sets forth the purposes of the ITS Act of 1997, which are: (1) to provide for accelerated deployment of proven technologies and concepts and increased Federal commitment to improving surface transportation safety, and (2) to expedite deployment and integration of basic ITS services for consumers of passenger and freight transportation across the Nation.

DISCUSSION

During the past 6 years of the authorized program, the Federal government and industry have worked to define the parameters of a successful ITS program, by identifying the potential for ITS within the national transportation infrastructure and the appropriate role of the Federal government in ITS. The purposes provide general direction to ensure that ITS reach their potential in advancing transportation safety, efficiency, economic productivity, technological advancement and environmental protection, and in ensuring that ITS is mainstreamed so that ITS becomes another tool in the range of options when transportation planners at all levels of government and industry consider approaches to addressing the need to increase capacity, improve safety or improve efficiency.

*23 U.S.C. § 522. Definitions*

This section provides definitions for terms used in this subchapter. The key ITS technologies can be grouped into several broad categories according to intended functions: (1) Advanced Traveler Information Systems help travelers by providing real-time routing, scheduling and congestion information relevant to transportation systems; (2) Advanced Traffic Management Systems help

State departments of transportation departments manage surface transportation systems through surveillance, signal coordination, electronic payment services, ramp metering, and incident response; (3) Advanced Public Transportation Systems improve the scheduling and transfers as well as on time performance of transit systems and provide improved schedule information to users; (4) Commercial Vehicle Operations help safety inspectors and economic regulators efficiently conduct their responsibilities pertaining to commercial buses and trucks; (5) Advanced Vehicle Control Systems seek to improve driver information and functions or facilitate emergency response of drivers; and (6) Automated Highway Systems intend to increase the operating efficiency or throughput of highways by automating cars, allowing them to be driven in closely spaced platoons under roadway controlled and safe conditions.

*23 U.S.C. § 523. Cooperation, Consultation, and Analysis*

This section requires the Secretary to foster enhanced operation and management of the national surface transportation system, promote the widespread deployment of ITS, and advance emerging technologies in cooperation with State and local governments and the private sector.

*23 U.S.C. § 524. Research, Development, and Training*

SUMMARY

This section requires the Secretary to undertake comprehensive research, development, testing and technical assistance to carry out the purposes of the ITS Act. It encourages projects that improve mobility, the quality of the environment, and safety, such as advanced vehicle controls and roadway safety systems linked to the vehicle. Programs shall be consistent with the national ITS architecture and shall maintain an appropriate balance between near-term safety spin-off systems and longer-term fully automated systems.

The Secretary is required to submit a 6-year plan to Congress within 1 year of enactment of this subtitle, and annually thereafter. This document will report on progress in meeting program goals, objectives, and milestones. The Secretary also is required to establish and maintain an informational clearinghouse containing technical and safety data collected from Federal projects. A total of \$120 million for fiscal year 1998; \$125 million for fiscal year 1999; \$130 million for fiscal year 2000; \$135 million for fiscal year 2001; \$140 million for fiscal year 2002; and \$150 million for fiscal year 2003 in contract authority from the Highway Trust Fund is provided to carry out the requirements set forth in this section.

DISCUSSION

This section provides guidance to the Secretary in directing the resources toward programs and projects that meet the goals of the program and satisfy the Federal role in ITS. This section focuses on intelligent vehicles and intelligent infrastructure and gives examples of those projects. While substantial investment is needed to ensure that ITS technologies reach their potential, the Secretary is expected to work with industry and research partners in leveraging

scarce Federal funds to advance the most promising fields and technologies. While the most promising projects involve short-term benefits, the Secretary is also encouraged to move ahead on technologies, such as automated highway systems, that may offer long-term safety benefits.

While the Federal/non-Federal cost share for research projects is 80 percent-20 percent, the Secretary may waive the non-Federal share for high-risk research projects. Because the ITS field is dynamic and emerging, the Secretary has the option of moving ahead on innovative, high-risk projects that are consistent with the goals of the title, but that may not have a sufficient level of support within industry or local or State governments.

Many advances in successfully implementing ITS have been achieved through operational tests and projects. While research and development is important, the ultimate test for the potential of ITS has been in the field of implementation. Consequently, the Secretary is allowed to allocate funds for evaluations, to ensure that the States and localities are able to understand what has worked and what has not worked.

*23 U.S.C. §525. Intelligent Transportation System Integration Program*

SUMMARY

This section requires the Secretary to conduct a comprehensive program to accelerate the integration and compatibility of ITS technologies. The Secretary is required to encourage private sector involvement through public private partnerships and other innovative financial arrangements. A total of \$100 million for fiscal year 1998; \$110 million for fiscal year 1999; \$115 million for fiscal year 2000; \$130 million for fiscal year 2001; \$135 million for fiscal year 2002; and \$145 million for fiscal year 2003 in contract authority from the Highway Trust Fund is provided to carry out this program.

DISCUSSION

The ITS field has witnessed significant advances during the past 6 years. Much of the program's focus has been on research, development and operational tests. These efforts have produced proven technologies that can be deployed today. Thus, the ITS program must move from a primarily research-driven program to one of integration. This integration program will assist in this aggressive implementation of model deployment projects. In order to provide guidance to States and localities, the section identifies priorities for integrating projects, and requires a financing and operations plan.

*23 U.S.C. §526. Integration Program for Rural Areas*

SUMMARY

This section requires the Secretary to conduct a comprehensive program to accelerate the integration and deployment of ITS in rural areas. The Secretary is required to promote private sector involvement in the project by using public private partnerships or other innovative financial arrangements. A total of \$10 million for

each of fiscal years 1998 through 2000; \$15 million for fiscal year 2000; and \$20 million for each of fiscal years 2002 and 2003 in contract authority is provided to carry out this program. If funds made available under this section are used, the Federal share shall not exceed 50 percent. If other program funds are used, the normal Federal share of 80 percent applies.

#### DISCUSSION

While much of the focus of ITS projects has tended to be in metropolitan areas, ITS technologies have shown significant benefits for rural communities, regions and corridors. Projects such as Road Weather Information Services, Tourism Information Systems, May-day Services, and In-Vehicle Navigation Systems have been carried out with success. In order to encourage the use of ITS to improve safety, encourage tourism and improve efficiencies, this section provides the Secretary with separate funding to integrate ITS in rural areas.

#### *23 U.S.C. §527. Commercial Vehicle Intelligent Transportation System Infrastructure*

#### SUMMARY

This section requires the Secretary to deploy intelligent transportation systems (ITS) to promote the safety and productivity of commercial vehicles and drivers, and to reduce administrative costs associated with commercial vehicle operations. A total of \$25 million for each of fiscal years 1998 through 2000; \$35 million for each of the fiscal years 2001 and 2002; and \$40 million for fiscal year 2003 in contract authority is provided to carry out this section. If funds made available under this section are used, the Federal share shall not exceed 50 percent. If other program funds are used, the normal Federal share of 80 percent applies. The section focuses on CVO safety and programs that advance onboard driver and vehicle safety monitor systems. The funds will be used primarily for safety, efficiency of enforcement efforts, electronic processing of registration, driver licensing and fuel tax, and communication with other States

#### DISCUSSION

The Secretary is directed to continue to research and then deploy the Commercial Vehicle Intelligent System Network (CVISN) program, to promote safety and productivity of commercial vehicles and drivers, and to reduce costs associated with commercial vehicle operations (CVO). These systems will be deployed along corridors and will link States' records on CVO companies and compliance. Private companies using computing and communications technology for their truck fleets are realizing productivity gains, for example, increasing pickups and deliveries per day. Cost savings have also been predicted for States using CVO at weigh stations. One study found that ITS holds promise for improving the efficiency of regulatory and enforcement agencies. The program eventually will allow State regulators near real-time access to records and information in other States and agencies. This information will allow the regulators to both target carriers with poor safety records and better enforce violators off the highway.



*23 U.S.C. § 528. Standards*

## SUMMARY

This section requires the Secretary to develop, implement and maintain a national architecture and supporting standards to promote the widespread use and evaluation of ITS technology as a component of the national surface transportation system that will promote interoperability among and efficiency of ITS technologies. Highway Trust Fund monies cannot be used to deploy ITS technology that does not comply with each provisional or completed standard established under this section. This restriction does not apply to upgrades, expansions, operation, and maintenance of ITS in existence before the date of enactment of this subchapter.

This section gives the DOT Secretary the ability to secure the necessary spectrum from the FCC for nationwide ITS technologies. The Secretary is to consult with the Secretaries of Defense, Commerce, and the Chairman of the Federal Communications Commission (FCC) to determine the best means for securing spectrums needed to carry out this subsection and shall submit a report on the progress within 1 year of enactment of this subchapter. Within 2 years of enactment of this subchapter, the FCC shall allocate the necessary spectrum for the near-term establishment of a dedicated short-range vehicle-to-wayside wireless standard. The Secretary is authorized to use funds available under section 524 for Research, Development, and Technology to carry out this section.

This section continues the Priority Corridor program established in ISTEA. Established corridor coalitions have shown success in managing traffic congestion and emergency response.

## DISCUSSION

Standards can facilitate innovation and promote interoperability among ITS. The Secretary has engaged in an aggressive campaign to develop standards through consensus-based method via established standards developing organizations (SDOs). However, there is a general concern within industry and governmental agencies that those standards that are critical to ensuring national and regional interoperability will not be completed in a timely fashion. To address this concern, the section establishes a process for the Secretary to identify critical standards to ensure interoperability, and then sets a deadline (January 1, 2001) for the SDO to issue a final standard. If the SDO does not meet that deadline, then the Secretary can set a temporary, or "provisional" standard. The provisional standard is immediately replaced by the consensus standard when adopted by the SDO. The bill also provides a waiver to this process if the Secretary deems it to be appropriate.

In recent correspondence, the JPO identified a list of 21 standards that it believes is currently critical to ensuring interoperability. They include: National Transportation Communications for ITS Protocol, CVO Safety and Credentials Information, In-Vehicle Navigation and Related Advanced Traveler Information System, and Mayday Reporting Interface. The JPO also identified a list of eight standards that will be critical to achieving interoperability in the future, and a list of potential standards that may be relevant more than 2 years in the future. The JPO also stated that, except

for any new starts after the beginning of 1999, there are expected to be few, if any, critical standards' activities that will extend past 2001.

The section also prohibits the use of Federal funds to deploy ITS technologies if they do not comply with the provisional or completed standard. This prevents an infusion of Federal funds on technologies that are counter to the national ITS architecture. However, funds can be used for operation and maintenance of existing projects, so that those that have already been deployed are not discriminated against; and for upgrade or expansion of an existing system if the Secretary determines that it meets stated criteria.

#### *23 U.S.C. § 529. Funding limitations*

This new section includes several limitations on ITS funding. (1) It requires that any funds made available under this subtitle must be consistent with the national architecture. (2) It prohibits the Secretary from funding any ITS operational test or deployment that competes with a similar privately funded project. (3) It prohibits the use of ITS funds for the construction of physical highway and transit infrastructure. (4) It limits the funds available for ITS outreach, public relations, and training activities.

#### *23 U.S.C. § 530. Advisory Committees*

This section that the Secretary may use one or more advisory committees to carry out ITS activities, but specifies that any advisory committee so utilized shall be subject to the Federal Advisory Committee Act.

### *Subtitle C—Funding*

#### *Sec. 2201. Funding (23 U.S.C. § 541).*

This section provides contract authority for fiscal years 1998 through 2003 to carry out the Research and Technology program, the International Highway Transportation Outreach Program, the Infrastructure Investment Needs Report, and the study on the Strategic Highway Program. A total of \$98,000,000 is authorized for fiscal year 1998; \$101,000,000 for fiscal year 1999; \$104,000,000 for fiscal year 2000; \$107,000,000 for fiscal year 2001; \$110,000,000 for fiscal year 2002; and \$114,000,000 in fiscal year 2003. This section also provides an equal amount of obligation limitations for funds authorized by this section.

### HEARINGS

Prior to the introduction of S. 1173, the Subcommittee on Transportation and Infrastructure held seven oversight hearings and four field hearings on the reauthorization of the Intermodal Surface Transportation Efficiency Act. The full Committee on Environment and Public Works held a field hearing in Warwick, RI.

The first hearing was held on February 13, 1997, in Washington, DC. The purpose of the first hearing was to receive testimony on transportation trends, funding requirements and the economic returns from transportation infrastructure investment. Testimony was given by Mortimer Downey, Deputy Secretary of the U.S. De-

partment of Transportation; Andrew H. Card, Jr., president and CEO, American Automobile Manufacturers Association; Darrel Resnick, president, American Association of State Highway and Transportation Officials; Alan E. Pisarski, author of *Commuting in America*; and Damian Kulash, president and CEO, ENO Transportation Foundation Inc.

The purpose of the second hearing, which was held on February 26, 1997, was to receive testimony of the Department of Transportation's ISTEA reauthorization proposal and ISTEA program performance. Testimony was received by Rodney E. Slater, Secretary, U.S. Department of Transportation; William D. Fay, president and CEO, American Highway Users Alliance; and Hank Dittmar, executive director, Surface Transportation Policy Project.

The third hearing was held on March 6, 1997 in Washington, DC. The purpose of the third hearing was to examine innovative financing technology, construction and design practices. Testimony was received by Representative Rosa L. De Lauro; Mortimer Downey, Deputy Secretary of Transportation, accompanied by Jane Garvey, Deputy Federal Highway Administrator, and Christine Johnson, Director of the Joint Program Office, Intelligent Transportation Systems; Phyllis F. Scheinberg, associate director, Transportation and Telecommunications Issues, General Accounting Office (GAO), accompanied by Joseph Christoff, assistant director, GAO, and Yvonne Pufahl, senior evaluator, GAO; Gerald Pfeiffer, senior vice president, United Infrastructure Company, Chicago, IL; Daniel V. Flanagan, president, The Flanagan Consulting Group, Inc.; James Constantino, Ph.D., P.E., president and CEO, ITS America; and Robert Skinner, executive director, Transportation Research Board.

The fourth hearing was held on March 13, 1997. The purpose of the hearing was to examine program eligibility under ISTEA. Testimony was received from Senator William V. Roth Jr.; Senator James M. Jeffords; Senator John McCain; Senator Joseph R. Biden, Jr.; Michael Huerta, Associate Deputy Secretary of Transportation; Leslie White, chairperson, American Public Transit Association; Tom M. Downs, chairman, President and Chief Executive Officer, Amtrak, National Railroad Passenger Corporation; Karen B. Phillips, senior vice president, American Association of Railroads; William E. Loftus, president, American Short Line Railroad Association; and Thomas Donohue, president and CEO, American Trucking Associations.

The fifth hearing was held on March 19, 1997, and focused on environmental programs and statewide and metropolitan planning under ISTEA. Testimony was received from Jane Garvey, Acting Federal Highway Administrator; David M. Gardiner, Assistant Administrator for Policy, Planning, and Evaluation, U.S. Environmental Protection Agency; Thomas Walker, executive director, Wisconsin Road Builders Association, on behalf of the American Road and Transportation Builders Association; Hal Hiemstra, vice president of national policy, Rails to Trails; Meg Maguire, president, Scenic America; Hank Dittmar, executive director, Surface Transportation Policy Project; Leon Kenison, commissioner, New Hampshire Department of Transportation, Lawrence D. Dahms, executive director, Metropolitan Transportation Commission, San Fran-

cisco, CA; M. Michael Cooke, chair, Board of County Commissioners, Douglas County, CO; Guillermo Vidal, executive director, Colorado Department of Transportation; and Timothy S. Stowe, vice president, Anderson and Associates, Inc., on behalf of the American Consulting Engineers Council.

The sixth hearing was a field hearing held in Coeur d'Alene, ID, on March 22, 1997. The hearing examined rural transportation issues in light of the ISTEA reauthorization. Testimony was received from Governor Phillip Batt of Idaho; Jane Garvey, Acting Federal Highway Administrator; the Idaho State Senator Evan Frasure; Idaho State Representative Jim Kempton; Jack King, County Commissioner, Shoshone County, Idaho; Dwight Bowers, director, Idaho Department of Transportation; Marvin Dye, director, Montana Department of Transportation; Yvonne Ferrell, director, Idaho Department of Parks and Recreation; Michael Kyle, director, National Center for Transportation Technologies, University of Idaho, Moscow, ID; Steve Albert, director, Western Transportation Institute, Bozeman, MT; Basil Barna, manager, Transportation and Infrastructure Department, Lockheed Idaho Technologies; Jim Mannion, Idaho Division President, AAA Oregon-Idaho, Boise, ID; Tom Arnold, Idaho Department of Commerce, Boise, ID; Dave Doeringsfeld, port manager, Port of Lewiston, Lewiston, ID; Ron McMurray, past president, U.S. Highway 95 Coalition, Lewiston, ID; Kermit Kiebert, Association of Idaho Highway Districts, Sandpoint, ID; Dave Cook, Regional vice President, Swift Transportation Co., Inc., Lewiston, ID; and Carl Schweizer, director of government relations, Montana Contractors Association, Helena, MT.

The seventh hearing was a field hearing held in Kansas City, MO on March 26, 1997. Testimony on safety issues in the context of ISTEA reauthorization was received from Carolyn Winkler, private citizen, Huntsville, MO; Mike Right, vice president, Public Affairs, American Automobile Association, Missouri, St. Louis, MO; Barry Seward, president, Missouri Transportation Development Council, Jefferson City, MO; Tom Boland, chairman, Missouri Highway and Transportation Commission, Hannibal, MO; John J. Wagner, Jr., chairman, Greater Kansas City Chamber of Commerce Surface Transportation Committee; Richard C.D. Fleming, president and CEO, St. Louis Regional Commerce and Growth Association, Kansas City, MO; Don Clarkson, Clarkson Construction Company, Kansas City, MO; Peter Herschend, Vice Chairman, Silver Dollar City, Inc., Branson, MO; Gary Evans, executive vice president and CEO, Farmland Industries, Kansas City, MO; Malcomb McCance, existing building manager, St. Joseph Chamber of Commerce, St. Joseph, MO; Brian Mills, Cass County Commissioner, Northern District, Harrisonville, MO; and John Lieber, Deputy Assistant Secretary of Transportation Policy, Missouri Department of Transportation Policy.

The eighth hearing was a field hearing held in Las Vegas, NV on March 28, 1997. The purpose of the hearing was to examine innovative technologies in the context of the ISTEA reauthorization. Testimony was received from Governor Robert Miller of Nevada; Senator Richard Bryan; Representative John Ensign; Representative Jim Gibbons; Yvonne Atkinson Gates, Clark County commissioner, Las Vegas, NV; Bruce Woodbury, Clark County commis-

sioner, Las Vegas, NV; Celia G. Kupersmith, executive director, Reno Regional Transportation Commission, Reno, NV; Christine Johnson, director of Intelligent Transportation Systems, Joint Program Office, Federal Highway Administration; Bob McClellan, general manager, Metropolitan Transit Authority of Harris County, Houston, TX; Dick Howard, director, Intergovernmental Relations, South Dakota Department of Transportation, Pierre, SD; Pete Rahn, cabinet secretary, New Mexico State Highway And Transportation Department, Santa Fe, NM; Deborah Redman, Senior Planner, South California Association of Governments, Los Angeles, CA; P.D. Kiser, Parsons Transportation, Reno, NV; Steve Teshara, executive director, Lake Tahoe Gaming Alliance; Manfred Wackers, president, Transrapid International, Washington, DC; Glen Schaeffer, president and CEO, Circus Circus Enterprises, Las Vegas, NV; and Dick Landis, Director of Transportation Programs, Heavy Vehicle Electric License Plate Inc., Las Vegas, NV.

The ninth hearing, which was chaired by the committee chairman, Senator John H. Chafee, was held on April 21, 1997 in Warwick, RI. Testimony was received from Senator Jack Reed; Representative Robert Weygand; Governor Lincoln Almond of Rhode Island; Rodney E. Slater, Secretary, U.S. Department of Transportation; William Ankner, director, Rhode Island Department of Transportation, Providence, RI; Beverly Scott, director, Rhode Island Public Transit Authority, Providence, RI; Colonel Edmond S. Culhane, Jr., superintendent, Rhode Island State Police, Providence, RI; Edward S. Sanderson, executive director, Rhode Island Preservation and Heritage Commission, Providence, RI; Barry Schiller, Sierra Club, Providence, RI; Dan Baudoin, executive director, Providence Foundation, Providence, RI; Kenneth Bianchi, DOT Watch; Curt Spalding, executive director, Save the Bay, Providence, RI; and James RePass, president and CEO, The Northeast Corridor Initiative, Inc.

The tenth hearing was a field hearing held in New York, NY on April 7, 1997. Testimony was received from Governor George E. Pataki of New York; Governor Christine Todd Whitman of New Jersey; Mayor Rudolph W. Giuliani of New York, NY; Mortimer L. Downey, Deputy Secretary, U.S. Department of Transportation; Thomas M. Downs, chairman, President and CEO, Amtrak; James Sullivan, acting commissioner, Connecticut Department of Transportation, Newington, Connecticut; Robert E. Boyle, executive director, Port Authority of New York and New Jersey, New York, NY; E. Virgil Conway, chairman, Metropolitan Transportation Authority, New York, NY; J. William Van Dyke, chairman, North Jersey Planning Authority, Inc., Newark, NJ; Janine Bauer, executive director, Tri-State Transportation Campaign, New York, NY; Robert Kiley, president, New York City Partnership and Chamber of Commerce, Inc.; Lew Rudin, Rudin Management, New York, NY; Philip Beachem, executive director, New Jersey Alliance for Action on ISTEA, Edison, NJ; Ed Cleary, president, New York State AFL-CIO; and Raymond Pocino, Regional Manager, Laborers International Union of North America, Cranbury, NJ.

The eleventh hearing was held in Washington, DC on May 7, 1997. The purpose of the hearing was to receive testimony on ISTEA and safety issues and programs. Testimony was presented

by the Senator Richard G. Lugar; Senator Frank R. Lautenberg; Senator Mike DeWine; Representative Nita Lowey; Phillip R. Recht, Deputy Administrator, National Highway Traffic and Safety Administration; Anthony R. Kane, Executive Director, Federal Highway Administration, accompanied by George L. Reagle, Associate Administrator for Motor Carriers, Federal Highway Administration; Richard Crabtree, president and COO, Nationwide Mutual Insurance Company representing ADVOCATES for Highway and Auto Safety, accompanied by Joan Claybrook, president, Public Citizen; Katherine P. Prescott, national president, Mothers Against Drunk Drivers; Thomas Donohue, president and CEO, American Trucking Associations; James L. Kolstad, vice president, American Automobile Association; Brenda Berry, board member, CRASH, Woodbridge, VA; Bob Bartlett, mayor of Monrovia, CA, representing Southern California Association of Governments; Barbara Harsha, executive director, representing the National Association of Governors' Highway and Safety Representatives; Robert Georgine, President, Building and Construction Trades Department, AFL-CIO; and Edward Wytkind, Executive Director, Transportation Trades Department.

The twelfth hearing was held on June 6, 1997 in Washington, DC. The purpose of the hearing was to receive testimony on ISTEA and the replacement of the Woodrow Wilson Memorial Bridge. Testimony was presented by the Jane Garvey, Acting Administrator, Federal Highway Administration; Robert Martinez, secretary of transportation, Commonwealth of Virginia; David Winstead, secretary of transportation, State of Maryland; Kenneth Laden, administrator of the office of policy and planning, Department Public Works, District of Columbia; Kerry J. Donley, mayor, Alexandria, VA; Katherine K. Hanley, chairman, Fairfax County, Virginia, Board of Supervisors; John J. Collins, senior vice president, American Trucking Associations; Wayne Curry county executive, Prince Georges County, Maryland; Susan Williams, chairman, Greater Washington Board of Trade; Jonas Neihardt, president, Old Town Alexandria Civic Association; Robert Montague, Alexandria Historical Restoration and Preservation Commission; Randal Kell, vice chairman of government affairs, Alexandria Chamber of Commerce; and Mike Lewis, chairman of legislative affairs, Fairfax County Chamber of Commerce.

#### ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during the committee's consideration of a bill be noted in the report.

The committee met to consider the S. 1173 on September 17, 1997, and ordered the bill reported, as amended, by a rollcall vote of 18-0. The short title of the bill was amended to "Intermodal Surface Transportation Efficiency Act of 1997."

#### REGULATORY IMPACT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation

of the regulatory impact of the reported bill. The regulatory impact of the reported bill is expected to be minimal. This bill will not have any effect on the personal privacy of individuals.

Other than current regulations and those regulations affecting the eligibility and use of funds provided in the bill, the only provision having a regulatory impact of significance is section 1407, which changes current Federal regulations that govern safety standards of supplemental restraint systems, commonly known as air bags, installed in motor vehicles. This section ensures that the testing standard for air bags will be based on the simultaneous use of the air bag or supplemental restraint system and a manual seat belt.

Section 1407 requires that on the date of the enactment of this Act, manufacturers of motor vehicles shall be deemed to be in compliance with applicable performance standards for occupant crash protection if the motor vehicle meets the applicable requirements for testing with the simultaneous use of both an automatic restraint system and a manual seat belt. The Secretary of Transportation is directed to issue revised standards that are consistent with this section.

#### MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee makes the following evaluation of the Federal mandates contained in the reported bill.

S. 1173 imposes no Federal intergovernmental unfunded mandates on State, local, or tribal governments. All of the bill's governmental directives are imposed on Federal agencies. In addition, this bill does not impose any Federal private sector mandates. Finally, the reported bill will have no discernable effect on the competitive balance between the public and private sectors.

#### COST OF LEGISLATION

Senate Rule XXVI, section 11(b) of the Standing Rules of the Senate, and section 403 of the Congressional Budget Impoundment and Control Act, require that each committee report on a bill contain a statement estimating the cost of the proposed legislation, which was prepared by the Congressional Budget Office. This statement has been requested from the Congressional Budget Office, but it was not available at the date of filing this report. When the information is made available to the committee, it will be placed in the Congressional Record.

### ADDITIONAL VIEWS OF SENATOR CRAIG THOMAS

S. 1173, the Intermodal Transportation Act, would advance the national interest in increasing investment in transportation facilities and in making Federal transportation programs work more effectively. I commend Senators Chafee, Warner and Baucus for reaching across party and State lines to craft this compromise legislation.

In my view, the current ISTEA law was a helpful first step toward shaping transportation policy to take this country into the next century. It maintained a national commitment to transportation, but made some necessary changes to surface transportation policies. However, it failed to address important issues that will make our transportation program more flexible and efficient in order to respond to changing transportation needs. This bill, "ISTEA II," makes those necessary changes to help us build the roads and bridges of the 21st Century.

### INFRASTRUCTURE NEEDS/FUNDING FORMULA

S. 1173 achieves a funding distribution that is fair and based on the national interest. It represents a balance between transportation factors and policy and equity considerations. It includes factors based on the extent and usage of Federal-aid highways, urban concerns such as the Congestion Mitigation and Air Quality (CMAQ) program and rural policy factors such as low population density. It rightly emphasizes the National Highway System (NHS), ensuring that people and goods can be moved safely and efficiently across this country. The NHS represents the strong Federal interest in making sure the entire nation is well connected.

Wyoming is a "bridge" State; goods are transported from their source, across Wyoming, and to their final destination. A set of efficient and well maintained roads are as important to the cities that export goods across the country and around the world as they are to the people in Wyoming. The former director of the Wyoming Department of Transportation, Don Diller, said last year, "On I-80 in Wyoming, more than 50 percent of the traffic is trucks, and those trucks are not serviced in Wyoming. The goods are not manufactured in Wyoming, and the economy of Wyoming is not improved by their manufacture. The goods are not delivered in Wyoming, but add to the economy of some other area."

Clearly, it is important that this legislation meet Wyoming's needs—44 percent of our roads are in fair to poor condition. But writing a new formula is also about fairness, in fact, my constituents contribute more per capita to the highway trust fund than any other State, over \$200 per person. Appropriately, S. 1173 moves toward bringing these dollars back to the State.

In addition, Wyoming gets only pennies back on the dollar it sends to the transit account of the trust fund. I am hopeful the transit provisions of ISTEA II address this inequity.

### FEDERAL LANDS

I am also concerned about the infrastructure needs in our national parks. In fact, the majority of Yellowstone's roads are structurally deficient. As one of the crown jewels of the national park



system and host of more than three million visitors annually, this situation is unacceptable. In fact, the Park's 10 year plan includes \$250 million in road funding requirements. However, Yellowstone only receives roughly \$8 million annually to meet these needs. In addition, the National Park Service (NPS) faces a \$2 billion backlog in road needs overall.

I am pleased that S. 1173 begins to meet these needs with the creation of the Cooperative Federal Lands Program. This provision will help ensure adequate access to and across Federal lands by giving States a more significant role in Federal lands highway funding than under present law. In addition, the legislation continues funding for the existing Federal lands program.

Clearly, more work needs to be done to help the parks with road improvement and maintenance, but I commend the committee for taking this first step.

#### STREAMLINING/PROGRAM FLEXIBILITY

The Intermodal Transportation Act streamlines the five major programs into three; the National Highway System (NHS), Surface Transportation Program (STP) and the Congestion Mitigation and Air Quality (CMAQ) program. This change gives State and local governments more flexibility by placing a greater percentage of overall funding within their discretion. It will also ensure that American taxpayers will get more for their fuel tax dollars.

While providing flexibility to State and local governments, the bill also maintains a strong commitment to the interstate and bridges. In fact, the S. 1173 will require more to be spent on these priorities than is the case under current law.

Another flexibility issue involves the safety program. My State is concerned about the current prohibition on using safety set-aside money on the interstate system. In Wyoming, one of the most useful safety features on our system is the addition of "rumble strips" on the shoulders of our interstate highways. They are particularly effective on rural interstate highways. The use of safety set-aside money for this type of work would be ideal and I am pleased this flexibility is granted in S. 1173.

In addition, the legislation brings some needed flexibility to the safety program. It requires States to spend 20 percent of this money on railway-highway crossing projects, 20 percent on hazard elimination projects and the remaining 60 percent may be used for either program at State discretion. This flexibility will ensure that each State's individual safety needs are met.

#### RELIANCE ON PRIVATE ENTERPRISE

Enactment of S. 1173 will provide billions of dollars in funds to Federal and State agencies and other governmental organizations. Some of these funds will be used to perform inherently governmental functions that only government agencies can perform, such as basic research, setting and administering standards, safety administration, contract management and program management. Much of the money, however, will be used for activities that are commercial in nature, to provide goods and services that can and should be performed by the private sector.

Section 1125 expresses the opinion of the committee that those activities which can be performed by the private sector should be performed by the private sector. The funds in the bill should not be used by government entities to duplicate or compete with the private sector.

Since 1955, it has been Federal policy that "the Federal Government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary business channels." (Office of Management Budget Circular A-76).

This section reaffirms that policy in the transportation bill. Whether it is construction, engineering, surveying, mapping, aerial photography, paving, maintenance or dozens of other activities that go into successful transportation programs, there are hundreds of private firms, many of them small business, that can do this work at equal or higher quality and at lower prices.

### ADDITIONAL VIEWS OF SENATOR JEFF SESSIONS

We believe that the committee report misrepresents the effect of *Adarand Constructors, Inc. v. Peña*, 115 S.Ct. 2097 (1995) on the disadvantaged business enterprise (DBE) program. *Adarand* involved the same (DBE) program that this legislation seeks to continue. In *Adarand*, the Court ruled that all government racial classifications are subject to the strictest judicial scrutiny. The Court held that “Federal racial classifications, like those of a State, must serve a compelling governmental interest and must be narrowly tailored to further that interest.” (Id. at 2118.)

The report is technically correct when it states that the Supreme Court did not strike down the DBE program in *Adarand*. The Court did not uphold the DBE program, either. The report is misleading because the Court in *Adarand* remanded the case to allow the lower court to develop the factual record. (Id. at 2118). As Justice Scalia noted in concurrence, “[i]t is unlikely, if not impossible, that the challenged program would survive under this understanding of strict scrutiny, but I am content to leave that to be decided on remand.” (Id. at 2118–2119.)

Not surprisingly, on remand, the Federal district court ruled on summary judgment that the (DBE) program was unconstitutional. *Adarand Constructors, Inc. v. Pena*, 965 F.Supp. 1556 (1997). Leaving no doubt concerning the constitutionality of this program, the court stated that “I find it difficult to envisage a race-based classification that is narrowly tailored. By its very nature, such program is both underinclusive and overinclusive.” (Id. 1580.) The court also enjoined the defendants from administering § 1003(b) of ISTEA.

Moreover, other recent Supreme Court cases such as *Bush v. Vera*, 116 S.Ct. 1941 (1996), *Miller v. Johnson*, 115 S.Ct. 2475 (1995), *Shaw v. Reno*, 509 U.S. 630 (1993), and *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), have subjected government racial preferences and classifications to the strictest scrutiny. In each case, the racial classification was ruled unconstitutional.

Section 1111 simply reenacts without change the same statutory language that was invalidated in *Adarand Constructors, Inc. v. Peña*. As a consequence, nothing in this reenactment does anything to strengthen the argument that this section is constitutional. This committee held no hearings examining the constitutionality of this provision or establishing the need for such a provision.

The committee report suggests that the new regulations promulgated by the Department of Transportation somehow strengthen the case for the constitutionality of this provision. Putting to one side the very real question whether subsequent regulations can provide narrow tailoring that is lacking in a statute, I am at a loss as to the report’s conclusions. We did not hear any testimony concerning the constitutionality of this section or the regulations promulgated pursuant to its identically-worded predecessor.

In conclusion, I have no doubt but that this section is unconstitutional. This section is neither supported by a compelling governmental interest, nor narrowly tailored. Therefore, I urged the committee to reconsider this provision.

ADDITIONAL VIEWS OF SENATOR DANIEL PATRICK  
MOYNIHAN

When we crafted the Intermodal Surface Transportation Efficiency Act of 1991, we declared that, as a matter of policy, the era of Interstate Highway construction was over. We set about writing a bill to take us to the next era of national transportation policy. In ISTEA, we streamlined existing programs, granted States considerable flexibility with regard to the use of funds, incorporated municipalities and environmental interests in transportation planning and decision-making, and promoted intermodalism. We acknowledged, for the first time, the devastating impact the Federal highway program had on our inner cities and took steps to repair some of the damage.

I am especially proud of the principles we set out in ISTEA 6 years ago and wish to include them in this bill.

"It is the policy of the United States to develop a National Intermodal Transportation System that is economically efficient and environmentally sound, provides the foundation for the Nation to compete in the global economy, and will move people and goods in an energy efficient manner.

"The National Intermodal Transportation System shall consist of all forms of transportation in a unified, interconnected manner, including the transportation systems of the future, to reduce energy consumption and air pollution while promoting economic development and supporting the Nation's preeminent position in international commerce.

"The National Intermodal Transportation System shall include a National Highway System which consists of the National System of Interstate and Defense Highways and those principal arterial roads which are essential for interstate and regional commerce and travel national defense, intermodal transfer facilities, and international commerce and border crossings.

"The National Intermodal Transportation System shall include significant improvements in public transportation necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly persons, persons with disabilities, and economically disadvantaged persons in urban and rural areas of the country.

"The National Intermodal Transportation System shall provide improved access to ports and airports, the Nation's link to world commerce.

"The National Intermodal Transportation System shall give special emphasis to the contributions of the transportation sectors to increased productivity growth. Social benefits must be considered with particular attention to the external benefits of reduced air pollution, reduced traffic congestion and other aspects of the quality of life in the United States.

"The National Intermodal Transportation System must be operated and maintained with insistent attention to the concepts of innovation, competition, energy efficiency, productivity, growth, and accountability. Practices that resulted in the lengthy and overly costly construction of the Interstate and Defense Highway System must be confronted and ceased.

“The National Intermodal Transportation System shall be adapted to “intelligent vehicles”, “magnetic levitation systems”, and other new technologies wherever feasible and economical, with benefit cost estimates given special emphasis concerning safety considerations and techniques for cost allocation.

“The National Intermodal Transportation System, where appropriate, will be financed, as regards Federal apportionments and reimbursements, by the Highway Trust Fund. Financial assistance will be provided to State and local governments and their instrumentalities to help implement national goals relating to mobility for elderly persons, persons with disabilities, and economically disadvantaged persons.

“The National Intermodal Transportation System must be the centerpiece of a national investment commitment to create the new wealth of the Nation for the 21st century.

“The Secretary shall distribute copies of this Declaration of Policy to each employee of the Department of Transportation and shall ensure that such Declaration of Policy is posted in all offices of the Department of Transportation.”

## ADDITIONAL VIEWS OF SENATOR FRANK R. LAUTENBERG

As a cosponsor of the Intermodal Surface Transportation Efficiency Act of 1991, I am pleased that this bill generally holds to the structure of ISTEA and aims to continue the thrust of the 1991 Act, in ensuring that our Nation's transportation infrastructure system is developed in an economically efficient and environmentally sound manner. I am pleased that the bill includes the programs that benefit the environment, and that move forward on important programs such as Intelligent Transportation Systems. However, I am disappointed that the bill eliminates the national focus on bridges, does not adequately address infrastructure needs, and unfairly shortchanges certain States.

The 1991 ISTEA launched a new era of transportation investment that reached out to incorporate nontraditional interests and views in transportation planning and construction. ISTEA brought new thinking into transportation planning that has benefitted the entire country. ISTEA's bold policy statement is one that still has resonance today. I encourage everyone to re-read that statement and consider whether the bill before us this session meets those goals and fully addresses both today's and tomorrow's transportation needs.

While this bill attempts to embrace ISTEA's policy statement, I must express serious disappointment with how funding is distributed among the States. This bill does not treat States fairly. Instead, this bill shortchanges the transportation needs of 96 million people in the 15 States. Simply put, the bill does not balance the needs among the States, and certainly does not meet the transportation needs that exist in some States. And, in that respect, it fails all Americans.

The funding authorization for the next 6 years of highway spending will increase by 20 percent over the funding authorized in ISTEA. With this significant funding increase, no State should have to endure a cut in transportation spending over the previous fiscal year, and every State should share in the program's significant growth. I am disappointed that the bill fails to meet this basic test of sound policy and fairness.

Many of the States left out of the scheme are those with aging, heavily used infrastructure. Many of these States serve as heavily used corridors, transporting goods that benefit not just those States, but the entire country. And those are the States with some of the greatest needs.

For instance, the roadways that run from Pennsylvania through Ohio, Indiana and Illinois make up one of the busiest trucking corridors in the United States. Yet every one of those States, except Indiana, is slated to lose under this bill. Have we considered the consequences of cutting these States, despite their obvious future needs?

Also, 14 cities that are ranked among the top 50 for traffic congestion are in States that do not benefit from the increase in the program. Think of the millions of productive hours wasted and the millions of gallons of gasoline squandered. Isn't it in our national interest to do something about situations like these?

Consider my State of New Jersey. Densely populated, with aging, weathered infrastructure, New Jersey's roads, bridges and ports are among the most heavily used in the nation. There are more vehicles on New Jersey's roads than any other State.

New Jersey is one of the most critical links in the Nation's transportation system. New Jersey is a corridor State, linking commerce and travel to the Northeast and the rest of the country. Over 60 billion vehicle miles are traveled on the State's roads annually. Ten percent of the Nation's total freight either originates, terminates or passes through New Jersey, and almost 60 percent of this tonnage is strictly through-traffic. Goods traveling just 24 hours on a truck from New Jersey will reach a market of 40 percent of the populations of the United States and Canada—over 100 million people.

Travelers in both cars and trucks struggle with New Jersey's congestion and with its heavily used roads and bridges that need a high level of maintenance. The status of New Jersey's transportation infrastructure has a direct effect on the State and region's economic vitality and on every resident's quality of life. According to a recent study by the Transportation Construction Coalition, congestion and roads that are not repaired cost motorists \$74.7 billion in lost time, wasted fuel and extra vehicle operating costs.

A long-term national transportation bill should allocate funding based on usage and should reflect the needs and costs of repair for each State. I am sorry to say that this bill does not do that.

I voted to report this bill from committee after significant consideration was given to New Jersey's transportation needs. However, I am not yet satisfied. I hope and expect that when this bill is signed into law, it will have been revised to adequately fund States that were shortchanged.

## CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: existing law as proposed to be omitted is enclosed between **[bold brackets]**; new matter proposed to be added to existing law is printed in *italic*; and existing law in which no change is proposed is shown in roman.

## TITLE 23—UNITED STATES CODE

## HIGHWAYS

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## CHAPTER 1—FEDERAL-AID HIGHWAYS

Sec.	
101.	<b>[Definitions and declaration of policy.]</b> <i>Definitions.</i>
102.	<b>[Program efficiencies.]</b> <i>Declaration of policy.</i>
103.	Federal-aid systems.
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105.	<b>[Programs.]</b> <i>Minimum guarantee.</i>
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107.	Acquisition of rights-of-way—Interstate System.
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111.	Agreements relating to use of and access to rights-of-way—Interstate System.
112.	Letting of contracts.
113.	Prevailing rate of wage.
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115.	Advance construction.
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118.	Availability of funds.
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120.	Federal share payable.
121.	Payment to States for construction.
122.	Payments to States for bond and other debt instrument financing.
123.	Relocation of utility facilities.
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125.	Emergency relief.
126.	<b>[Diversion.]</b> <i>[Repealed]</i>
127.	Vehicle weight limitations—Interstate System.
128.	Public hearings.
129.	Toll roads, bridges, tunnels, and ferries.
130.	Railway-highway crossings.
131.	Control of outdoor advertising.
132.	Payments on Federal-aid projects undertaken by a Federal agency.
133.	Surface transportation program.
134.	<b>[Transportation planning in certain urban centers.]</b> <i>Metropolitan planning.</i>
135.	Statewide planning.
136.	Control of junkyards.
137.	Fringe and corridor parking facilities.
138.	Preservation of parklands.
139.	<b>[Additions to Interstate System.]</b> <i>[Repealed]</i>
140.	Nondiscrimination.
141.	Enforcement of requirements.
142.	Public transportation.



- 143. **[Economic growth center development highways.]** *Highway use tax evasion projects.*
- 144. Highway bridge replacement and rehabilitation **[program].**
- 145. Federal-State relationship.
- 146. Carpool and vanpool projects.
- 147. **[Priority primary routes.]** *[Repealed]*
- 148. **[Development of a national scenic and recreational highway.]** *[Repealed]*
- 149. Congestion mitigation and air quality improvement program.
- 150. **[Allocation of urban system funds.]** *[Repealed]*
- 151. National bridge inspection program.
- 152. Hazard elimination program.
- 153. Use of safety belts and motorcycle helmets.
- 155. **[Access highways to public recreation areas on certain lakes.]** *[Repealed]*
- 156. **[Income from airspace rights-of-way]** *Proceeds from the sale or lease of real property.*
- 157. **[Minimum allocation.]** *[Repealed]*
- 158. National minimum drinking age.
- 159. Revocation or suspension of drivers' licenses of individuals convicted of drug offenses.
- 160. Reimbursement for segments of the Interstate System constructed without Federal assistance.
- 161. Operation of motor vehicles by intoxicated minors.
- 162. *State infrastructure bank program.*
- 163. *Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.*
- 164. *Safety incentive grants for use of seat belts.*
- 165. *National scenic byways program.*

#### **§ 101. [Definitions and declaration of policy] Definitions**

**[(a)]** As used in this title, unless the context requires otherwise—

The term “apportionment” in accordance with section 104 of this title includes unexpended apportionments made under prior acts.

*The term “carpool project” means any project to encourage the use of carpools and vanpools, including but not limited to provision of carpooling opportunities to the elderly and handicapped, 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.*

The term “construction” means the supervising, inspecting, actual building, and all expenses 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, locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the National Oceanic and Atmospheric Administration in the Department of Commerce), resurfacing, restoration, and rehabilitation, acquisition of rights-of-way, relocation assistance, elimination of hazards of railway grade crossings, elimination of roadside obstacles, acquisition of replacement housing sites, acquisition and rehabilitation, relocation, and construction of replacement housing, and 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. The term also includes capital improvements which directly facilitate

an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses and also includes costs incurred by the State in performing Federal-aid project related audits which directly benefit the Federal-aid highway program.

The term "county" includes corresponding units of government under any other name in States which do not have county organizations, and likewise in those States in which the county government does not have jurisdiction over highways it may be construed to mean any local government unit vested with jurisdiction over local highways.

*The term "Federal-aid highway funds" means funds made available to carry out the Federal-aid highway program.*

*The term "Federal-aid highway program" means all programs authorized under chapters 1, 3, and 5.*

*The term "Federal-aid highways" means highways eligible for assistance under this chapter other than highways classified as local roads or rural minor collectors.*

*The term "Federal-aid system" means any one of the Federal-aid highway systems described in section 103 of this title.*

The term "Federal lands highways" means forest highways, public lands highways, park roads, parkways, and Indian reservation roads which are public roads.

【The term "forest road or trail" means a road or trail wholly or partly within, or adjacent to, and serving the National Forest system and which is necessary for the protection, administration, and utilization of the National Forest system and the use and development of its resources.】

The term "forest development roads and trails" means a forest road or trail under the jurisdiction of the Forest Service.

The term "forest highway" means a forest road under the jurisdiction of, and maintained by, a public authority and open to public travel.

*The term "forest road or trail" means a road or trail wholly or partly within, or adjacent to, and serving the National Forest system and which is necessary for the protection, administration, and utilization of the National Forest system and the use and development of its resources.*

The term "highway" includes roads, streets, and parkways, and also includes rights-of-way, bridges, railroad-highway crossings, tunnels, drainage structures, signs, guardrails, and protective structures, in connection with highways. It further includes that portion of any interstate or international bridge or tunnel and the approaches thereto, the cost of which is assumed by a 【State highway department】*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.

【The term "Federal-aid highways" means highways eligible for assistance under this chapter other than highways classified as local roads or rural minor collectors.】

【The term "【highway safety】 *safety* improvement project" means a project which corrects or improves high hazard locations, eliminates roadside obstacles, improves highway signing and pave-

ment 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 high accident potential locations.】

The term “Indian reservation roads” means public roads that are located within or provide access to an Indian reservation or Indian trust land or restricted Indian land which 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.

*The term “Interstate System” means the Dwight D. Eisenhower National System of Interstate and Defense Highways described in subsection 【(e) of section 103 of this title】 section 103(c).*

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

*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)).*

*The term “National Highway System” means the Federal-aid highway system described in subsection (b) of section 103 of this title.*

*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.*

【The term “operational improvement” means 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 such other capital improvements to public roads as the Secretary may designate, by regulation; except that such term 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.】

*The term “operational improvement” means the installation, operation, or maintenance, in accordance with subchapter II of chapter 5, of public infrastructure to support intelligent transportation systems and includes the installation or operation of any traffic management activity, communication system, or roadway weather information and prediction system, and any other improvement that the Secretary may designate that enhances roadway safety and mobility during adverse weather.*

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.

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

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.

The term “project agreement” means the formal instrument to be executed by the **[State highway department]***State transportation department* and the Secretary as required by **[the provisions of subsection (a) of section 110 of this title]** *section 106*.

*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.*

The term “public lands development roads and trails” means those roads or trails which the Secretary of the Interior determines are of primary importance for the development, protection, administration, and utilization of public lands and resources under his control.

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.

*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.*

The term “public road” means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

The term “rural areas” means all areas of a State not included in urban areas.

*The term “**[highway safety]** safety improvement project” means a project which 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 high accident potential locations.*

The term “Secretary” means Secretary of Transportation.

The term “State” means any one of the fifty States, the District of Columbia, or Puerto Rico.

*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 highway department]***State transportation department*.*

*The term “**[State highway department]***State transportation department” means that department, commission, board, or official of**

any State charged by its laws with the responsibility for highway construction.

*The term “transportation enhancement activities” means, with respect to any project or the area to be served by the project, provision of facilities for pedestrians and bicycles, acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs, landscaping and other scenic beautification, historic preservation, rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic 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, and mitigation of water pollution due to highway runoff.*

*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 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. Such boundaries shall, as a minimum, encompass 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.*

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. Boundaries shall, at a minimum, encompass the entire urbanized area within a State as designated by the Bureau of the Census.

【The term “State” means any one of the fifty States, the District of Columbia, or Puerto Rico.】

【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 highway department】*State transportation department.*】

【The term “【State highway department】*State transportation department*” means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.】

【The term “Federal-aid system” means any one of the Federal-aid highway systems described in section 103 of this title.】

【The term “National Highway System” means the Federal-aid highway system described in subsection (b) of section 103 of this title.】

【The term “Interstate System” means the Dwight D. Eisenhower National System of Interstate and Defense Highways described in subsection (e) of section 103 of this title.】

【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.】

【The term “carpool project” means any project to encourage the use of carpools and vanpools, including but not limited to provision of carpooling opportunities to the elderly and handicapped, 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.】

【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.】

【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.】

【The term “operational improvement” means 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 such other capital improvements to public roads as the Secretary may designate, by regulation; except that such term 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.】

【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 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. Such boundaries shall, as a minimum, encompass 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.】

【The term “transportation enhancement activities” means, with respect to any project or the area to be served by the project, provision of facilities for pedestrians and bicycles, acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs, landscaping and other scenic beautification, historic preservation, rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic 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, and mitigation of water pollution due to highway runoff.】

【(b) It is hereby declared to be in the national interest to accelerate the construction of the Federal-aid highway systems, including the National 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 National 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.

#### **§ 102. [Program efficiencies] Declaration of policy**

[[**(a)**] (c) HOV PASSENGER REQUIREMENTS.—A [State highway department]*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.]

[[**(c)**]<sup>1</sup> (a) 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)**] (b) 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

<sup>1</sup> Subparagraphs (a)–(c) were moved from old Section 101 and renamed.

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** *Federal-aid highway program*, or as otherwise specifically authorized to be appropriated from the Highway Trust Fund by Federal-aid highway legislation.

**[(e)]** (c) 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 interagency 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.

### **§ 103. Federal-aid systems**

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

**[(b)]** NATIONAL HIGHWAY SYSTEM.—

**[(1)]** PURPOSE.—The purpose of the National Highway System is to provide an interconnected system of principal arterial routes which will serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and other major travel destinations; meet national defense requirements; and serve interstate and interregional travel.

**[(2)]** COMPONENTS.—The National Highway System shall consist of the following:

**[(A)]** Highways designated as part of the Interstate System under subsection (e) and section 139 of this title.

**[(B)]** Other urban and rural principal arterials and highways (including toll facilities) which provide motor vehicle access between such an arterial and a major port, airport, public transportation facility, or other intermodal transportation facility. The States, in cooperation with local and regional officials, shall propose to the Secretary arterials and highways for designation to the National Highway System under this paragraph. In urbanized areas, the local officials shall act through the metropolitan planning organizations designated for such areas under section 134 of this title. The routes on the National Highway System, as shown on the map submitted by the Secretary to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate in 1991, illustrating the National Highway System, shall serve as the basis for the States in proposing arterials and highways for designation to such system. The Secretary may modify or revise such proposals and submit such modified or revised proposals to Congress for approval in accordance with paragraph (3).



[(C) A strategic highway network which is a network of highways which are important to the United States strategic defense policy and which provide defense access, continuity, and emergency capabilities for the movement of personnel, materiel, and equipment in both peace time and war time. Such highways may include highways on and off the Interstate System and shall be designated by the Secretary in consultation with appropriate Federal agencies and the States and be subject to approval by Congress in accordance with paragraph (3).

[(D) Major strategic highway network connectors which are highways that provide motor vehicle access between major military installations and highways which are part of the strategic highway network. Such highways shall be designated by the Secretary in consultation with appropriate Federal agencies and the States and subject to approval by Congress in accordance with paragraph (3).

[(3) APPROVAL OF DESIGNATIONS.—

[(A) PROPOSED DESIGNATIONS.—Not later than 2 years after the date of the enactment of this section, the Secretary shall submit for approval 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 proposed National Highway System with a list and description of highways proposed to be designated to the National Highway System under this subsection and a map showing such proposed designations. In preparing the proposed system, the Secretary shall consult appropriate local officials and shall use the functional reclassification of roads and streets carried out under subsection (c) of section 1006 of the Intermodal Surface Transportation Efficiency Act of 1991.

[(B) APPROVAL OF CONGRESS REQUIRED.—After September 30, 1995, no funds made available for carrying out this title may be apportioned for the National Highway System or the Interstate maintenance program under this title unless a law has been approved designating the National Highway System.

[(C) MAXIMUM MILEAGE.—The mileage of highways on the National Highway System shall not exceed 155,000 miles; except that the Secretary may increase or decrease such maximum mileage by not to exceed 15 percent.

[(D) EQUITABLE ALLOCATIONS OF HIGHWAY MILEAGE.—The Secretary shall provide for equitable allocation of highway mileage on the National Highway System among the States.

[(4) INTERIM SYSTEM.—For fiscal years 1992, 1993, 1994, and 1995, highways classified as principal arterials by the States shall be treated as being on the National Highway System for purposes of this title.

[(5) DESIGNATION OF NHS.—The National Highway System as submitted by the Secretary of Transportation on the map entitled “Official Submission, National Highway System, Federal Highway Administration”, and dated November 13, 1995,

is hereby designated within the United States, including the District of Columbia and the Commonwealth of Puerto Rico.】

**§ 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 an interconnected system of major routes and connectors that—

(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 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) *ELIGIBLE PROJECTS FOR NHS.*—Subject to approval by the Secretary, funds apportioned to a State under section 104(b)(1)(C) 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, construction of a transit project eligible for assistance under chapter 53 of title 49, and capital improvements to any National Railroad Passenger Corporation passenger rail line or any publicly-owned intercity passenger rail line, if—

(i) the highway, transit, or rail 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 state-

*wide 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.*

*(N) Publicly-owned intracity or intercity passenger rail or bus terminals, including terminals of the National Railroad Passenger Corporation and publicly-owned intermodal surface freight transfer facilities, other than seaports and airports, if the terminals and facilities are located on or adjacent to National Highway System routes or connections to the National Highway System selected in accordance with paragraph (2).*

*(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 funding under section 133, any airport, and any seaport.*

*(Q) Publicly owned components of magnetic levitation transportation systems.*

*(R) Construction of ferry boats and ferry terminal facilities, if the conditions described in section 129(c) are met.*

**[(6) MODIFICATIONS TO NHS.—**

**[(A) IN GENERAL.—**Subject to paragraph (7), the Secretary may make modifications to the National Highway System that are proposed by a State or that are proposed by the State and revised by the Secretary if the Secretary determines that each of the modifications—

(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.—**In proposing modifications under this paragraph, a State shall cooperate with local and regional officials. In urbanized areas, the local officials shall act through the metropolitan planning organizations designated for such areas under section 134.

**[(7) TRANSITIONAL RULES FOR INTERMODAL CONNECTORS.—**

**[(A) REQUIRED SUBMISSION.—**Not later than 180 days after the date of the enactment of the National Highway System Designation Act of 1995, the Secretary shall submit for approval to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives modifications to the National Highway System that

are proposed by a State or that are proposed by the State and revised by the Secretary and that consist of connectors to major ports, airports, international border crossings, public transportation and transit facilities, interstate bus terminals, and rail and other intermodal transportation facilities.

[(B) COOPERATION.—Paragraph (6)(B) shall apply to modifications proposed by a State under this paragraph.

[(C) ELIGIBILITY.—

[(i) INITIAL APPROVAL BY LAW.—Modifications proposed under subparagraph (A) may take effect only if a law has been enacted approving such modifications.

[(ii) INTERIM ELIGIBILITY.—Notwithstanding clause (i), a project to construct a connector to an intermodal transportation facility described in subparagraph (A) shall be eligible for funds apportioned under section 104(b)(1) for the National Highway System if the Secretary finds that the project is consistent with criteria developed by the Secretary for construction of such connectors.

[(iii) PERIOD OF ELIGIBILITY.—A project which is eligible under clause (ii) for funds apportioned under section 104(b)(1) shall remain eligible for such funds pursuant to clause (ii) only until the date of the enactment of a law described in clause (i).

[(D) MODIFICATIONS AFTER INITIAL APPROVAL.—After the date of the enactment of a law described in subparagraph (C)(i), a modification consisting of a connector to an intermodal transportation facility described in subparagraph (A) may be made in accordance with paragraph (6).

[(8) 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 thereof established by section 1105 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2031–2037) which was not identified on the National Highway System designated by paragraph (5).

【Subsections (c) and (d) repealed by section 1006(b)(1) of P.L. 102–240, 105 Stat. 1925】

(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—*

*(i) designed—*

*(I) in accordance with the standards of section 109(b); or*

*(II) in the case of highways in Alaska and Puerto Rico, 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; and*

*(ii) 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.

(B) *SELECTION OF ROUTES.*—To the maximum extent practicable, each route of the Interstate System shall be selected by joint action of the State transportation agencies 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), 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 that 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.*—

(i) *IN GENERAL.*—Except as provided in clause (ii), the designation of a highway under this paragraph shall create no additional Federal financial responsibility with respect to the highway.

(ii) *CERTAIN HIGHWAYS.*—Subject to section 119(b)(1)(B), a State may use funds available to the State under paragraphs (1) and (3) of section 104(b) for the resurfacing, restoration, rehabilitation, and reconstruction of a highway—

(I) designated before March 9, 1984, as a route on the Interstate System under subparagraph (A) or as a future Interstate System route under subparagraph (B); or

(II) designated under subparagraph (A) and located in Alaska or Puerto Rico.

(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 Intermodal Surface Transportation Efficiency Act of 1997), 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 be ineligible for funding under section 104(b)(5)(A) (as in effect on the day before the

*date of enactment of the Intermodal Surface Transportation Efficiency Act of 1997) or 104(k).*

(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 Intermodal Surface Transportation Efficiency Act of 1997), 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.

(e) *UNOBLIGATED BALANCES OF INTERSTATE SUBSTITUTE FUNDS.*—Unobligated balances of funds apportioned to a State under section 103(e)(4)(H) (as in effect on the day before the date of enactment of the Intermodal Surface Transportation Efficiency Act of 1997) 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.

(e) *INTERSTATE SYSTEM.*—

(1) *DESIGNATION; MILEAGE LIMITATION.*—The Interstate System shall be designated within the United States, including the District of Columbia, and, except as provided in paragraphs (2) and (3) of this subsection, it shall not exceed forty-one thousand miles in total extent. It shall be so located as to connect by routes, as direct as practicable, the principal metropolitan areas, cities, and industrial centers, to serve the national defense, and to the greatest extent possible, to connect at suitable border points with routes of continental importance in the Dominion of Canada and the Republic of Mexico. The routes of this system, to the greatest extent possible, shall be selected by joint action of the [State highway departments] *State transportation departments* of its State and the adjoining States, subject to the approval by the Secretary as provided in subsection (f) of this section. All highways or routes included in the Interstate System as finally approved, if not already coincident with the primary system, shall be added to said system without regard to the mileage limitation set forth in subsection (b) of this section. This system may be located both in rural and urban areas.

(2) *MODIFICATIONS.*—In addition to the mileage authorized by the first sentence of paragraph (1) of this subsection, there is hereby authorized additional mileage for the Interstate System of five hundred miles, to be used in making modifications or revisions in the Interstate System as provided in this paragraph. Upon the request of a [State highway department] *State transportation department* the Secretary may withdraw his approval of any route or portion thereof on the Interstate System within that State selected and approved in accordance with this title, if he determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System (including urban routes necessary



for metropolitan transportation) 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. After the Secretary has withdrawn his approval of any such route or portion thereof the mileage of such route or portion thereof and the additional mileage authorized by the first sentence of this paragraph shall be available for the designation of interstate routes or portions thereof as provided in this subsection. The provisions of this title applicable to the Interstate System shall apply to all mileage designated under the third sentence of this paragraph. The Secretary shall not designate any Interstate route or portion thereof under authority of this paragraph after the date of enactment of the Federal Aid Highway Act of 1978.

(3) ADDITIONAL MILEAGE FOR IMPROVED EFFICIENCY.—In addition to the mileage authorized by paragraphs (1) and (2) of this subsection, there is hereby authorized additional mileage of not to exceed 1,500 miles for the designation of routes in the same manner as set forth in paragraph (1), in order to improve the efficiency and service of the Interstate System to better accomplish the purposes of that System.

(4) INTERSTATE SUBSTITUTE PROGRAM.—

(A) WITHDRAWAL OF APPROVAL.—Upon the joint request of a State Governor and the local governments concerned, the Secretary may withdraw approval of any route or portion thereof on the Interstate System which was selected and approved in accordance with this title, if the Secretary determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System and if the Secretary receives assurances that the State does not intend to construct a toll road in the traffic corridor which would be served by the route or portion thereof.

(B) SUBSTITUTE PROJECTS.—When the Secretary withdraws approval under this paragraph, 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 latest Interstate System cost estimate approved by Congress, or up to and including the 1983 interstate cost estimate, whichever is earlier, subject to increase or decrease, as determined by the Secretary based on changes in construction costs of the withdrawn route or portion thereof as of the date of approval of each substitute project under this paragraph, or the date of approval of the 1983 interstate cost estimate, whichever is earlier, shall be available to the Secretary to incur obligations for the Federal share of either public mass transit projects involving the construction of fixed rail facilities or the purchase of passenger equipment including rolling stock, for any mode of mass transit, or both, or highway construction projects on any public road, or both, which will serve the area or areas from which the interstate route or portion thereof was withdrawn, which are selected by the responsible local offi-

cials 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. Each project constructed under this paragraph on a Federal-aid system shall be subject to the provisions of this title applicable to such system. Each project constructed under this paragraph not on a Federal-aid system shall be subject to the provisions of this title applicable to projects on the Federal-aid secondary system.

(C) DEADLINE FOR WITHDRAWAL.—The Secretary shall not approve any withdrawal of a route under this paragraph after September 30, 1983—

(i) except that with respect to any route which on November 6, 1978, is under judicial injunction prohibiting its construction the Secretary may approve withdrawals until September 30, 1986, and

(ii) except that with respect to any route which on May 12, 1982, is under judicial injunction prohibiting its construction, the Secretary may approve withdrawals on such route until September 30, 1985.

(D) PROJECT APPROVAL; FEDERAL SHARE.—Approval by the Secretary of the plans, specifications, and estimates for a substitute project shall be deemed to be a contractual obligation of the Federal Government. The Federal share of each substitute project shall not exceed 85 percent of the cost thereof.

(E) AVAILABILITY OF FUNDS FOR SUBSTITUTE PROJECTS.—

(i) TIME PERIOD.—The sums apportioned and the sums allocated under this paragraph for public mass transit projects and for highway construction projects in a State shall remain available for obligation in such State for the fiscal year for which apportioned or allocated, as the case may be, and for the succeeding fiscal year. In the case of funds authorized to be appropriated for substitute transit projects under this paragraph for fiscal year 1993 and for substitute highway projects under this paragraph for fiscal year 1995, such funds shall remain available until expended.

(ii) REAPPORTIONMENT OR REALLOCATION.—Any sums which are apportioned or allocated to a State and are unobligated (other than an amount which, by itself, is insufficient to pay the Federal share of the cost of a substitute project which has been submitted by the State to the Secretary for approval) at the end of the period of availability established by clause (i) shall be apportioned or allocated, as the case may be, among those States which have obligated all sums (other than such an amount) apportioned or allocated, as the case may be, to them. Such reapportionments

shall be in accordance with the latest approved or adjusted estimate of the cost of completing substitute projects, and such reallocations shall be at the discretion of the Secretary.

(F) ADMINISTRATION OF TRANSIT FUNDS.—The sums obligated for mass transit projects under this paragraph shall become part of, and be administered through, the Urban Mass Transportation Fund.

(G) AUTHORIZATION OF APPROPRIATIONS FOR HIGHWAY PROJECTS.—For the fiscal year ending September 30, 1983, \$257,000,000 shall be available out of the Highway Trust Fund for expenditure at the discretion of the Secretary for projects under highway assistance programs. There shall be available, out of the Highway Trust Fund (other than the Mass Transit Account), to the Secretary for expenditure under this paragraph for projects under highway assistance programs \$700,000,000 per fiscal year for each of fiscal years 1984 and 1985, \$693,825,000 for fiscal year 1986, \$740,000,000 per fiscal year for each of fiscal years 1987, 1988, 1989, 1990, and 1991, \$240,000,000 per fiscal year for each of fiscal years 1992, 1993, 1994, and 1995. Such sums may be obligated for transit substitute projects under this paragraph.

(H) DISTRIBUTION OF SUBSTITUTE HIGHWAY FUNDS.—

(i) BETWEEN DISCRETIONARY AND APPORTIONED PROGRAMS.—Subject to section 149(d) of the Federal-Aid Highway Act of 1987, 25 percent of the funds made available by subparagraph (G) for each of fiscal years 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991 for substitute highway projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 75 percent of such funds shall be apportioned in accordance with cost estimates approved by Congress or adjusted by the Secretary. For each of fiscal years 1992, 1993, 1994, and 1995, all funds made available by subparagraph (G) shall be apportioned in accordance with cost estimates adjusted by the Secretary.

(ii) FISCAL YEARS 1985, 1986, AND 1987 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute highway projects under this paragraph and transmit the same to the Senate and the House of Representatives within 10 days subsequent to January 2, 1984, and upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute highway projects for fiscal years 1985, 1986, and 1987.

(iii) FISCAL YEARS 1988–1995 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute highway projects under this paragraph and transmit the same to the Senate and the House of Representatives as soon as practicable after the date of the enactment of the Federal-

Aid Highway Act of 1987. Upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute highway projects for fiscal year 1988. If such estimate is not approved by Congress by September 30, 1987, the Secretary shall adjust such estimate in accordance with this clause and use the Federal share of the adjusted estimate in making apportionments for fiscal year 1988. The Secretary shall adjust such estimate annually thereafter in accordance with this clause and shall use the Federal share of such adjusted estimate in making apportionments for substitute highway projects for fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995. The adjustments required by this clause shall reflect previous withdrawals of interstate segments, changes in State estimates in the division of funds between substitute highway and transit projects, amounts made available in prior fiscal years, and the availability and reapportionment of funds under subparagraph (E).

(I) AUTHORIZATION OF APPROPRIATIONS FOR TRANSIT PROJECTS.—There are authorized to be appropriated for liquidation of obligations incurred for substitute transit projects under this paragraph the sums provided in section 4(g) of the Urban Mass Transportation Act of 1964.

(J) DISTRIBUTION OF SUBSTITUTE TRANSIT FUNDS.—

(i) BETWEEN DISCRETIONARY AND APPORTIONED PROGRAMS.—Fifty percent of the funds appropriated for each fiscal year beginning after September 30, 1983, and ending before October 1, 1991<sup>1</sup> for carrying out substitute transit projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 50 percent of such funds shall be apportioned in accordance with cost estimates approved by Congress or adjusted by the Secretary. 100 percent of funds appropriated for each of fiscal years 1992 and 1993 shall be apportioned in accordance with cost estimates adjusted by the Secretary.

(ii) FISCAL YEARS 1985, 1986, AND 1987 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute transit projects under this paragraph and transmit the same to the Senate and the House of Representatives within 10 days subsequent to January 2, 1984, and upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute transit projects for fiscal years 1985, 1986, and 1987.

(iii) FISCAL YEARS 1988–1993 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute transit projects under

<sup>1</sup>So in law. Section 1011(b)(1) of P.L. 102–240, added “and ending before October 1, 1991” after “1983.” The inserted material probably should have ended with a comma.

this paragraph and transmit the same to the Senate and the House of Representatives as soon as practicable after the date of the enactment of the Federal-Aid Highway Act of 1987. Upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute transit projects for fiscal year 1988. If such estimate is not approved by Congress by September 30, 1987, the Secretary shall adjust such estimate in accordance with this clause and use the Federal share of the adjusted estimate in making apportionments for fiscal year 1988. The Secretary shall adjust such estimate annually thereafter in accordance with this clause and shall use the Federal share of such adjusted estimate in making apportionments for substitute transit projects for fiscal years 1989, 1990, 1991, 1992, and 1993. The adjustments required by this clause shall reflect previous withdrawals of Interstate segments, changes in State estimates in the division of funds between substitute highway and transit projects, amounts made available in prior fiscal years, and the availability and reapportionment of funds under subparagraph (E).

(K) REDUCTION OF INTERSTATE APPORTIONMENT.—

(i) IN GENERAL.—Unobligated apportionments for the Interstate System in any State where a withdrawal is approved under this paragraph shall, on the date of such approval, be reduced in the proportion that the Federal share of the cost of the withdrawn route or portion thereof bears to the Federal share of the total cost of all interstate routes in that State as reflected in the latest cost estimate approved by the Congress.

(ii) EXCEPTION.—In any State where the withdrawal of an interstate route or portion thereof has been approved under this section prior to the date of the enactment of the Federal-Aid Highway Act of 1976, the unobligated apportionments for the Interstate System in that State on such date of enactment shall be reduced in the proportion that the Federal share of the cost to complete such route or portion thereof, as shown in the latest cost estimate approved by Congress prior to such approval of withdrawal, bears to the Federal share of the cost of all interstate routes in that State, as shown in such cost estimate; except that the amount of such proportional reduction shall be credited with the amount of any reduction in such State's Interstate apportionment which was attributable to the Federal share of any substitute project approved under this paragraph before such date of enactment.

(L) APPLICABILITY OF CHAPTER 53 OF TITLE 49.—

(i) SUPPLEMENTARY FUNDS.—Funds available for expenditure to carry out the purposes of this para-

graph shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to chapter 53 of title 49.

(ii) LABOR PROTECTION.—The provisions of section 5323(a)(1)(D) of title 49 shall apply in carrying out this paragraph.

(M) LIMITATION ON INTERSTATE DESIGNATIONS.—After the date of the enactment of the Federal-Aid Highway Act of 1978, the Secretary may not designate any mileage as part of the Interstate System pursuant to this paragraph or under any other provision of law. The preceding sentence shall not apply to a designation made under section 139 of this title.

(N) OPEN TO TRAFFIC REQUIREMENT.—After September 30, 1979, the Secretary shall not withdraw his approval under this paragraph of any route or portion thereof on the Interstate System open to traffic before the date of the proposed withdrawal. Any withdrawal of approval of any such route or portion thereof before September 30, 1979, is hereby determined to be authorized by this paragraph.

(O) LIMITATION ON SUBSTITUTION FOR STATUTORILY DESIGNATED ROUTES.—Any route or segment which was statutorily designated after March 7, 1978, to be on the Interstate System shall not be eligible for withdrawal or substitution under this subsection.

(P) RIGHT-OF-WAY PAYBACK.—

(i) ENFORCEMENT.—Of sums apportioned or allocated under this paragraph to a State, the Secretary shall not obligate for projects in such State an amount equal to the amount of Federal funds expended to purchase the right-of-way for any withdrawn route or portion thereof if the right-of-way is not first disposed of (or applied to a project in accordance with paragraph (5)(B), (6)(B), or (7)) by the State.

(ii) LIMITATION ON APPLICABILITY.—Clause (i) shall not apply to sums apportioned or allocated under this paragraph to a State for a fiscal year if the projected total amount of funds to be apportioned and allocated under this paragraph to such State in succeeding fiscal years exceeds the amount of Federal funds expended to purchase the right-of-way.

(iii) RELEASE OF FUNDS.—The Secretary may obligate for projects in a State under this paragraph any funds withheld from obligation in such State if the State repays an equivalent amount in accordance with paragraph (5)(B), (6)(B), or (7), as the case may be, or if the Secretary determines that such repayment is not required under such paragraph.

(5) LIMITATION ON REFUNDS FOR WITHDRAWALS BEFORE NOVEMBER 6, 1978.—Notwithstanding any other provision of law, in the case of any withdrawal of approval before November 6, 1978—

(A) upon the withdrawal of approval of any route or portion thereof on the Interstate System under this sec-

tion, a State, subject to the approval of the Secretary, shall not be required to refund to the Highway Trust Fund any sums paid to the State for intangible costs;

(B) refund will not be required for the costs of construction items, materials, or rights-of-way of the withdrawn route or portion of the Interstate System which will be or have been applied (i) to a transportation project permissible under this title, (ii) to a public conservation or public recreation purpose, or (iii) to such other public purpose as may be determined by the Secretary to be in the public interest on condition that the State shall make assurances satisfactory to the Secretary that such construction items or materials or rights-of-way have been or will be so applied by the State of any political subdivision thereof to a project under clause (i), (ii), or (iii) within 10 years from the date of the withdrawal of approval.

(6) LIMITATION ON REFUNDS FOR WITHDRAWALS ON AND AFTER NOVEMBER 6, 1978.—Notwithstanding any other provision of law—

(A) in the case of any withdrawal of approval on or after November 6, 1978, of a route or portion thereof on the Interstate System, a State, subject to the approval of the Secretary, shall not be required to refund to the Highway Trust Fund any sums paid to the State for intangible costs;

(B) in the case of any withdrawal of approval on or after November 6, 1978, of any route or portion thereof on the Interstate System under this section, a State shall not be required to refund to the Highway Trust Fund the costs of construction items, materials, or rights-of-way of the withdrawn route or portion thereof if such items, materials, and rights-of-way were acquired before November 6, 1978, if by the date of withdrawal of approval the Secretary has not approved the environmental impact statement required by the National Environmental Policy Act of 1969, and if such construction items, materials, or rights-of-way will be or have been applied (i) to a transportation project permissible under this title, (ii) to a public conservation or public recreation purpose, or (iii) to any other public purpose determined by the Secretary to be in the public interest on condition that the State gives assurances satisfactory to the Secretary that such construction items, materials, or rights-of-way have been or will be so applied by the State, or any political subdivision thereof, to a project under clause (i), (ii), or (iii) within ten years from the date of withdrawal of approval.

(7) ADDITIONAL LIMITATION ON REFUNDS.—In any case where a withdrawal of approval of a route or portion thereof on the Interstate System on or after November 6, 1978, does not come within the provisions of paragraph (6)(B) of this subsection, the State shall refund to the Highway Trust Fund the costs of construction items, materials, and rights-of-way of the withdrawn route or portion thereof, except if the State gives assurances satisfactory to the Secretary that such items, mate-

rials, and rights-of-way have been or will be applied to a transportation project permissible under this title within ten years from the date of withdrawal of approval, the amount of such repayment shall be the difference between the amount received for such items, materials, and rights-of-way and the amount which would be received in accordance with the current Federal share applicable to the transportation project to which such items, materials, and rights-of-way were or are to be applied.

(8) PROTECTION OF PROPERTY RIGHTS.—Nothing in this subsection shall in any way alter rights under State law of persons owning property within the right-of-way immediately prior to such property being obtained by the State. The Federal share of the cost of property sold or otherwise transferred to previous owners under State law shall be refunded and credited to the unobligated balance of the State's apportionment for interstate highways.

(9) LIMITATION ON FUNDING OF MODIFIED MILEAGE PROJECTS.—Interstate mileage authorized for any State and withdrawn and transferred under the provisions of paragraph (2) of this subsection after the date of enactment of the Federal-Aid Highway Act of 1976, must be constructed by the State receiving such mileage as part of its Interstate System. Any State receiving such transfer of mileage may not, with respect to that transfer, avail itself of the optional use of Interstate funds under the second sentence of paragraph (4) of this subsection.

(f) The Secretary shall have authority to approve in whole or in part the Interstate System, as and when such systems or portions thereof are designated, or to require modifications or revisions thereof.

(g) 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. 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 that such schedule will be met, shall be removed from designation, as a part of the Interstate System. No segment of the Interstate System removed under the authority of the preceding sentence shall thereafter be designated as a part of the Interstate System except as the Secretary finds necessary in the interest of national defense or for other reasons of national interest. This subsection shall not be applicable to any segment of the Interstate System referred to in section 23(a) of the Federal-Aid Highway Act of 1968.

(h) Notwithstanding subsections (e)(2) and (g) of this section, in any case where a segment of the Interstate System was a designated part of such System on June 1, 1973, and is entirely within



the boundaries of an incorporated city and such city enters into an agreement with the Secretary to pay all non-Federal costs of construction of such segment, such segment shall be constructed.

(i) ELIGIBLE PROJECTS FOR NHS.—Subject to project 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:

(1) Construction, reconstruction, resurfacing, restoration, and rehabilitation of segments of such system.

(2) Operational improvements for segments of such system.

(3) 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—

(A) if such highway or transit project is in the same corridor as, and in proximity to, a fully access controlled highway designated to the National Highway System;

(B) if the construction or improvements will improve the level of service on the fully access controlled highway and improve regional travel; and

(C) if the construction or improvements are more cost effective than an improvement to the fully access controlled highway that has benefits comparable to the benefits which will be achieved by the construction of, or improvements to, the highway not on the National Highway System.

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

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

(6) Highway research and planning in accordance with section 307.

(7) Highway-related technology transfer activities.

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

(9) Fringe and corridor parking facilities.

(10) Carpool and vanpool projects.

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

(12) Development and establishment of management systems under section 303.

(13) In accordance with all applicable Federal law and regulations, participation in wetlands mitigation efforts related to projects funded under this title, which may include participation in wetlands mitigation banks; contributions to statewide and regional efforts to conserve, restore, enhance and create wetlands; and development of statewide and regional 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 require-

ments of Federal law and regulations and State transportation planning processes.

#### § 104. Apportionment

[(a) 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  $3\frac{3}{4}$  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.]

(a) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—*Whenever an apportionment is made of the sums made available for expenditure on the surface transportation program under section 133, the congestion mitigation and air quality improvement program under section 149, or the Interstate and National Highway System program under section 103, the Secretary shall deduct a sum, in an amount not to exceed  $1\frac{1}{2}$  percent of all sums so made available, as the Secretary determines necessary to administer the provisions of law to be financed from appropriations for the Federal-aid highway program and programs authorized under chapter 2.*

(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.*

[(b) On October 1 of each fiscal year except as provided in paragraph (5)(A) of this subsection, the Secretary, after making the deduction authorized by subsection (a) of this section and the set asides authorized by subsection (f) of this section and section 307 of this title, shall apportion the remainder 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 for that fiscal year, among the several States in the following manner:

[(1) NATIONAL HIGHWAY SYSTEM.—For the National Highway System 1 percent to the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands and the remaining 99 percent apportioned in the same ratio as funds are apportioned under paragraph (3).

[(2) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—For the congestion mitigation and air quality improvement program, in the ratio which the weighted non-

attainment area population of each State bears to the total weighted nonattainment area population of all States. The weighted nonattainment area population shall be calculated by multiplying the population of each area within any State that 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 by a factor of—

[(A) 1.0 if the area is classified as a marginal ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act;

[(B) 1.1 if the area is classified as a moderate ozone nonattainment area under such subpart;

[(C) 1.2 if the area is classified as a serious ozone nonattainment area under such subpart;

[(D) 1.3 if the area is classified as a severe ozone nonattainment area under such subpart; or

[(E) 1.4 if the area is classified as an extreme ozone nonattainment area under such subpart.

[If the area was also classified under subpart 3 of part D of title I of such Act as a nonattainment area for carbon monoxide during any part of fiscal year 1994, for purposes of calculating the weighted nonattainment area population, the weighted nonattainment area population of the area, as determined under the preceding provisions of this paragraph, shall be further multiplied by a factor of 1.2. Notwithstanding any provision of this paragraph, in the case of States with a total 1990 census population of 15,000,000 or greater, the amount apportioned under this paragraph in a fiscal year to all of such States in the aggregate, shall be distributed among such States based on their relative populations; except that none of such States shall be distributed more than 42 percent of the aggregate amount so apportioned to all of such States. Notwithstanding any other provision of this paragraph, each State shall receive a minimum apportionment of  $\frac{1}{2}$  of 1 percent of the funds apportioned under this paragraph. The Secretary shall use estimates prepared by the Secretary of Commerce when determining population figures.

[(3) SURFACE TRANSPORTATION PROGRAM.—

[(A) GENERAL RULE.—For the surface transportation program in a manner so that a State's current percentage share of apportionments is equal to the State's 1987–1991 percentage share of apportionments. For purposes of this paragraph—

[(i) a State's current percentage share of apportionments is the State's percentage share of all funds apportioned for a fiscal year under paragraph (1) for the National Highway System, under section 144 for the bridge program, under paragraph (5)(B) for Interstate maintenance, and under this paragraph; and

[(ii) a State's 1987–1991 percentage share of apportionments is the State's percentage share of all apportionments and allocations under this title for fiscal years 1987, 1988, 1989, 1990, and 1991 (except apportionments and allocations for Interstate construction

under sections 104(b)(5)(A) and 118, Interstate highway substitute under section 103(e)(4), Federal lands highways under section 202, and emergency relief under section 125, all allocations under section 149 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and the portion of allocations under section 157 (relating to minimum allocation) that would be attributable to apportionments made under Interstate construction and Interstate highway substitute programs under sections 104(b)(5)(A) and 103(e)(4), respectively, for such fiscal years if the minimum allocation percentage for such fiscal years had been 90 percent instead of 85 percent).

**[(B) CALCULATION RULES.—**In calculating a State's percentage share under this paragraph for the purpose of making apportionments for fiscal years 1992, 1993, 1994, 1995, 1996, and 1997, each State shall be treated as having received  $\frac{1}{2}$  of 1 percent of all funds apportioned for the Interstate construction program under section 104(b)(5)(A) in fiscal years 1987, 1988, 1989, 1990, and 1991. Notwithstanding any other provision of this paragraph, in any fiscal year no State shall receive a percentage of total apportionments and allocations that is less than 70 percent of its percentage of total apportionments and allocations for fiscal years 1987, 1988, 1989, 1990, and 1991, except for those States that receive an apportionment for Interstate construction under paragraph (5)(A) of more than \$50,000,000 for fiscal year 1992.

**[(4)** For the Interstate System, for the fiscal years ending June 30, 1957, June 30, 1958, and June 30, 1959:

**[(One-half 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, except that no States shall receive less than three-fourths of 1 per centum of the funds so apportioned; and one-half in the manner provided in paragraph (1) of this subsection. The sums authorized by section 108(b) of the Federal-Aid Highway Act of 1956 for the fiscal years ending June 30, 1958, and June 30, 1959, shall be apportioned on a date not less than six months and not more than twelve months in advance of the beginning of the fiscal year for which authorized.**

**[(5)(A)** Except as provided in subparagraph (B)—For the Interstate System for the fiscal years 1960 through 1996:

**[(For the fiscal years 1960 through 1966, in the ratio which the estimated cost of completing the Interstate System in such State, as determined and approved in the manner provided in this paragraph, bears to the sum of the estimated cost of completing the Interstate System in all of the States. For the fiscal year 1967 through 1990, in the ratio which the Federal share of the estimated cost of completing the Interstate System in such State, as determined and approved in the manner provided in this paragraph, bears to the sum of the estimated cost of the Federal share of completing the Interstate System in all of the States. Each apportionment herein authorized for the fiscal years 1960 through 1996, in-**

clusive, shall be made on October 1 of the year preceding the fiscal year for which authorized.

【As soon as the standards provided for in subsection (b) of section 109 of this title have been adopted, the Secretary, in cooperation with the 【State highway departments】*State transportation departments*, shall make a detailed estimate of the cost of completing the Interstate System as then designated, after taking into account all previous apportionments made under this section, based upon such standards and in accordance with rules and regulations adopted by him and applied uniformly to all of the States. The Secretary shall transmit such estimates to the Senate and the House of Representatives within ten days subsequent to January 2, 1958. Upon approval of such estimate by the Congress by concurrent resolution, the Secretary shall use such approved estimate in making apportionments for the fiscal years ending June 30, 1960, June 30, 1961, and June 30, 1962. 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 ten days subsequent to January 2, 1961. Upon approval of such estimate by the Congress by concurrent resolution, the Secretary shall use such approved estimate in making apportionments for the fiscal years ending June 30, 1963, June 30, 1964, June 30, 1965, and June 30, 1966. 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 ten days subsequent to January 2, 1965. Upon the approval of such estimate by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal years ending June 30, 1967; June 30, 1968; and June 30, 1969. 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 ten days subsequent to January 2, 1968. Upon the approval by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal years ending June 30, 1970, and June 30, 1971. 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 on April 20, 1970. Upon the approval by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal years ending June 30, 1972, and June 30, 1973. 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 ten days subsequent to January

2, 1972. Upon the approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976. 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 ten days subsequent to January 2, 1975. Upon the approval by Congress, the Secretary shall use the Federal share of such approved estimate in making the apportionment for the fiscal year ending September 30, 1977. The Secretary shall make the apportionment for the fiscal year ending September 30, 1978, in accordance with section 103 of the Federal-Aid Highway Act of 1976. 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 ten days subsequent to January 2, 1977. Upon the approval by Congress, the Secretary shall use the Federal share of such approved estimates in making apportionments for the fiscal years ending September 30, 1979, and September 30, 1980. 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 ten days subsequent to January 2, 1979. Upon the approval by Congress, the Secretary shall use the Federal share of such approved estimates in making apportionments for the fiscal years ending September 30, 1981, and September 30, 1982. 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 ten days subsequent to January 2, 1981. Upon the approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal years ending September 30, 1983, and September 30, 1984. 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 ten days subsequent to January 2, 1983. Upon the approval by Congress, the Secretary shall use the Federal share of such approved estimates in making apportionments for the fiscal years ending September 30, 1985, and September 30, 1986. 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 ten days subsequent to January 2, 1985. Upon the approval by Congress, the Secretary shall use the Federal share of such approved estimates in making appor-

tionments for the fiscal years ending September 30, 1987, and September 30, 1988. 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 ten days subsequent to January 2, 1987. Upon the approval by Congress, the Secretary shall use the Federal share of such approved estimates in making apportionments for the fiscal years ending September 30, 1989, and September 30, 1990. 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. Whenever the Secretary, pursuant to this subsection, requests and receives estimates of cost from the [State highway departments]*State transportation departments*, he shall furnish copies of such estimates at the same time to the Senate and the House of Representatives. The Secretary shall not include in any estimate submitted under this provision after December 31, 1978, any cost of a project to expand or clear zones immediately adjacent to the paved roadway of routes designed prior to February, 1967. Notwithstanding any other provisions of this subparagraph, the Secretary in making the revised estimate of the cost of completing the then designated Interstate System for the purpose of transmitting it to the Senate and House of Representatives within ten days subsequent to January 2, 1983, or thereafter, shall include only those costs eligible for funds authorized by subsection (b) of section 108 of the Federal-Aid Highway Act of 1956, as amended, including the amendments made by section 4 of the Federal-Aid Highway Act of 1981. 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. 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. If, before apportionment of funds under this subparagraph for any fiscal year, the Secretary and a [State highway department] *State transportation 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.

[(B) For resurfacing, restoring, rehabilitating, and reconstructing the Interstate System:

[55 per centum in the ratio that lane miles on the Interstate routes designated under sections 103 and 139(c) of this title and routes on the Interstate System designated under section 139(a) of this title before March 9, 1984, (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 and routes on the Interstate System designated under section 139(a) of this title before March 9, 1984, (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 vehicle miles in all States. Notwithstanding the preceding sentence, 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.

[(6) For the Federal-aid urban system:

[In the ratio which the population in urban areas, or parts thereof, in each State bears to the total population in such urban areas, or parts thereof, in all the States as shown by the latest available Federal census. No State shall receive less than one-half of 1 per centum of each year's apportionment.]

(b) *APPORTIONMENTS.*—On October 1 of each fiscal year, the Secretary, after making the deduction authorized by subsection (a) and the set-asides authorized by [subsection (f)] subsections (d) and (f), shall apportion the remainder of the sums authorized to be appropriated for expenditure on the National Highway System, the congestion mitigation and air quality improvement program, and the surface transportation program, for that fiscal year, among the States in the following manner:

(1) *INTERSTATE AND NATIONAL HIGHWAY SYSTEM PROGRAM.*—

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

(i) 50 percent in the ratio that—

(I) the total lane miles on Interstate System routes designated under—

(aa) section 103;

(bb) section 139(a) 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*

*(cc) section 139(c) (as in effect on the day before the date of enactment of the Intermodal Surface Transportation Efficiency Act of 1997);*

*in each State; bears to*

*(II) the total of all such lane miles in all States; and*

*(ii) 50 percent in the ratio that—*

*(I) the total vehicle miles traveled on lanes on Interstate System routes designated under—*

*(aa) section 103;*

*(bb) section 139(a) 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*

*(cc) section 139(c) (as in effect on the day before the date of enactment of the Intermodal Surface Transportation Efficiency Act of 1997);*

*in each State; bears to*

*(II) the total of all such vehicle miles traveled in all States.*

*(B) INTERSTATE BRIDGE COMPONENT.—For resurfacing, restoring, rehabilitating, and reconstructing bridges on the Interstate System, in the ratio that—*

*(i) the total square footage of structurally deficient and functionally obsolete bridges on the Interstate System (other than bridges on toll roads not subject to a Secretarial agreement under section 105 of the Federal-Aid Highway Act of 1978 (92 Stat. 2692)) in each State; bears to*

*(ii) the total square footage of structurally deficient and functionally obsolete bridges on the Interstate System (other than bridges on toll roads not subject to a Secretarial agreement under section 105 of the Federal-Aid Highway Act of 1978 (92 Stat. 2692)) in all States.*

*(C) OTHER NATIONAL HIGHWAY SYSTEM COMPONENT.—*

*(i) IN GENERAL.—For the National Highway System (excluding funds apportioned under subparagraph (A) or (B)), \$36,400,000 for each fiscal year to the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands and the remainder apportioned as follows:*

*(I) 20 percent of the apportionments in the ratio that—*

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

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

(II) 29 percent of the apportionments in the ratio that—

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

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

(III) 18 percent of the apportionments in the ratio that—

(aa) the total square footage of structurally deficient and functionally obsolete bridges on principal arterial routes (excluding bridges on Interstate System routes (other than bridges on toll roads not subject to a Secretarial agreement under section 105 of the Federal-Aid Highway Act of 1978 (92 Stat. 2692))) in each State; bears to

(bb) the total square footage of structurally deficient and functionally obsolete bridges on principal arterial routes (excluding bridges on Interstate System routes (other than bridges on toll roads not subject to a Secretarial agreement under section 105 of the Federal-Aid Highway Act of 1978 (92 Stat. 2692))) in all States.

(IV) 24 percent of the apportionments in the ratio that—

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

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

(V) 9 percent of the apportionments in the ratio that—

(aa) 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

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

(ii) DATA.—Each calculation under clause (i) shall be based on the latest available data.

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

(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 that subpart;

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

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

(vi) 1.4 if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area under that 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 that 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 that 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 that 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) 20 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) 30 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) 25 percent of the apportionments in the ratio that—

(I) the total square footage of structurally deficient and functionally obsolete bridges on Federal-aid highways (excluding bridges described in subparagraphs (B) and (C)(i)(III) of paragraph (1)) in each State; bears to

(II) the total square footage of structurally deficient and functionally obsolete bridges on Federal-aid highways (excluding bridges described in subparagraphs (B) and (C)(i)(III) of paragraph (1)) in all States.

(iv) 25 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 Ac-

*count) 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) *DATA.*—Each calculation under subparagraph (A) shall be based on the latest available data.

(C) *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.

(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.*—The Secretary shall expend, from administrative funds deducted under subsection (a), \$300,000 for each fiscal year for carrying out a public information and education program to help prevent and reduce motor vehicle accidents, injuries, and fatalities and to improve driver performance at railway-highway crossings.]

(1) *OPERATION LIFESAVER.*—Before making an apportionment of funds under subsection (b)(3) for a fiscal year, the Secretary shall set aside \$500,000 of the funds authorized to be appropriated for the surface transportation program for the fiscal year to carry out a public information and education program to help prevent and reduce motor vehicle 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) 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.

[(3) 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.】

(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 \$5,000,000 of the funds authorized to be appropriated for the surface transportation program for the fiscal year for elimination of hazards of railway-highway crossings.*

(B) *ELIGIBLE CORRIDORS.*—*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); and*

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

(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) *NOTIFICATION TO STATES.*—*On October 1 of each fiscal year the Secretary shall certify to each of the 【State highway departments】State transportation departments the sums which he has apportioned hereunder 【(other than 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. 【On October 1 of the year preced-*

ing the fiscal year for which authorized, the Secretary shall certify to each of the ~~State highway departments~~ *State transportation 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.] 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].

[(f)(1) On] *(f) METROPOLITAN PLANNING.*—

*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[, 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].

[(2) These] *(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) The] *(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(j) of this title unless the Secretary determines that the interests of the Federal-aid highway program would be best served without such matching.

[(4) The] *(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] *subsection (b)(1)(B) and sections 130 and 152* may be transferred from the apportionment under one [section] *provision* to the apportionment under any other of [such sections] *those provisions* if such a transfer is requested by the [State highway department] *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] *provision* to the apportionment under any other of [such sections] *those provisions* if such transfer is requested by the [State highway department] *State transportation department*, and is approved by the Secretary as being in the public interest, if he has received satisfactory assurances from such [State highway department] *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] *subsection (b)(1)(B)* in any fiscal year to the apportionment of such State under [subsection (b)(1)] *subsection (B)(1)(C)* 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) NATIONAL RECREATIONAL TRAILS FUNDING.—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.]

(h) *EFFECT OF CERTAIN AMENDMENTS.*—*Notwithstanding any other provision of law, deposits into the Highway Trust Fund resulting from the amendments made by section 901 of the Taxpayer Relief Act of 1997 shall not be taken into account in determining the apportionments and allocations that any State shall be entitled to receive under the Intermodal Surface Transportation Efficiency Act of 1997 and this title.*

[(i) WOODROW WILSON MEMORIAL BRIDGE.—

[(1) EXPENDITURE.—From any available administrative funds deducted under subsection (a), the Secretary shall obligate such sums as are necessary for each of fiscal years 1996 and 1997 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.]

(i) *AUDITS OF HIGHWAY TRUST FUND.*—From available 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) *REPORTING OF RATES OF OBLIGATION.*—On an annual basis, the Secretary shall publish or otherwise report rates of obligation of funds apportioned or set aside under this section and sections 103 and 133 according to—

- (1) program;
  - (2) funding category or subcategory;
  - (3) type of improvement;
  - (4) State; and
  - (5) sub-State geographic area, including urbanized and rural areas, on the basis of the population of each such area.
- (k) *SET-ASIDE FOR INTERSTATE 4R AND BRIDGE PROJECTS.*—

(1) *IN GENERAL.*—For each of fiscal years 1998 through 2003, before any apportionment is made under subsection (b)(1), the Secretary shall set aside \$70,000,000 from amounts to be apportioned under subsection (b)(1)(A), and \$70,000,000 from amounts to be apportioned under subsection (b)(1)(B), for allocation by the Secretary—

(A) for projects for resurfacing, restoring, rehabilitating, or reconstructing any route or portion of a route on the Interstate System (other than any highway designated as a part of the Interstate System under section 103(c)(4) and any toll road on the Interstate System that is not subject to an agreement under section 119(e) (as in effect on December 17, 1991) or an agreement under section 129(a));

(B) for projects for a highway bridge the replacement, rehabilitation, or seismic retrofit cost of which is more than \$10,000,000; and

(C) for projects for a highway bridge the replacement, or rehabilitation, or seismic retrofit cost of which is less than \$10,000,000 if the cost is at least twice the amount reserved under section 144(c) by the State in which the bridge is located for the fiscal year in which application is made for an allocation for the bridge under this subsection.

(2) *REQUIRED ALLOCATION.*—

(A) *IN GENERAL.*—Subject to subparagraph (B), for each of fiscal years 1998 through 2003, the Secretary shall allocate on October 1, for use for highway bridge projects, at least \$20,000,000 of the amounts set aside under paragraph (1) to any State that—

- (i) is apportioned for fiscal year 1998 under paragraphs (1)(B), (1)(C)(i)(III), and (3)(A)(iii) of subsection (b)
- (b) an amount that is less than the amount apportioned to the State for the highway bridge replacement and rehabilitation program under section 144 for fiscal year 1997; and

(ii) was apportioned for that program for fiscal year 1997 an amount greater than \$125,000,000.

(B) *EXCEPTION.*—A State that transferred funds from the highway bridge replacement and rehabilitation program during any of fiscal years 1995 through 1997 in an amount greater than 10 percent of the apportionments for that program for the fiscal year shall not be eligible for an allocation under subparagraph (A).

(C) *ADDITIONAL ALLOCATION.*—An allocation to a State under subparagraph (A) shall be in addition to any allocation to the State under paragraph (1).

(3) *AVAILABILITY TO STATES OF INTERSTATE 4R FUNDS.*—The Secretary may grant the application of a State for funds made available for a fiscal year for a project described in paragraph (1)(A) if the Secretary determines that—

(A) the State has obligated or demonstrates that it will obligate for the fiscal year all of the apportionments to the State under subparagraphs (A) and (B) of subsection (b)(1) other than an amount that, by itself, is insufficient to pay the Federal share of the cost of a project described in paragraph (1)(A) that has been submitted by the State to the Secretary for approval; and

(B) the State is willing and able to—

(i) obligate the funds within 1 year after the date on which the funds are made available;

(ii) apply the funds to a project that is ready to be commenced; and

(iii) in the case of construction work, begin work within 90 days after the date of obligation of the funds.

(4) *ELIGIBILITY OF CERTAIN BRIDGES.*—

(A) *IN GENERAL.*—Notwithstanding any other provision of law, any bridge that is owned and operated by an agency that does not have taxing powers and whose functions include operating a federally assisted public transit system subsidized by toll revenues shall be eligible for assistance under this subsection.

(B) *LIMITATION.*—The amount of assistance under subparagraph (A) shall not exceed the cumulative amount that the agency has expended for capital and operating costs to subsidize the transit system.

(C) *DETERMINATION BY THE SECRETARY.*—Before authorizing an expenditure of funds under this paragraph, the Secretary shall make a determination 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, seismic retrofitting, or rehabilitation project.

(D) *CREDITING OF NON-FEDERAL FUNDS.*—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 expenditure.

(5) *PERIOD OF AVAILABILITY OF DISCRETIONARY FUNDS.*—Amounts made available under this subsection shall remain available until expended.

(l) *TRANSFER OF HIGHWAY AND TRANSIT FUNDS.*—

(1) *TRANSFER OF HIGHWAY FUNDS.*—Funds made available under this title and transferred for transit projects 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 that chapter relating to the non-Federal share shall apply to the transferred funds.

(3) *TRANSFER TO AMTRAK AND PUBLICLY-OWNED PASSENGER RAIL LINES.*—Funds made available under this title or chapter 53 of title 49 and transferred to the National Railroad Passenger Corporation or to any publicly-owned intercity or intracity passenger rail line shall be administered by the Secretary in accordance with subtitle V of title 49, except that the provisions of this title or chapter 53 of title 49, as applicable, relating to the non-Federal share shall apply to the transferred funds.

(4) *TRANSFER OF OBLIGATION AUTHORITY.*—Obligation authority provided for projects described in paragraphs (1) through (3) shall be transferred in the same manner and amount as the funds for the projects are transferred.

[(j)] (m) *REPORT TO CONGRESS.*—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] a report for each fiscal year on (1) the amount of obligation, by State, for [Federal-aid highways and the highway safety construction programs] the Federal-aid highway program during the preceding [calendar month] fiscal year, [(2) the cumulative amount of obligation, by State, for that fiscal year,] [(3)] (2) the balance as of the last day of [such preceding month] that preceding fiscal year of the unobligated apportionment of each State by fiscal year, and [(4)] (3) the balance of unobligated sums available for expenditure at the discretion of the Secretary for such highways and programs for the fiscal year.

#### § 105. [Programs]

[(a)] As soon as practicable after the apportionments for the Federal-aid systems have been made for any fiscal year, the [State highway department] State transportation department of any State desiring to avail itself of the benefits of this chapter shall submit to the Secretary for his approval a program or programs of proposed projects for the utilization of the funds apportioned. The Secretary shall act upon programs submitted to him as soon as practicable after the same have been submitted. The Secretary may approve a program in whole or in part, but he shall not approve any project in a proposed program which is not located upon an approved Federal-aid system.

[(b) In approving programs for projects on the Federal-aid secondary system, the Secretary shall require that such projects be selected by the [State highway department]*State transportation department* and the appropriate local officials in cooperation with each other, except in States where all public roads and highways are under the control and supervision of the [State highway department]*State transportation department*, such selection shall be made after consultation with appropriate local officials.

[(c) In approving programs for projects on the Federal-aid primary system, the Secretary shall give preference to such projects as will expedite the completion of an adequate and connected system of highways interstate in character.

[(d) In approving programs for projects on the Federal-aid urban system, the Secretary shall require that such projects be selected by the appropriate local officials with the concurrence of the [State highway department]*State transportation department* of each State and, in urbanized areas, also in accordance with the planning process required pursuant to section 134 of this title.

[(e) In approving programs for projects under this chapter, the Secretary may give priority of approval to, and expedite the construction of, projects that are recommended as important to the national defense by the Secretary of Defense, or other official authorized by the President to make such recommendation.

[(f) In approving programs for projects on the Federal-aid systems pursuant to chapter 1 of this title, the Secretary shall give priority to those projects which incorporate improved standards and features with safety benefits.

[(g) In preparing programs to submit in accordance with subsection (a) of this section, the [State highway departments]*State transportation departments* shall give consideration to projects providing direct and convenient public access to public airports, public ports for water transportation, new town communities, and new town-intown communities, and in approving such programs the Secretary shall give consideration to such projects.

[(h) In preparing programs to submit in accordance with subsection (a) of this section, the [State highway departments]*State transportation departments* may give priority to projects for the reconstruction, resurfacing, restoration, or rehabilitation of highways which are incurring a substantial use as a result of transportation activities to meet national energy requirements and which will continue to incur such use, and in approving such programs the Secretary may give priority to such projects.

[(k) PRIORITY FOR HIGH PRIORITY SEGMENTS OF CORRIDORS OF NATIONAL SIGNIFICANCE.—In selecting projects for inclusion in a program of projects under this section, the State may give priority to high priority segments of corridors identified under section 1105(f) of the Intermodal Surface Transportation Efficiency Act of 1991. In approving programs of projects under this section, the Secretary may give priority of approval to, and expedite construction of, projects to complete construction of such segments.]

#### **§ 105. Minimum guarantee**

(a) *ADJUSTMENT.*—

(1) *IN GENERAL.*—In fiscal year 1998 and each fiscal year thereafter on October 1, or as soon as practicable thereafter, the Secretary shall allocate among the States amounts sufficient to ensure that—

(A) the ratio that—

(i) each State's percentage of the total apportionments for the fiscal year—

(I) under section 104 for the Interstate and National Highway System program, the surface transportation program, metropolitan planning, and the congestion mitigation and air quality improvement program; and

(II) under this section and section 1102(c) of the Intermodal Surface Transportation Efficiency Act of 1997 for ISTEA transition; bears to

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

is not less than 0.90; and

(B) in the case of a State specified in paragraph (2)—

(i) the State's percentage of the total apportionments for the fiscal year described in subclauses (I) and (II) of subparagraph (A)(i) is not less than the percentage specified for the State in paragraph (2); but

(ii) the State's total apportionments for the fiscal year described in subclauses (I) and (II) of subparagraph (A)(i) is not greater than the product determined for the State under section 1102(c)(1)(D) of the Intermodal Surface Transportation Efficiency Act of 1997 for the fiscal year.

(2) *STATE PERCENTAGES.*—The percentage referred to in paragraph (1)(B) for a specified State shall be determined in accordance with the following table:

<i>State</i>	<i>Percentage</i>
<i>Alaska</i> .....	<i>1.24</i>
<i>Arkansas</i> .....	<i>1.33</i>
<i>Delaware</i> .....	<i>0.47</i>
<i>Hawaii</i> .....	<i>0.55</i>
<i>Idaho</i> .....	<i>0.82</i>
<i>Montana</i> .....	<i>1.06</i>
<i>Nevada</i> .....	<i>0.73</i>
<i>New Hampshire</i> .....	<i>0.52</i>
<i>New Jersey</i> .....	<i>2.41</i>
<i>New Mexico</i> .....	<i>1.05</i>
<i>North Dakota</i> .....	<i>0.73</i>
<i>Rhode Island</i> .....	<i>0.58</i>
<i>South Dakota</i> .....	<i>0.78</i>

<i>State</i>	<i>Percentage</i>
<i>Vermont</i> .....	0.47
<i>Wyoming</i> .....	0.76.

(b) *TREATMENT OF ALLOCATIONS.*—

(1) *OBLIGATION.*—Amounts allocated under subsection (a)—

(A) shall be available for obligation when allocated and shall remain available for obligation for a period of 3 years after the last day of the fiscal year for which the amounts are allocated; and

(B) shall be available for any purpose eligible for funding under this title.

(2) *SET-ASIDE.*—Fifty percent of the amounts allocated under subsection (a) shall be subject to section 133(d)(3).

(c) *TREATMENT OF WITHHELD APPORTIONMENTS.*—For the purpose of subsection (a), any funds that, but for section 158(b) or any other provision of law under which Federal-aid highway funds are withheld from apportionment, would be apportioned to a State for a fiscal year under a section referred to in subsection (a) shall be treated as being apportioned in that fiscal year.

(d) *AUTHORIZATION OF CONTRACT AUTHORITY.*—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to carry out this section.

**§ 106. Plans, specifications, and estimates**

[(a) Except as provided in this section and section 117 of this title, the [State highway department] *State transportation department* shall submit to the Secretary for his approval, as soon as practicable after program approval, such surveys, plans, specifications, and estimates for each proposed project included in an approved program as the Secretary may require. The Secretary shall act upon such surveys, plans, specifications, and estimates as soon as practicable after the same have been submitted, and his approval of any such project shall be deemed a contractual obligation of the Federal Government for the payment of its proportional contribution thereto. In taking such action, the Secretary shall be guided by the provisions of section 109 of this title.

[(b) *SPECIAL RULES.*—

[(1) *3R PROJECTS ON NHS.*—Notwithstanding any other provision of this title, a [State highway department] *State transportation department* may approve, on a project by project basis, plans, specifications, and estimates for projects to resurface, restore, and rehabilitate highways on the National Highway System if the State certifies that all work will meet or exceed the standards approved by the Secretary under section 109(c).

[(2) *NON-NHS PROJECTS AND LOW-COST NHS PROJECTS.*—Any State may request that the Secretary no longer review and approve plans, specifications, and estimates for any project (including any highway project on the National Highway System with an estimated construction cost of less than \$1,000,000 but excluding any other highway project on the National Highway System). After receiving any such notification, the Secretary shall undertake project review only as requested by the State.

[(3) SAFETY CONSIDERATIONS.—Safety considerations for projects subject to this subsection may be met by phase construction consistent with an operative safety management system established in accordance with section 303.]

[(c) LIMITATION ON ESTIMATES FOR CONSTRUCTION ENGINEERING.—Items included in all such estimates for construction engineering for a State for a fiscal year shall not exceed, in the aggregate, 15 percent of the total estimated costs of all projects financed within the boundaries of the State with Federal-aid highway funds in such fiscal year, after excluding from such total estimate costs, the estimated costs of rights-of-way, preliminary engineering, and construction engineering.]

[(d) In such cases as the Secretary determines advisable, plans, specifications, and estimates for proposed projects on any Federal-aid system shall be accompanied by a value engineering or other cost reduction analysis.]

#### **§ 106. Project approval and oversight**

(a) *IN GENERAL.*—Except as otherwise provided in this section, the State transportation department shall submit to the Secretary for approval such plans, specifications, and estimates for each proposed project as the Secretary may require. The Secretary shall act upon such plans, specifications, and estimates as soon as practicable after they have been submitted, and shall enter into a formal project agreement with the State transportation department formalizing the conditions of the project approval. The execution of such project agreement shall be deemed a contractual obligation of the Federal Government for the payment of its proportional contribution thereto. In taking such action, the Secretary shall be guided by the provisions of section 109 of this title.

(b) *PROJECT AGREEMENT.*—The project agreement shall make provision for State funds required for the State's pro rata share of the cost of construction of the project and for the maintenance of the project after completion of construction. The Secretary may rely upon representations made by the State transportation department with respect to the arrangements or agreements made by the State transportation department and appropriate local officials where a part of the project is to be constructed at the expense of, or in cooperation with, local subdivisions of the State.

(c) *SPECIAL RULES FOR PROJECT OVERSIGHT.*—

(1) *NHS PROJECTS.*—Except as otherwise provided in subsection (d) of this section, the Secretary may discharge to the State any of the Secretary's responsibilities for the design, plans, specifications, estimates, contract awards, and inspection of projects under this title on the National Highway System. Before discharging responsibilities to the State, the Secretary shall reach agreement with the State as to the extent to which the State may assume the responsibilities of the Secretary under this subsection. The Secretary may not assume any greater responsibility than the Secretary is permitted under this title as of September 30, 1997, except upon agreement by the Secretary and the State.

(2) *NON-NHS PROJECTS.*—For all projects under this title that are off the National Highway System, the State may re-

*quest that the Secretary no longer review and approve the design, plans, specifications, estimates, contract awards, and inspection of projects under this title. After receiving any such request, the Secretary shall undertake project review only as requested by the State.*

*(d) RESPONSIBILITIES OF THE SECRETARY.—*

*(1) IN GENERAL.—Subject to paragraph (2), nothing in this section, section 133, or section 149 shall affect or discharge any responsibility or obligation of the Secretary under any Federal law other than this title.*

*(2) LIMITATION.—Any responsibility or obligation of the Secretary under sections 113 and 114 of this title shall not be affected and may not be discharged under this section, section 133, or section 149.*

*(e) VALUE ENGINEERING ANALYSIS.—In such cases as the Secretary determines advisable, plans, specifications, and estimates for proposed projects on any Federal-aid highway shall be accompanied by a value engineering or other cost reduction analysis.*

*(f) FINANCIAL PLAN.—The Secretary shall require a financial plan to be prepared for any project with an estimated total cost of \$1,000,000,000 or more.*

**[(e)] (g) 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.

**[(f)] (h) 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.】

## **§ 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 authorized, 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) 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 of **[Federal-aid highways]** *the Federal-aid highway program* 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 highway department]** *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 highway department]** *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.

**§ 108. [Advance acquisition of rights-of-way] *Advance acquisition of real property***

[(a) 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] *State transportation 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] *State transportation 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.]

(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)(1) There is hereby established in the Treasury of the United States a revolving fund to be known as the right-of-way revolving fund which shall be administered by the Secretary in carrying out the provisions of this subsection. Sums authorized to be appropriated to the right-of-way revolving fund shall be available for ex-

penditure without regard to the fiscal year for which such sums are authorized.

[(2) For the purpose of acquiring rights-of-way for future construction of highways and passenger transit facilities on any Federal-aid system and for making payments for the moving or relocation of persons, businesses, farms, and other existing uses of real property caused by the acquisition of such rights-of-way, in addition to the authority contained in subsection (a) of this section, the Secretary, upon request of a [State highway department] *State transportation department*, is authorized to advance funds, without interest, to the State from amounts available in the right-of-way revolving fund, in accordance with rules and regulations prescribed by the Secretary. Funds so advanced may be used to pay the entire costs of projects for the acquisition of rights-of-way, including the net cost to the State of property management, if any, and related moving and relocation payments.

[(3) Actual construction of a project on rights-of-way, with respect to which funds are advanced under this subsection, shall be commenced within a period of not less than two years nor more than 20 years following the end of the fiscal year in which the Secretary approves such advance of funds, unless the Secretary, in his discretion, shall provide for an earlier or later termination date. Immediately upon the termination of the period of time within which actual construction must be commenced, in the case of any project where such construction is not commenced before such termination, or upon approval by the Secretary of the plans, specifications, and estimates for such project for the actual construction of a project on rights-of-way with respect to which funds are advanced under this subsection, whichever shall occur first, the right-of-way revolving fund shall be credited with an amount equal to the Federal share of the funds advanced, as provided in section 120 of this title, out of any Federal-aid highway funds apportioned to the State in which such project is located and available for obligation for projects on the Federal-aid system of which such project is to be a part and 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 right-of-way revolving fund.]

(c) *TERMINATION OF RIGHT-OF-WAY REVOLVING FUND.*—

(1) *IN GENERAL.*—*Funds apportioned and advanced to a State by the Secretary from the right-of-way revolving fund established by this section prior to the date of enactment of the Intermodal Surface Transportation Efficiency Act of 1997 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.*

(2) *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 paragraph (1), 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—*

*(A) the Highway Trust Fund shall be credited with an amount equal to the Federal share of the funds advanced,*

*as provided in section 120, 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*

*(B) 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.*

(d) **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—

(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, 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.

### § 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.]

(a) IN GENERAL.—

(1) REQUIREMENTS FOR FACILITIES.—The Secretary shall ensure that the plans and specifications for each proposed highway project under this chapter provide for a facility that will—

(A) *adequately serve the existing traffic of the highway in a manner that is conducive to safety, durability, and economy of maintenance; and*

(B) *be designed and constructed in accordance with criteria best suited to accomplish the objectives described in subparagraph (A) and to conform to the particular needs of each locality.*

(2) CONSIDERATION OF PLANNED FUTURE TRAFFIC DEMANDS.—In carrying out paragraph (1), the Secretary shall ensure the consideration of the planned future traffic demands of the facility.

(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 highway departments] *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 highway departments] *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 highway department] *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 operation 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, bikeways, gutters, ditches, and side slopes, and of sufficient width to provide service roads to 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 decision 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 in 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.

(1)(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)] (m) 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.】

[(n)] (n) 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.

[(o)] (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.

[(p)] (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.



[(q)] (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.*

#### **[§ 110. Project agreements**

[(a)] As soon as practicable after the plans, specifications, and estimates for a specific project have been approved, the Secretary shall enter into a formal project agreement with the [State highway department]*State transportation department* concerning the construction and maintenance of such project. Such project agreement shall make provision for State funds required for the State's pro rata share of the cost of construction of such project and for the maintenance thereof after completion of construction.

[(b)] The Secretary may rely upon representations made by the [State highway department]*State transportation department* with respect to the arrangements or agreements made by the [State highway department]*State transportation department* and appropriate local officials where a part of the project is to be constructed at the expense of, or in cooperation with, local subdivisions of the State.]

#### **§ 110. Repealed**

#### **§ 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 highway department]*State transportation department* 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 highway department] *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.

## § 112. Letting of contracts

(a) In all cases where the construction is to be performed by the ~~the [State highway department]~~*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)]~~ *paragraphs (2) and (3)*, 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 highway department]~~*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]~~ *Subject to paragraph (3), 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~~],~~ except to the extent that such State adopts by statute a formal procedure for the procurement of such services~~].~~

(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, 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).

[(C) PERFORMANCE AND AUDITS.—Any contract or sub-contract 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.]

(C) SELECTION, PERFORMANCE, AND AUDITS.—

(i) IN GENERAL.—*All requirements for architectural, engineering, and related services at any phase of a highway project funded in whole or in part with Federal-aid highway funds shall be performed by a contract awarded in accordance with subparagraph (A).*

(ii) PROHIBITION ON STATE RESTRICTION.—*A State shall not impose any overhead restriction that would preclude any qualified firm from being eligible to compete for contracts awarded in accordance with subparagraph (A).*

(iii) COMPLIANCE WITH FEDERAL ACQUISITION REGULATIONS.—*The process for selection, award, performance, administration, and audit of the resulting contracts shall comply with the cost principles and cost accounting principles of the Federal Acquisition Regulations, including parts 30, 31, and 36 of the Regulations.”; and*

(3) by adding at the end the following:

(H) COMPLIANCE.—

(i) IN GENERAL.—*A State shall comply with the qualifications-based selection process, contracting based on the Federal Acquisition Regulations, and the single audit procedures required under this paragraph, or with an existing State law or a statute enacted in accordance with the legislative session exemption under subparagraph (G), with respect to any architecture, engineering, or related service contract for any phase of a Federal-aid highway project.*

(ii) STATES WITH ALTERNATIVE PROCESS.—*Any State that, after November 28, 1995, enacted legislation to establish an alternative State process as a substitute for the contract administration and audit procedures required under this paragraph or was granted a waiver under subparagraph (G) shall submit the legislation to the Secretary, not later than 60 days after the date of enactment of this subparagraph, for certification that the State legislation is in compliance with the statutory timetable and substantive criteria specified in subparagraph (G).*

(D) INDIRECT COST RATES.—*Instead of performing its own audits, a recipient of funds under a contract or sub-contract awarded in accordance with subparagraph (A) shall accept indirect cost rates established in accordance with the Federal Acquisition Regulations for 1-year appli-*

cable 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.

(3) DESIGN-BUILD CONTRACTING.—

(A) IN GENERAL.—A State transportation department may award a contract for the design and construction of a qualified project described in subparagraph (B) using competitive selection procedures approved by the Secretary.

(B) QUALIFIED PROJECTS.—A qualified project referred to in subparagraph (A) is a project under this chapter that involves installation of an intelligent transportation system or that consists of a usable project segment and for which—

(i) the Secretary has approved the use of design-build contracting described in subparagraph (A) under criteria specified in regulations promulgated 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 a usable project segment, \$50,000,000.

(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 highway department~~ *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 of this title, except where employees of a political subdivision of a State are working on a project outside of such political subdivision.]

(f) *COMPETITIVE BIDDING DEFINED.*—*In this section, the term “competitive bidding” means the procedures used to award contracts for engineering and design services under subsection (b)(2) and design-build contracts under subsection (b)(3).*

### **§ 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 Fed-

eral-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.

#### § 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 highway departments]*State transportation departments* or under their direct supervision. Except as provided in [section 117 of this title] *section 106*, 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 highway department]*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 highway department]*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 if 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.

#### § 115. Advance construction

(a) [SUBSTITUTE.] 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 [103(e)(4)(H), 104(b)(2), 104(b)(3), 104(f), 144] 104(b)(1)(B), 104(b)(2), 104(b)(3), 104(f), [or 307] 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].—

(1) [IN GENERAL.—When a State] *PROJECTS.*—*When a State* proceeds to construct 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)(5), as the case may be,] if—

[(A)] (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) BOND INTEREST FOR PROJECTS UNDER CONSTRUCTION ON JANUARY 1, 1983.—For any project under construction on January 1, 1983, on the Interstate System and converted to a regularly funded project after January 1, 1983, for which the proceeds of bonds issued by the State, county, city, or other political subdivision of the State were used, any interest earned and payable on such bonds by the date of conversion is an eligible cost of construction, to the extent that the proceeds of such bonds have actually been expended in the construction of such projects.]

[(B)] (2) the project conforms to the applicable standards under section 109 of this title.

[(3) BOND INTEREST.—Subject to the provisions of this paragraph, the cost of construction of a project, the Federal share of which the Secretary is authorized to pay under this subsection, shall include the amount of any interest earned and payable on bonds issued by the State to the extent that the proceeds of such bonds have actually been expended in the construction of such project. In no event shall the amount of interest considered as a cost of construction of a project under the preceding sentence be greater than the excess of (A) the amount which would be the estimated cost of construction of the project if the project were to be constructed at the time the project is converted to a regularly funded project, over (B) the actual cost of construction of such project (not including such interest). The Secretary shall consider changes in construction cost indices in determining the amount under clause (A) of this paragraph.]

[(c) COMPLETION OF PROJECTS.—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.]

[(d)] ((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)] *section 135*.

## § 116. Maintenance

(a) It shall be the duty of the [State highway department] *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 highway department] *State transportation department* is without legal authority to maintain a project constructed on the Federal-aid secondary system, or within a municipality, such highway 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)] (b) If at any time [he] *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] *the Secretary* shall call such fact to the attention of the [State highway department] *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] *further expenditure of Federal-aid highway program funds* 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)] (c) 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.

#### **[§ 117. Certification acceptance**

[(a)] The Secretary may discharge any of his responsibilities under this title relative to projects under this chapter, except projects on the Interstate System, upon the request of any State, by accepting a certification by the [State highway department] *State transportation department*, or that department, commission, board, or official of any State charged by its laws with the responsibility for highway or other transportation construction, of its performance of such responsibilities, if he finds such projects will be carried out in accordance with State laws, regulations, directives, and standards which will accomplish the policies and objectives contained in or issued pursuant to this title.

[(b)] The Secretary may accept projects based on inspections of a type and frequency necessary to ensure the projects are completed in accordance with appropriate standards.

[(c)] The procedure authorized by this section shall be an alternative to that otherwise prescribed in this title. The Secretary shall promulgate such guidelines and regulations as may be necessary to carry out this section.

[(d)] Acceptance by the Secretary of a State's certification under this section may be rescinded by the Secretary at any time if, in his opinion, it is necessary to do.

[(e)] Nothing in this section, section 106(b), section 133, and section 149 shall affect or discharge any responsibility or obligation of the Secretary under any Federal law, including the National En-

vironmental Policy Act of 1969 (42 U.S.C. 4321, et seq.), section 303 of title 49, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d), et seq.), title VIII of the Act of April 11, 1968 (Public Law 90-284, 42 U.S.C. 3601 et seq.), and the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), other than this title.

[(f)(1) In the case of the Federal-aid secondary system, in lieu of discharging his responsibilities in accordance with subsections (a) through (d) of this section, the Secretary may, upon the request of any [State highway department] *State transportation department*, discharge his responsibility relative to the plans, specifications, estimates, surveys, contract awards, design, inspection, and construction of all projects on the Federal-aid secondary system by his receiving and approving a certified statement by the [State highway department] *State transportation department* setting forth that the plans, design, and construction for each such project are in accord with those standards and procedures which (A) were adopted by such [State highway department] *State transportation department*, (B) were applicable to projects in this category, and (C) were approved by him.

[(2) The Secretary shall not approve such standards and procedures unless they are in accordance with the provisions of subsection (b) of section 105, subsection (b) of section 106, and subsection (c) of section 109 of this title.

[(3) Paragraphs (1) and (2) of this subsection shall not be construed to relieve the Secretary of his obligation to make a final inspection of each project after construction and to require an adequate showing of the estimated cost of construction and the actual cost of construction.]

### **§ 117. Repealed.**

### **§ 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; DISCRETIONARY PROJECTS.—

(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) SET ASIDE FOR CONSTRUCTION PROJECTS.—**Before any apportionment is made under section 104(b)(5)(A) of this title for a fiscal year beginning after September 30, 1992, the Secretary shall set aside \$100,000,000. Subject to section 149(d) of the Federal-Aid Highway Act of 1987, such amount shall be available only for obligation by the Secretary in accordance with subsection (b)(2) of this section.

**[(2) SET ASIDE FOR 4R PROJECTS.—**

**[(A) IN GENERAL.—**Before any apportionment is made under section 104(b)(1) of this title, the Secretary shall set aside \$54,000,000 for fiscal year 1992, \$64,000,000 for each fiscal years 1993, 1994, 1995, and 1996, and \$65,000,000 for fiscal year 1997 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 and any toll road on the Interstate System not subject to an agreement under section 119(e) of this title, as in effect on the day before the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991). Of the amounts set aside under the preceding sentence, the Secretary shall obligate \$16,000,000 for fiscal year 1992 and \$17,000,000 for each of fiscal years 1993 and 1994 for improvements on the Kennedy Expressway in Chicago, Illinois. The remainder of such funds shall be made available by the Secretary to any State applying for such funds, if the Secretary determines that—

**[(i)** the State has obligated or demonstrates that it will obligate in the fiscal year all of its apportionments under section 104(b)(1) other than an amount which, by itself, is insufficient to pay the Federal share of the cost of a project for resurfacing, restoring, rehabilitating, and reconstructing the Interstate System which has been submitted by the State to the Secretary for approval; and

**[(ii)** the applicant is willing and able to (I) obligate the funds within 1 year of the date the funds are made available, (II) apply them to a ready-to-commence project, and (III) in the case of construction work, begin work within 90 days of obligation.

**[(B) PRIORITY CONSIDERATION FOR CERTAIN PROJECTS.—**In selecting projects to fund under subparagraph (A), 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.

**[(C) PERIOD OF AVAILABILITY OF DISCRETIONARY FUNDS.—**Sums made available pursuant to this paragraph shall remain available until expended.

**[(d)]** 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 withdrawal 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.

**[(e)]** 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.]

**[(e)] (c) AVAILABILITY OF FUNDS.—**

*(1) IN GENERAL.—Any Federal-aid highway funds released by the final payment on a project, or by the modification of a project agreement, shall be credited to the same program funding category for which the funds were previously apportioned and shall be immediately available for obligation.*

*(2) TRANSFER OF INTERSTATE CONSTRUCTION FUNDS.—Any Federal-aid highway funds apportioned to a State under section 104(b)(5)(A) (as in effect on the day before the date of enactment of this paragraph) and credited under paragraph (1) may be transferred by the Secretary in accordance with section 103(d).*

**[(f)] (d)** 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.

*(f)<sup>1</sup> ENGINEERING COST REIMBURSEMENT.—If on-site construction of, or acquisition of right-of-way for, a highway project is not commenced within 10 years 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.*

**[(g)] (e) OBLIGATION AUTHORITY.—**

*(1) DISTRIBUTION.—For each fiscal year, the Secretary shall—*

*(A) distribute the total amount of obligation authority for Federal-aid highways and highway safety construction programs made available for the fiscal year by allocation in the ratio that—*

*(i) the total of the sums made available for Federal-aid highways and highway safety construction programs that are apportioned or allocated to each State for the fiscal year; bears to*

*(ii) the total of the sums made available for Federal-aid highways and highway safety construction*

<sup>1</sup> This subparagraph was moved from old Section 102.

*programs that are apportioned or allocated to all States for the fiscal year;*

*(B) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways that have been apportioned to a State; and*

*(C) not distribute—*

*(i) amounts deducted under section 104(a) for administrative expenses;*

*(ii) amounts set aside under section 104(k) for Interstate 4R and bridge projects;*

*(iii) amounts made available under sections 143, 164, 165, 204, 206, 207, and 322;*

*(iv) amounts made available under section 111 of title 49;*

*(v) amounts made available under section 201 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.);*

*(vi) amounts made available under section 1012(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 149 note; 105 Stat. 1938);*

*(vii) amounts made available under chapter 2 of subtitle C of title I, and sections 1503, 1603, and 1604, of the Intermodal Surface Transportation Efficiency Act of 1997;*

*(viii) amounts made available under section 149(d) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (101 Stat. 201); and*

*(ix) amounts made available for implementation of programs under chapter 5 of this title and sections 5222, 5232, and 5241 of title 49.*

*(2) REDISTRIBUTION.—Notwithstanding paragraph (1), the Secretary shall, after August 1 of each of fiscal years 1998 through 2003—*

*(A) revise a distribution of the funds made available under paragraph (1) for the fiscal year if a State will not obligate the amount distributed during the fiscal year; and*

*(B) redistribute sufficient amounts to those States able to obligate amounts in addition to the amounts previously distributed during the fiscal year, giving priority to those States that have large unobligated balances of funds apportioned under section 104 and under section 144 (as in effect on the day before the date of enactment of this subparagraph).*

## **§ 119. Interstate maintenance program**

(a) The Secretary may approve projects for resurfacing, restoring [and rehabilitating], rehabilitating, and reconstructing routes on the Interstate System designated under [sections 103 and 139(c) of this title] *section 103(c)(1) and, in Alaska and Puerto Rico, under section 103(c)(4)(A) and routes on the Interstate System designated before [the date of enactment of this sentence] March 9, 1984 under [section 139 (a) and (b) of this title subparagraphs (A) and (B) of section 103(c)(4)]*; 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.]

*(b) ELIGIBLE ACTIVITIES.—*

*(1) IN GENERAL.—A State—*

*(A) may use funds apportioned under subparagraph (A) or (B) of section 104(b)(1) for resurfacing, restoring, rehabilitating, and reconstructing routes on the Interstate System, including—*

*(i) resurfacing, restoring, rehabilitating, and reconstructing bridges, interchanges, and overcrossings;*

*(ii) acquiring rights-of-way; and*

*(iii) intelligent transportation system capital improvements that are infrastructure-based to the extent that they improve the performance of the Interstate System; but*

*(B) may not use the funds for construction of new travel lanes other than high-occupancy vehicle lanes or auxiliary lanes.*

*(2) EXPANSION OF CAPACITY.—*

*(A) USING TRANSFERRED FUNDS.—Notwithstanding paragraph (1), funds transferred under subsection (c)(1) may be used for construction to provide for expansion of the capacity of an Interstate System highway (including a bridge).*

*(B) USING FUNDS NOT TRANSFERRED.—*

*(i) IN GENERAL.—In lieu of transferring funds under subsection (c)(1) and using the transferred funds for the purpose described in*

[(b) 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 the 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.]

*[(c) ELIGIBLE ACTIVITIES.—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.】

【(d) 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)(5)(B) any amount of the funds apportioned to such State for any fiscal year under section 104(b)(5)(A) 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).】

【(e) PREVENTIVE MAINTENANCE.—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.】

【(f) 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)(5)(B) 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)(5)(B) 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)(5)(B) for such fiscal year.】

【(f)】 (c) TRANSFERABILITY OF FUNDS.—

(1) UNCONDITIONAL.—*A State may transfer an amount not to exceed 30 percent of the sums apportioned to the State under subparagraphs (A) and (B) of section 104(b)(1) to the apportionment of the State under paragraphs (1)(C) and (3) of section 104(b).*

(2) UPON ACCEPTANCE OF CERTIFICATION.—*If a State certifies to the Secretary that any part of the sums apportioned to the State under subparagraphs (A) and (B) of section 104(b)(1) is in excess of the needs of the State for resurfacing, restoring, rehabilitating, or reconstructing routes and bridges on the Interstate System in the State and that the State is adequately*



*maintaining the routes and bridges, and the Secretary accepts the certification, the State may transfer, in addition to the amount authorized to be transferred under paragraph (1), an amount not to exceed 20 percent of the sums apportioned to the State under subparagraphs (A) and (B) of section 104(b)(1) to the apportionment of the State under paragraphs (1)(C) and (3) of section 104(b).*

[(g) 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.]

## **§ 120. Federal share payable**

(a) INTERSTATE SYSTEM PROJECTS.—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. *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.*

(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】~~ *Except in the case of a project funded from sums apportioned under section 104(b)(2), 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, breakaway utility poles, or priority control systems for emergency 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 system】~~ *highway*, including the Interstate System, shall not exceed the Federal share payable on a project on such system as provided in subsections (a) and (c)<sup>1</sup> 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 90 days<sup>2</sup> 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

<sup>1</sup>Section 1021(b)(3) of P.L. 102–240 amended subsection (d) as redesignated by striking “and (c)” and inserting “and (b)”. The amendment was unexecutable but probably should have been amended in subsection (e) as redesignated.

<sup>2</sup>Section 1022(a) of P.L. 102–240 also amended subsection (d) as redesignated instead of subsection (e) as redesignated. The amendment is strike “90 days” and insert “180 days”.

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 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 highway departments] *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) **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.*

(k) **USE OF FEDERAL LANDS HIGHWAYS PROGRAM FUNDS.**—*Notwithstanding any other provision of law, the funds made available 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.*

(l) **CREDIT FOR NON-FEDERAL SHARE.**—

(1) **ELIGIBILITY.**—*A State may use as a credit toward the non-Federal share requirement for any program under the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240) or this title, other than the emergency relief program authorized by section 125, toll revenues that are generated and used by public, quasi-public, and private agencies to build, improve, or maintain, without the use of Federal funds, highways, bridges, or tunnels that serve the public purpose of interstate commerce.*

(2) *MAINTENANCE OF EFFORT.*—

(A) *IN GENERAL.*—The credit toward any non-Federal share under paragraph (1) shall not reduce nor replace State funds required to match Federal funds for any program under this title.

(B) *CONDITIONS ON RECEIPT OF CREDIT.*—

(i) *AGREEMENT WITH THE SECRETARY.*—To receive a credit under paragraph (1) for a fiscal year, a State shall enter into such agreements as the Secretary may require to ensure that the State will maintain its non-Federal transportation capital expenditures at or above the average level of such expenditures for the preceding 3 fiscal years.

(ii) *EXCEPTION.*—Notwithstanding clause (i), a State may receive a credit under paragraph (1) for a fiscal year 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  $\leq 30$  percent of the average level of such expenditures for the other 2 of the preceding 3 fiscal years.

(3) *TREATMENT.*—

(A) *IN GENERAL.*—Use of the credit toward a non-Federal share under paragraph (1) shall not expose the agencies from which the credit is received to additional liability, additional regulation, or additional administrative oversight.

(B) *CHARTERED MULTISTATE AGENCIES.*—When credit is applied from a chartered multistate agency under paragraph (1), the credit shall be applied equally to all charter States.

(C) *NO ADDITIONAL STANDARDS.*—A public, quasi-public, or private agency from which the credit for which the non-Federal share is calculated under paragraph (1) shall not be subject to any additional Federal design standards or laws (including regulations) as a result of providing the credit beyond the standards and laws to which the agency is already subject.

**§ 121. Payment to States for construction**

(a) 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.] The payments may also be made for the value of such materials as—

(1) have been stockpiled in the vicinity of the construction in conformity to plans and specifications for the projects; and

*(2) are not in the vicinity of the construction if the Secretary determines that because of required fabrication at an off-site location the materials cannot be stockpiled in the vicinity.*

[(b) 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.]

*(b) PROJECT AGREEMENTS.—*

*(1) PAYMENTS.—A payment under this chapter may be made only for a project covered by a project agreement.*

*(2) SOURCE OF PAYMENTS.—After completion of a 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 of the cost of the project.*

[(c) 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.

[(d) In making payment pursuant to this section, the Secretary shall be bound by the limitations with respect to the permissible amounts of such payments contained in sections 106(c), 120, and 130 of this title.]

[(e)] (c) Such payments shall be made to such official or officials or depository as may be designated by the [State highway department] *State transportation department* and authorized

## **§ 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.

### **§ 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

(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.

### **§ 124. Advances to States**

[(a)] 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 highway department]*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 highway department]*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.

[(b) Notwithstanding subsection (a) of this section, if the Secretary of Transportation determines that any toll bridge, toll tunnel, or approach thereto, which meets the requirements of section 129 of this title is necessary to complete an essential gap in the Interstate System then, upon request of [State highway department] *State transportation department*, the Secretary shall at any time during construction of such bridge, tunnel, or approach and for one year after it is opened to traffic, and subject to the conditions and limitations of such section 129, advance to such State 100 per centum of the cost of construction of such bridge, tunnel, or approach. So much of the amount so advanced that exceeds the Federal share of such construction cost shall be repaid to the United States as follows:

[(1) 50 per centum within one year of the date such bridge, tunnel, or approach is opened to traffic,

[(2) 25 per centum within two years of such date of opening, and

[(3) 25 per centum within three years of such date of opening.

[Any advance made to a State under this subsection shall be from the funds apportioned to said State for the Interstate System. So much of any advance made to a State under this subsection required to be repaid shall be repaid with interest at a rate determined by the Secretary. If a State receives any advance under this subsection with respect to any toll bridge, tunnel, or approach thereto, then the provisions of section 103(e)(4) of this title shall not apply to such bridge, tunnel, or approach.]

## **§ 125. Emergency relief**

[(a) An emergency fund is authorized for expenditure by the Secretary, subject to the provisions of this section and section 120 of this title, for the repair or reconstruction of highways, roads, and trails which the Secretary shall find have suffered serious damage as the result of (1) natural disaster over a wide area such as by floods, hurricanes, tidal waves, earthquakes, severe storms, or landslides, or (2) catastrophic failures from any external cause, in any part of the United States. In no event shall funds be used pursuant to this section for the repair or reconstruction of bridges which have been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to structural deficiencies or physical deterioration. Subject to the following limitations, there is hereby authorized to be appropriated from the Highway Trust Fund such sums as may

be necessary to establish the funds authorized by this section and to replenish it on an annual basis: (1) Not more than \$50,000,000 is authorized to be expended in any fiscal year ending before July 1, 1972, and not more than \$100,000,000 is authorized to be expended in any one fiscal year commencing after June 30, 1972, and ending before June 1, 1976, to carry out the provisions of this section and an additional amount not to exceed \$100,000,000 is further authorized to be expended in the fiscal year ending June 30, 1973, to carry out the provisions of this section, and not more than \$25,000,000 for the three-month period beginning July 1, 1976, and ending September 30, 1976, is authorized to be expended to carry out the provisions of this section, and not more than \$100,000,000 is authorized to be expended in any one fiscal year commencing after September 30, 1976, and not more than \$100,000,000 is authorized to be expended in any one 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 expenditures under this section is less than the amount authorized to be expended in such fiscal year, the unexpended balance of such amount shall remain available for expenditure during the next two succeeding fiscal years in addition to amounts otherwise available to carry out this section in such years, and (2) prior to the fiscal year ending September 30, 1978, 60 per centum of the expenditures under this section for any fiscal year 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 moneys in the Treasury not otherwise appropriated, and for any fiscal year thereafter, 100 per centum of such expenditures are authorized to be appropriated out of the Highway Trust Fund. 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. Pending such appropriation or replenishment the Secretary may expend from any funds heretofore or hereafter appropriated for expenditure in accordance with the provisions of this title, including existing Federal-aid appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized, such appropriations to be reimbursed from the appropriations herein authorized when made.】

(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 hereby 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, provided that such funds are reimbursed from the appropriations authorized in paragraph (1) of this subsection when such appropriations are made.

[(b)] (d) The Secretary may expend funds from the emergency fund herein authorized for the repair or reconstruction of highways on Federal-aid highways<sup>1</sup>, 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 [(c)] (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 [(c)] (e) of this section, no funds shall be so expended unless the Secretary has received an application therefor from the [State highway department] *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 Disaster Relief and Emergency Assistance Act<sup>2</sup> (Public Law 93-288) concurrence of the Secretary is not required.

[(c)] (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,

<sup>1</sup> Section 101 of P.L. 102-302 (106 Stat. 252) amended section 125(b) by striking "on the Federal-aid highway systems including the Interstate System" in two places and inserting in each place "on Federal-aid highways". The amendment probably should have included a comma after "systems".

<sup>2</sup> In accordance with section 102(b) of the Disaster Relief and Emergency Assistance Amendments of 1988, this reference is deemed to be a reference to the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

public lands highways, public lands development roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are [on any of the Federal-aid highway systems] *Federal-aid highways*.

[(d)] (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

#### **§ 126. Diversion**

[(a)] (a) Since it is unfair and unjust to tax motor-vehicle transportation unless the proceeds of such taxation are applied to the construction, improvement, or maintenance of highways, after June 30, 1935, Federal aid for highway construction shall be extended only to those States that use at least the amounts provided by law on June 18, 1934, for such purposes in each State from State motor vehicle registration fees, licenses, gasoline taxes, and other special taxes on motor-vehicle owners and operators of all kinds for the construction, improvement, and maintenance of highways and administrative expenses in connection therewith, including the retirement of bonds for the payment of which such revenues have been pledged, and for no other purposes, under such regulations as the Secretary of Transportation shall promulgate from time to time.

[(b)] (b) In no case shall the provisions of this section operate to deprive any State of more than one-third of the entire apportionment authorized under this chapter to which that State would be entitled in any fiscal year. The amount of any reduction in a State's apportionment shall be reapportioned in the same manner as any other unexpended balance at the end of the period during which it otherwise would be available in accordance with section 104(b) of this title.]

#### **§ 126. Repealed.**

#### **§ 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 National 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. However, the maximum gross weight to be allowed by any State for vehicles using the National 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 is (1)<sup>1</sup> 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) 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 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 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.

<sup>1</sup>Section 119(a)(1), (2) of P.L. 100-17, 101 Stat. 157, directed that the second sentence be amended by inserting "(1)" before "is 36 feet or more" and by inserting clause (2) after such phrase. This amendment was executed by making the insertions before and after "is thirty-six feet or more" to reflect the probable intent of Congress.

(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 adjustments 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 oper-

ation 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 criteria 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 139(a)] *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.

#### **§ 128. Public hearings**

(a) Any **[State highway department]***State transportation department* which submits plans for a Federal-aid highway project involving the bypassing 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 highway department]***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 highway department]***State transportation department* shall submit a copy of the transcript of said hearings to the Secretary, together with the certification and report.

#### **§ 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 has been approved under section 103(b) or (c) of this title as a part of one of the Federal-aid systems and has not~~ *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 terminal facilities, whether toll or free *in accordance with sections 103, 133, and 149*, 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.

(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 repair, debt service, negotiated management fees, and in the case of 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 operations 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 amounts 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.

[(d) PILOT PROGRAM.—

[(1) AUTHORIZATION FOR FEDERAL PARTICIPATION.—Subject to the provisions of this subsection, the Secretary shall establish a pilot program which permits Federal participation in 7 toll facilities on the same basis and in the same manner as in the construction of free highways under this chapter.

[(2) LIMITATION ON TYPES OF FACILITIES.—The Secretary may only permit Federal participation under this subsection in the following type of facilities:

[(A) The construction of a new toll highway, bridge, or tunnel (other than a highway on the Interstate System).

[(B) The reconstruction of an existing highway, bridge, or tunnel to expand its capacity (other than a highway, bridge, or tunnel on the Interstate System).

[(3) LIMITATION ON NUMBER OF FACILITIES.—The Secretary may only permit Federal participation under this subsection in 7 facilities. One of such facilities shall be carried out in each of the following: Orange County, California, the State of Texas, the State of Pennsylvania, the State of Florida, States of Georgia and West Virginia, and the State of South Carolina. The locations of the other 2 facilities shall be at the discretion of the Secretary; except that not more than 2 facilities carried out under this subsection may be located in a State. The Governor of the States of Pennsylvania and West Virginia shall select the facility to be carried out in such State. 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.

[(4) LIMITATION ON FEDERAL SHARE.—Notwithstanding any other provision of law, the Federal share payable for the construction or reconstruction of a toll highway, bridge, or tunnel under this subsection shall not exceed 35 percent.

[(5) PUBLIC OWNERSHIP REQUIREMENT.—Each highway, bridge, tunnel, or approach thereto under this subsection must be publicly owned and operated; except that, under this subsection, Federal funds may participate in the approaches to a toll highway, toll bridge, or toll tunnel whether the highway, bridge, or tunnel is to be or has been constructed by a State or other public authority.

[(6) LIMITATIONS ON USE OF REVENUES.—Before the Secretary may permit Federal participation under this subsection in a State, the State highway (and in the case of the State of TEXAS, the Texas Turnpike Authority) department must enter into an agreement with the Secretary which provides that all toll revenues received from operation of the tolled facility constructed or reconstructed under this subsection will be used

only on the tolled facility, and only for construction or reconstruction costs, or for the costs necessary for the proper operation, maintenance, and debt service of the tolled facility, including resurfacing, reconstruction, rehabilitation, and restoration.

[(7) LIMITATION ON FEDERAL PARTICIPATION TO ORIGINAL CONSTRUCTION.—Except for reconstruction to expand capacity, toll facilities may receive Federal participation under this chapter only once for the original construction or reconstruction of the facility.]

[(8) EFFECT ON APPORTIONMENT.—Toll mileage constructed or reconstructed under this subsection shall not be used to increase a State's apportionment under any apportionment formula.]

[(9) NEW TOLL HIGHWAY DEFINED.—For purposes of this subsection, the term “new toll highway, bridge, or tunnel” shall mean initial construction of a highway, bridge, or tunnel on a new location at any time before it is open to traffic and shall not include any improvements to a toll highway, bridge, or tunnel after it is open to traffic.]

[(10) SPECIAL RULE FOR FUNDING OF TEXAS PROJECT.—Upon request of the Texas Department of Highways and Public Transportation and subject to such terms and conditions as such Department and the Texas Turnpike Authority may agree, the Secretary shall reimburse the Texas Turnpike Authority for the Federal share of the costs of construction of the project carried out in the State of Texas 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 of Texas under this chapter and available for obligations on projects on the Federal-aid primary system in such State.]

### § 130. Railway-highway crossings

(a) Except as provided in subsection (d) of section 120 of this title 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] *structures*, the relocation of highways to eliminate grade crossings, *trespassing countermeasures in the immediate vicinity of a public railway-highway grade crossing, railway-highway crossing safety education, enforcement of traffic laws relating to railway-highway crossing safety, and projects at privately owned railway-highway crossings if each such project is publicly sponsored and the Secretary determines that the project would serve a public benefit*, 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, except as provided in subsection (d) of

section 120 of this title 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 highway department]*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. *In a manner established by the Secretary, each State shall submit a report that describes completed railway-highway crossing projects funded under this section to the Department of Transportation for inclusion in the National Grade Crossing Inventory prepared by the Department of Transportation and the Association of American Railroads.*

[(e) FUNDS FOR PROTECTIVE DEVICES.—At least ½ 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 appor-

tioned 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) 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.] *FEDERAL SHARE*.—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 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 State under paragraph (1) shall use the amount of the incentive payment for transportation safety improvements.

### **§ 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 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 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 pro-

mulgated 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, of 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 agreements 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 consultations 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 highway departments]*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 highway department]*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 highway department]*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 limita-

tions 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, 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 defined 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 system 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.

### **§ 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.

### **§ 133. Surface transportation program**

(a) **[ESTABLISHMENT.**—The Secretary shall establish] *IN GENERAL.*—*The Secretary shall carry out* 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 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 [and publicly owned intracity or intercity bus terminals and facilities], *including vehicles and facilities, whether publicly or privately owned, that are used to provide intercity passenger service by bus or rail.*

(3) Carpool projects, fringe and corridor parking facilities and programs, [and] 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, *publicly owned passenger rail*, and transit safety *infrastructure* improvements and programs, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings, *and any other noninfrastructure highway safety improvements.*

(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 clauses (xii) and (xvi)) of the Clean Air Act.

(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] *enhance, and create natural habitats* and wetlands; and development of statewide and regional *natural habitat* 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.

(12) *Construction of ferry boats and ferry terminal facilities, if the conditions described in section 129(c) are met.*

(13) *Publicly owned intercity passenger rail infrastructure, including infrastructure owned by the National Railroad Passenger Corporation.*

(14) *Publicly owned passenger rail vehicles, including vehicles owned by the National Railroad Passenger Corporation.*

(15) *Infrastructure-based intelligent transportation systems capital improvements.*

(16) *Publicly owned components of magnetic levitation transportation systems.*

(17) *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.]

(1) SAFETY PROGRAMS.—

(A) IN GENERAL.—With respect to funds apportioned for each of fiscal years 1998 through 2003—

(i) *an amount equal to 2 percent of the amount apportioned to a State under section 104(b)(3) shall be available only to carry out activities eligible under section 130;*

(ii) *an amount equal to 2 percent of the amount apportioned to a State under section 104(b)(3) shall be available only to carry out activities eligible under section 152; and*

(iii) *an amount equal to 6 percent of the amount apportioned to a State under section 104(b)(3) shall be*

*available only to carry out activities eligible under section 130 or 152.*

(B) *TRANSFER OF FUNDS.*—If a State certifies to the Secretary that any part of the amount set aside by the State under subparagraph (A)(i) is in excess of the needs of the State for activities under section 130 and the Secretary accepts the certification, the State may transfer that excess part to the set-aside of the State under subparagraph (A)(ii).

(C) *TRANSFERS TO OTHER SAFETY PROGRAMS.*—A State may transfer funds set aside under subparagraph (A)(iii) to the apportionment of the State under section 402 or the allocation of the State under section 31104 of title 49.

(2) **FOR TRANSPORTATION ENHANCEMENT ACTIVITIES.**—**[10]** 8 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]** 82 percent of the funds apportioned to a State under section 104(b)(3) for 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 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 any State which is noncontiguous with the continental United States.

(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 highway department]*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) CERTIFICATION.—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.]

(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.—*As necessary, each State shall request from the Secretary adjustments to the amount of obligations referred to in subparagraph (A)(ii).*

(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. [Payments shall not exceed the Federal share of costs incurred as of the date the State requests payments.]

(B) ADVANCE PAYMENT OPTION FOR TRANSPORTATION ENHANCEMENT ACTIVITIES.—

(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[ 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 expertise related to transportation enhancement activities].

(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) INNOVATIVE FINANCING.—

(i) *IN GENERAL.*—For each fiscal year, the average annual non-Federal share of the total cost of all projects to carry out transportation enhancement activities in a State shall be not less than the non-Federal share authorized for the State under section 120(b).

(ii) *EXCEPTION.*—Subject to clause (i), notwithstanding section 120, in the case of projects to carry out transportation enhancement activities—

(I) *funds from other Federal agencies, and other contributions that the Secretary determines are of value, may be credited toward the non-Federal share of project costs;*

(II) *the non-Federal share may be calculated on a project, multiple-project, or program basis; and*

(III) *the Federal share of the cost of an individual project subject to subclause (I) or (II) may be equal to 100 percent.*

[(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 dis-

tributed 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.]

(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 3-fiscal year period of 1998 through 2000, and the 3-fiscal year period of 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 each such period; by

(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).

#### **§ [134. Metropolitan planning**

[(a) *GENERAL REQUIREMENTS.*—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.

**[(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 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 designated 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.

**[(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.—**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.

**[(5) REDESIGNATION.—**

**[(A) PROCEDURES.—**A metropolitan planning organization may be redesignated 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) 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) TREATMENT OF LARGE URBAN AREAS.—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.

[(c) METROPOLITAN AREA BOUNDARIES.—For the purposes of this section, the boundaries of a metropolitan area shall be determined by agreement between the metropolitan planning organization and the Governor. 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.

[(d) COORDINATION IN MULTISTATE AREAS.—

[(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.

[(e) COORDINATION OF MPO'S.—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.

[(f) FACTORS TO BE CONSIDERED.—In developing transportation plans and programs pursuant to this section, each metropolitan planning organization shall, at a minimum, consider the following:

[(1) Preservation of existing transportation facilities and, where practical, ways to meet transportation needs by using existing transportation facilities more efficiently.

[(2) The consistency of transportation planning with applicable Federal, State, and local energy conservation programs, goals, and objectives.

[(3) The need to relieve congestion and prevent congestion from occurring where it does not yet occur.

[(4) The likely effect of transportation policy decisions on land use and development and the consistency of transportation plans and programs with the provisions of all applicable short- and long-term land use and development plans.

[(5) The programming of expenditure on transportation enhancement activities as required in section 133.

(6) The effects of all transportation projects to be undertaken within the metropolitan area, without regard to whether such projects are publicly funded.

[(7) International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation areas, monuments and historic sites, and military installations.

[(8) The need for connectivity of roads within the metropolitan area with roads outside the metropolitan area.

[(9) The transportation needs identified through use of the management systems required by section 303 of this title.

[(10) Preservation of rights-of-way for construction of future transportation projects, including identification of unused rights-of-way which may be needed for future transportation corridors and identification of those corridors for which action is most needed to prevent destruction or loss.

[(11) Methods to enhance the efficient movement of freight.

[(12) The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavement.

[(13) The overall social, economic, energy, and environmental effects of transportation decisions.

[(14) Methods to expand and enhance transit services and to increase the use of such services.

[(15) Capital investments that would result in increased security in transit systems.

[(16) Recreational travel and tourism.

[(g) DEVELOPMENT OF LONG RANGE 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 plan for its metropolitan area in accordance with the requirements of this subsection.

[(2) LONG RANGE PLAN.—A long range plan under this section shall be in a form that the Secretary determines to be appropriate and shall, at a minimum:

[(A) Identify 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 plan, the metropolitan planning organi-

zation shall consider factors described in subsection (f) as such factors relate to a 20-year forecast period.

[(B) 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.

[(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 nonattainment for ozone or carbon monoxide under the Clean Air Act, the metropolitan planning organization shall coordinate the development of a long range 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 plan, each metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the long range plan, in a manner that the Secretary deems appropriate.

[(5) PUBLICATION OF LONG RANGE PLAN.—Each long range 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.

[(h) TRANSPORTATION IMPROVEMENT PROGRAM.—

[(1) DEVELOPMENT.—The metropolitan planning organization designated for a metropolitan area, in cooperation with the State and affected transit operators, shall develop a transportation improvement program for the area for which such organization is designated. In developing the program, the metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private pro-

viders of transportation, and other interested parties with a reasonable opportunity to comment on the proposed program. The program shall be updated at least once every 2 years and shall be approved by the metropolitan planning organization and the Governor.

[(2) PRIORITY OF PROJECTS.—The transportation improvement program shall include the following:

[(A) A priority list of projects and project segments to be carried out within each 3-year period after the initial adoption of the transportation improvement program.

[(B) A financial plan that demonstrates how the 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 innovative financing techniques to finance needed projects and programs, including value capture, tolls, and congestion pricing.

[(3) SELECTION OF PROJECTS.—Except as otherwise provided in subsection (i)(4), project selection in metropolitan areas for projects involving Federal participation shall be carried out by the State in cooperation with the metropolitan planning organization and shall be in conformance with the transportation improvement program for the area.

[(4) MAJOR CAPITAL INVESTMENTS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall initiate a rulemaking proceeding to conform review requirements for transit projects under the National Environmental Policy Act of 1969 to comparable requirements under such Act applicable to highway projects. Nothing in this section shall be construed to affect the applicability of such Act to transit or highway projects.

[(5) INCLUDED PROJECTS.—A transportation improvement program for a metropolitan area developed under this subsection shall include projects within the area which are proposed for funding under this title and chapter 53 of title 49 and which are consistent with the long range plan developed under subsection (g) for the area. 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.

[(6) NOTICE AND COMMENT.—Before approving a transportation improvement program, a metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, and other interested parties with reasonable notice of and an opportunity to comment on the proposed program.

[(i) TRANSPORTATION MANAGEMENT AREAS.—

[(1) DESIGNATION.—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 organiza-



tion 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.

[(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.—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.

[(5) CERTIFICATION.—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.

[(j) ABBREVIATED PLANS AND PROGRAMS FOR CERTAIN AREAS.—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 nonattainment for ozone or carbon monoxide under the Clean Air Act.

[(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 requirements 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.—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.

(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) REPROGRAMMING OF SET ASIDE FUNDS.—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.]

### **§ 134. Metropolitan planning**

(a) *GENERAL REQUIREMENTS.*—

(1) *FINDINGS.*—*Congress finds that it is in the national interest to encourage and promote the safe and efficient manage-*

ment, operation, and development of surface transportation systems that will serve the mobility needs of people and freight 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.*—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) *REDESIGNATION.*—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.

(3) *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.

(4) *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.

(5) *OTHER AUTHORITY.*—Nothing in this subsection interferes with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities to—

(A) develop plans and programs for adoption by a metropolitan planning organization; or

(B) develop long-range capital plans, coordinate transit services and projects, and carry out other activities under State law.

(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 NON-ATTAINMENT.*—Notwithstanding paragraph (2), in the case of an 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 metropolitan planning area in existence as of the date of enactment of the Intermodal Surface Transportation Efficiency Act of 1997, shall be retained, except that the boundaries may be adjusted by agreement of the affected metropolitan planning organizations and Governors in the manner described in subsection (b)(2).

(4) *NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.*—In the case of an urbanized area designated after the date of enactment of the Intermodal Surface Transportation Efficiency Act of 1997 as a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

(A) shall be established by agreement between the appropriate units of general purpose local government (including the central city) and the Governor;

(B) shall encompass at least the urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period;

(C) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census; 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.

(e) COORDINATION OF METROPOLITAN PLANNING ORGANIZATIONS.—If more than 1 metropolitan planning organization has authority within a metropolitan planning area or an area that is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each such metropolitan planning organization shall consult with the other metropolitan planning organizations designated for the area and the State in the development of plans and programs required by this section.

(f) SCOPE OF PLANNING PROCESS.—The metropolitan transportation planning process for a metropolitan area under this section shall consider the following:

(1) Supporting the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency.

(2) Increasing the safety and security of the transportation system for motorized and nonmotorized users.

(3) Increasing the accessibility and mobility options available to people and for freight.

(4) Protecting and enhancing the environment, promoting energy conservation, and improving quality of life through land use planning.

(5) Enhancing the integration and connectivity of the transportation system, across and between modes, for people and freight.

(6) Promoting efficient system management and operation.

(7) Emphasizing the preservation of the existing transportation system.

(g) DEVELOPMENT OF LONG-RANGE TRANSPORTATION PLAN.—

(1) IN GENERAL.—

(A) DEVELOPMENT.—In accordance with this subsection, each metropolitan planning organization shall develop, and update periodically, according to a schedule that the Secretary determines to be appropriate, a long-range transportation plan for its metropolitan area.

(B) *FORECAST PERIOD.*—In developing long-range transportation plans, the metropolitan planning process shall address—

- (i) the considerations under subsection (f); and
  - (ii) any State or local goals developed within the cooperative metropolitan planning process;
- as they relate to a 20-year forecast period and to other forecast periods as determined by the participants in the planning process.

(C) *FUNDING ESTIMATES.*—For the purpose of developing the long-range transportation plan, the State shall consult with the metropolitan planning organization and each public transit agency in developing estimates of funds that are reasonably expected to be available to support plan implementation.

(2) *LONG-RANGE TRANSPORTATION PLAN.*—A long-range transportation plan under this subsection shall, at a minimum, contain—

(A) an identification of transportation facilities (including major roadways and transit, multimodal, and intermodal facilities) that should function as a future integrated transportation system, giving emphasis to those facilities that serve important national, regional, and metropolitan transportation functions;

(B) an identification of transportation strategies necessary to—

(i) ensure preservation, including requirements for management, operation, modernization, and rehabilitation, of the existing and future transportation system; and

(ii) make the most efficient use of existing transportation facilities to relieve congestion, to efficiently serve the mobility needs of people and goods, and to enhance access within the metropolitan planning area; and

(C) a financial plan that demonstrates how the long-range transportation plan can be implemented, indicates total resources from public and private sources that are reasonably expected to be available to carry out the plan (without any requirement for indicating project-specific funding sources), and recommends any additional financing strategies for needed projects and programs.

(3) *COORDINATION WITH CLEAN AIR ACT AGENCIES.*—In metropolitan areas that are in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), 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 that Act.

(4) *PARTICIPATION BY INTERESTED PARTIES.*—Before adopting a long-range transportation plan, each metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, freight shippers, private providers of transportation, and other inter-

*ested parties with a reasonable opportunity to comment on the long-range transportation plan.*

(5) *PUBLICATION OF LONG-RANGE TRANSPORTATION PLAN.—Each long-range transportation plan prepared by a metropolitan planning organization shall be—*

*(A) published or otherwise made readily available for public review; and*

*(B) submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.*

(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, other affected employee representatives, freight shippers, private providers of transportation, 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 list, in order of priority, 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 (without any requirement for indicating project-specific funding sources); and*

*(iii) identifies innovative financing techniques to finance projects, programs, and strategies (without any requirement for indicating project-specific funding sources).*

## (3) INCLUDED PROJECTS.—

(A) CHAPTER 1 AND CHAPTER 53 PROJECTS.—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 chapter 1 of this title and chapter 53 of title 49.

## (B) CHAPTER 2 PROJECTS.—

(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of this title shall be identified individually in the transportation improvement program.

(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of this title 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 consistent 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, private providers of transportation, 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 for implementation in metropolitan areas shall be carried out, from the approved transportation improvement program—

## (i) by—

(I) in the case of projects under chapter 1, 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 of higher priority in the 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 any affected public transit operator.

(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.

## (4) SELECTION OF PROJECTS.—

(A) *IN GENERAL.*—In addition to the transportation improvement program development required under subsection (h)(1), 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) 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 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.

(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 metropolitan transportation plan and program 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) *ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.*—

(1) *IN GENERAL.*—Notwithstanding any other provision of this title or chapter 53 of title 49, in the case of a transportation management area classified as nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), Federal funds may not be programmed in the area for any highway project that will result in a significant increase in carrying capacity for single occupant vehicles unless the project results from an approved congestion management system.

(2) *APPLICABILITY.*—This subsection applies to a nonattainment area within the metropolitan planning area boundaries determined under subsection (c).

(l) *LIMITATION.*—Nothing in this section confers on a metropolitan planning organization the authority to impose any legal requirement on any transportation facility, provider, or project not eligible for assistance under this title or chapter 53 of title 49.

(m) *FUNDING.*—

(1) *IN GENERAL.*—Funds set aside under section 104(f) of this title and section 5303 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.

### **§ 135. Statewide planning**

[(a) GENERAL REQUIREMENTS.—It is in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner 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.

[(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 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) STATE PLANNING PROCESS.—Each State shall undertake a continuous transportation planning process which shall, at a minimum, consider the following:

[(1) The results of the management systems required pursuant to subsection (b).

[(2) Any Federal, State, or local energy use goals, objectives, programs, or requirements.

[(3) Strategies for incorporating bicycle transportation facilities and pedestrian walkways in projects where appropriate throughout the State.

[(4) International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation and scenic areas, monuments and historic sites, and military installations.

[(5) The transportation needs of nonmetropolitan areas through a process that includes consultation with local elected officials with jurisdiction over transportation.

[(6) Any metropolitan area plan developed pursuant to section 134.

[(7) Connectivity between metropolitan areas within the State and with metropolitan areas in other States.

[(8) Recreational travel and tourism.

[(9) Any State plan developed pursuant to the Federal Water Pollution Control Act.

[(10) Transportation system management and investment strategies designed to make the most efficient use of existing transportation facilities.

[(11) The overall social, economic, energy, and environmental effects of transportation decisions.

[(12) Methods to reduce traffic congestion and to prevent traffic congestion from developing in areas where it does not yet occur, including methods which reduce motor vehicle travel, particularly single-occupant motor vehicle travel.

[(13) Methods to expand and enhance transit services and to increase the use of such services.

[(14) The effect of transportation decisions on land use and land development, including the need for consistency between transportation decisionmaking and the provisions of all applicable short-range and long-range land use and development plans.

[(15) The transportation needs identified through use of the management systems required by section 303 of this title.

[(16) Where appropriate, the use of innovative mechanisms for financing projects, including value capture pricing, tolls, and congestion pricing.

[(17) Preservation of rights-of-way for construction of future transportation projects, including identification of unused rights-of-way which may be needed for future transportation corridors, and identify those corridors for which action is most needed to prevent destruction or loss.

[(18) Long-range needs of the State transportation system.

[(19) Methods to enhance the efficient movement of commercial motor vehicles.

[(20) The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavement.

[(d) ADDITIONAL REQUIREMENTS.—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.

[(e) LONG-RANGE PLAN.—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.

**[(f) TRANSPORTATION IMPROVEMENT PROGRAM.—**

**[(1) DEVELOPMENT.—**The State shall develop a transportation improvement program for all areas of the State. With respect to metropolitan areas of the State, the program shall be developed in cooperation with metropolitan planning organizations designated for metropolitan areas in the State under section 134. In developing the program, the Governor 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 program.

**[(2) INCLUDED PROJECTS.—**A transportation improvement program for a State developed under this subsection shall include projects within the boundaries of the State which are proposed for funding under this title and chapter 53 of title 49, which are consistent with the long-range plan developed under this section for the State, which are consistent with the metropolitan transportation improvement program, and which in areas designated as nonattainment for ozone or carbon monoxide under the Clean Air Act conform with the applicable State implementation plan developed pursuant to the Clean Air Act. 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 such project within the time period contemplated for completion of the project. The program shall also reflect the priorities for programming and expenditures of funds, including transportation enhancements, required by this title.

**[(3) PROJECT SELECTION FOR AREAS LESS THAN 50,000 POPULATION.—**Projects undertaken in areas of less than 50,000 population (excluding projects undertaken on the National Highway System and pursuant to the bridge and Interstate maintenance programs) shall be selected by the State in cooperation with the affected local officials. Projects undertaken in such areas on the National Highway System or pursuant to the bridge and Interstate maintenance programs shall be selected 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 approved no less frequently than biennially by the Secretary.

**[(g) FUNDING.—**Funds set aside pursuant to section 307(c)(1) 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) of title 49, State laws, rules

or regulations pertaining to congestion management systems or programs may constitute the congestion management system under this Act 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), as appropriate.】

**§ 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 throughout each State.*

(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 (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal State transportation system and an integral part of the intermodal transportation system of 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) *SCOPE OF PLANNING PROCESS.*—*Each State shall carry out a transportation planning process that shall consider the following:*

(1) *Supporting the economic vitality of the United States, the States, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency.*

(2) *Increasing the safety and security of the transportation system for motorized and nonmotorized users.*

(3) *Increasing the accessibility and mobility options available to people and for freight.*

(4) *Protecting and enhancing the environment, promoting energy conservation, and improving quality of life through land use planning.*

(5) *Enhancing the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight.*

(6) *Promoting efficient system management and operation.*

(7) *Emphasizing the preservation of the existing transportation system.*

(c) *COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.*—*In carrying out planning under this section, a State shall—*

(1) *coordinate the planning with the transportation planning activities carried out under section 134 for metropolitan areas of the State; and*

(2) carry out the responsibilities of the State for the development of the transportation portion of the State air quality implementation plan to the extent required by the Clean Air Act (42 U.S.C. 7401 et seq.).

(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 plan shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134 of this title and section 5305 of title 49.

(B) *NONMETROPOLITAN AREAS.*—With respect to each nonmetropolitan area, the plan shall be developed in consultation with local elected officials representing units of general purpose local government.

(C) *INDIAN TRIBAL AREAS.*—With respect to each area of the State under the jurisdiction of an Indian tribal government, the plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

(3) *PARTICIPATION BY INTERESTED PARTIES.*—In developing the plan, the State shall—

(A) provide citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, freight shippers, private providers of transportation, 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.

(f) *STATE TRANSPORTATION IMPROVEMENT PROGRAM.*—

(1) *DEVELOPMENT.*—

(A) *IN GENERAL.*—The 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 5305 of title 49.

(ii) *NONMETROPOLITAN AREAS.*—With respect to each nonmetropolitan area in the State, the program shall be developed in consultation with units of general purpose local government.

(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, other affected employee representatives, freight shippers, private providers of transportation, 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.

(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.

(C) *CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.*—Each project shall—

(i) be consistent with the long-range transportation plan developed under this section for the State;

(ii) be identical to the project as described in an approved metropolitan transportation improvement program; and

(iii) be 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 that Act.

(D) *REQUIREMENT OF ANTICIPATED FULL FUNDING.*—

(i) *IN GENERAL.*—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.

(ii) *LIMITATION.*—Clause (i) does not require the indication of project-specific funding sources.

(E) *PRIORITIES.*—The program shall reflect the priorities for programming and expenditures of funds, including transportation enhancements, 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) 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 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 and section 134, 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 of higher priority in the program.

(g) *FUNDING.*—Funds set aside under section 505 of this title and section 5313(b) of title 49 shall be available to carry out this section.

(h) *CONTINUATION OF CURRENT REVIEW PRACTICE.*—Since plans and programs described in this section or section 134 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 that Act as of January 1, 1997, any decision by the Secretary concerning a plan or program described in this section or section 134 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.).

### **§ 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 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 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 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 nonferrous 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 junkyards 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 fiscal year ending June 30,

1966, not to exceed \$20,000,000 for fiscal year ending June 30, 1967, not to exceed \$3,000,000 for fiscal year ending June 30, 1970, not to exceed \$3,000,000 for fiscal year ending June 30, 1971, not to exceed \$3,000,000 for fiscal year ending June 30, 1972, and not to exceed \$5,000,000 for 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.】

(m) *PRIMARY SYSTEM DEFINED.*—*For purposes of this section, the term “primary system” means 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.*

### **§ 137. Fringe and corridor parking facilities**

(a) The Secretary may approve as a project [on the Federal-aid urban system] *on a Federal-aid highway* 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 highway department] *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)(5)(B) of this title] *section 104(b)(1)(A)*, 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.

### **§ 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.

**【§ 139. Additions to Interstate System**

【(a) Whenever the Secretary determines that a highway on the Federal-aid primary system meets all of the standards of a highway on the Interstate System and that such highway is a logical addition or connection to the Interstate System, he may, upon the affirmative recommendation of the State or States involved, designate such highway as a part of the Interstate System. The mileage of any highway designated as part of the Interstate System under this section shall not be charged against the limitation established by the first sentence of section 103(e) of this title. The designation of a highway as part of the Interstate System under this subsection shall create no Federal financial responsibility with respect to such highway; except that any State may use funds available to it under sections 104(b)(1) and 104(b)(5)(B) of this title for the resurfacing, restoring, rehabilitating, and reconstructing of any highway designated as a route on the Interstate System under this subsection before the date of enactment of this sentence.

【(b) Whenever the Secretary determines that a highway on the Federal-aid primary system would be a logical addition or connection to the Interstate System and would qualify for designation as a route on that system in the same manner as set forth in paragraph 1 of subsection (e) of section 103 of this title, he may upon the affirmative recommendation of the State or States involved designate such highway as a future part of the Interstate System. Such designation shall be made only upon the written agreement of the State or States involved that such highway will be constructed to meet all the standards of a highway on the Interstate System within twelve years of the date of the agreement between the Secretary and the State or States involved. The mileage of any highway designated as a future part of the Interstate System under this subsection shall not be charged against the limitations established by the first sentence of section 103(e) of this title. The designation of a highway as part of the Interstate System under this subsection shall create no Federal financial responsibility with respect to such highway; except that any State may use funds available to it under sections 104(b)(1) and 104(b)(5)(B) of this title for the resurfacing, restoring, rehabilitating, and reconstructing of any highway designated as a route on the Interstate System under this subsection before the date of enactment of this sentence. In the event that the State or States involved have not substantially completed the construction of any highway designated under this subsection within the time provided for in the agreement between the Secretary and State or States involved, the Secretary shall remove the designation of such highway as a future part of the Interstate System. Removal of such designation as result of failure to comply with the agreement provided for in this subsection shall in no way prohibit the Secretary from designating such route as part of the Interstate System pursuant to subsection (a) of this section or under any other provision of law providing for addition to the Interstate System. No law, rule, regulation, map, document, or other record of the United States, or of any State or political sub-

division thereof, shall refer to any highway under this section, nor shall any such highway be signed or marked, as a highway on the Interstate System until such time as such highway is constructed to the geometric and construction standards for the Interstate System and has been designated as a part of the Interstate System.

[(c) The Secretary shall designate those portions of highway segments on the Federal-aid primary system in States which have no Interstate System that are logical components to a system serving the State's principal cities, national defense needs and military installations, and traffic generated by rail, water, and air transportation modes. The designated segments shall have been constructed to the geometric and construction standards adequate for current and probable future traffic demands and the needs of the locality of the segment. The mileage of any highway designated as part of the Interstate System under this subsection shall not be charged against the limitation established by the first sentence of section 103(e)(1) of this title. The designation of a highway under this subsection shall create no Federal financial responsibility with respect to such highway, except that the State involved may use Federal-aid highway funds available to it under sections 104(b)(1) and 104(b)(5)(B) of this title, for the resurfacing, rehabilitation, restoration, and reconstruction of a highway designated as a route on the Interstate System under this subsection.]

### **§ 139. [Repealed]**

### **§ 140. Nondiscrimination**

(a) Prior to approving any programs for projects as provided for in [subsection (a) of section 105 of this title] *section 106(a)*, 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] *The Secretary* 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] *Before approving any project under section 106(a)*, the Secretary shall, where [he] *the Secretary* 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. The Secretary shall periodically obtain from the Secretary of Labor and the respective [State highway departments] *State transportation departments* information which will enable [him] *the Secretary* 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] *the Secretary* 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 non-profit), or any other organization or person, is authorized to develop, conduct, and administer highway construction training, including skill improvement programs. 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. 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  $\frac{1}{2}$  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]*State transportation department* to the Secretary.]

[(c)] (b) The Secretary, in cooperation with any other department or agency of the Government, State agency, authority, association, institution, Indian tribal governments, 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 104(a) 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) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(e)).

[(d)] (c) 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.

(d) *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 ex-

*clusive and will not prejudice or cut off any other legal remedies available to a discriminatee.*

#### **§ 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 enforcing 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 re-apportioned to all other eligible States.

(c) The Secretary shall reduce the State's apportionment of Federal-aid highway funds under [section 104(b)(5) of this title] *section 104(b)(1)(A)* 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 1954, 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)(5) of this title] *section 104(b)(1)(A)* 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.

#### **§ 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 paragraph (5) of subsection (b) of section 104 of this title 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) [(other than section 104(b)(5)(A))] 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.

<sup>1</sup> So in law. See section 1027(a)(2) of P.L. 102-240, 105 Stat. 1966.

(f) AVAILABILITY OF RIGHTS-OF-WAY.—In any case where sufficient land or air space exists 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 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.

(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.

#### **§ 143. Economic growth center development highways**

[(a) In order to promote the desirable development of the Nation's natural resources, to revitalize and diversify the economy of rural areas and smaller communities, to enhance and disperse industrial growth, to encourage more balanced population patterns, to check, and, where possible, to reverse current migratory trends from rural areas and smaller communities, and to improve living conditions and the quality of the environment, the Secretary is authorized to make grants to States for projects for the construction, reconstruction, and improvement of development highways on a Federal-aid system (other than the Interstate System) to serve and promote the development of economic growth centers and surrounding areas, encourage the location of business and industry in rural areas, facilitate the mobility of labor in sparsely populated areas, and provide rural citizens with improved highways to such public and private services as health care, recreation, employment, education, and cultural activities, or otherwise encourage the social and economic development of rural communities, and for planning, surveys, and investigations in connection therewith.

[(b) Each Governor may transmit to the Secretary his recommendations for (1) the selection of economic growth centers within the State, (2) priorities for the construction of development highways on a Federal-aid system (other than the Interstate System) to serve such centers, and (3) such other information as may be required by the Secretary, for his consideration in approving the selection of economic growth centers for projects.

[(c) Upon the application of the [State highway department] *State transportation department* of any State in which an economic growth center approved by the Secretary as eligible for a project is located, the Secretary is authorized to pay up to 100 per centum of the cost of engineering and economic surveys or other in-

vestigations necessary for the planning and design development highways on a Federal-aid system (other than the Interstate System) needed to provide appropriate access to such growth center, including publicly owned airport facilities and public ports for water transportation which may be established to serve it, in order to carry out the purposes of this section.

[(d) Except as otherwise provided in this section, all of the provisions of this title applicable to highways on the Federal-aid system on which such development highway is located except those which the Secretary determines are inconsistent with this section shall apply to development highways and to funds authorized to carry out this section. For the purposes of sections 105, 106, and 118 of this title, funds authorized to carry out this section shall be deemed to be apportioned on January 1 next preceding the commencement of the fiscal year for which authorized. No State shall receive in any fiscal year more than 15 per centum of the funds authorized to carry out this section for such fiscal year.

[(e) Except as otherwise provided in subsection (c) of this section, 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.

[(f)(1) Except in the case of a project subject to paragraph (2) of this subsection, no project shall be approved by the Secretary under this section until he has determined that such project will promote the aims and purposes set forth in subsection (a) of this section and that the economic growth center to be benefited will meet such criteria as he, after consultation with the Secretary of Commerce, deems necessary, including, but not limited to, the following: (1) growth centers shall be geographically and economically capable of contributing significantly to the development of the area, and (2) growth centers shall have a population not in excess of one hundred thousand according to the latest available Federal census. In approving projects the Secretary shall give preference to those areas offering the most potential for future economic growth.

[(2) In the case of a project proposed to be conducted within the Appalachian region as defined in section 403 of the Appalachian Regional Development Act of 1965, no project shall be approved by the Secretary under this section until he shall have consulted with the Federal Cochairman of the Appalachian Regional Commission. In the case of a project proposed to be conducted within an economic development region as defined in title V of the Public Works and Economic Development Act of 1965, no project shall be approved by the Secretary under this section until he shall have consulted with the Federal Cochairman for such region and the Secretary of Commerce. In consultation with the appropriate official, the Secretary shall establish criteria for the selection of growth centers eligible for assistance under this section such that the aims and purposes set forth in subsection (a) of this section will be promoted. Such criteria shall include, but not be limited to, the following: (1) growth centers shall be geographically and economically capable of contributing significantly to the development of the area, (2) growth centers shall have a population not in excess of

one hundred thousand persons according to the latest available Federal census, and (3) the selection of such growth centers within the Appalachian region and the economic development regions shall take into account the purposes of the Appalachian Regional Development Act of 1965 and the Public Works and Economic Development Act of 1965. In approving projects the Secretary shall give preference to those areas offering the most potential for future economic growth and he shall make arrangements for close coordination throughout the development and implementation of the project with the Federal Cochairman of the Appalachian Regional Commission, or with the appropriate Federal Cochairman of an economic development region, and the Secretary of Commerce, as the case may be.

[(g) There is authorized to be appropriated out of the Highway Trust Fund not to exceed \$50,000,000 for the fiscal year ending June 30, 1972, and not to exceed \$50,000,000 for the fiscal year ending June 30, 1973.]

**§ 143. Highway use tax evasion projects**

(a) *DEFINITION OF STATE.*—In this section, the term “State” means the 50 States and the District of Columbia.

(b) *PROJECTS.*—

(1) *IN GENERAL.*—The Secretary shall use funds made available under paragraph (7) to carry out highway use tax evasion projects in accordance with this subsection.

(2) *ALLOCATION OF FUNDS.*—The funds 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 under paragraph (7) 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) *AUTHORIZATION OF CONTRACT AUTHORITY.*—

(A) *IN GENERAL.*—There shall be available to the Secretary from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection \$5,000,000 for each of fiscal years 1998 through 2003.

(B) *AVAILABILITY OF FUNDS.*—Funds authorized under this paragraph shall remain available for obligation for a period of 1 year after the last day of the fiscal year for which the funds are authorized.

(c) *EXCISE FUEL REPORTING SYSTEM.*—

(1) *IN GENERAL.*—Not later than April 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 (referred to in this subsection 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, or law enforcement authorities, subject to section 6103 of the Internal Revenue Code of 1986.

(3) *AUTHORIZATION OF APPROPRIATIONS FROM HIGHWAY TRUST FUND.*—There are authorized to be appropriated to the Secretary from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection—

(A) \$8,000,000 for development of the system; and

(B) \$2,000,000 for each of fiscal years 1998 through 2003 for operation and maintenance of the system.

#### **§ 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 find 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 rehabilita-

tion; and (4) determine the cost of replacing each such bridge with a comparable facility or by 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 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. 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 regard 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) 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. 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.—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.

[(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 ap-

portioned 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, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, and 1997, shall be expended for projects to replace, rehabilitate, paint or seismic retrofit, or apply calcium magnesium acetate to highway bridges located on public roads, other than those on a Federal-aid system. 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 system when the Secretary determines that such State has inadequate needs to justify such expenditure.

[(4) INDIAN RESERVATION BRIDGES.—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.

[(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(e) 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 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 system 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.]

(a) *DEFINITION OF REHABILITATE.*—*In this section, the term “rehabilitate” (in any of its forms), with respect to a bridge, means to carry out major work necessary—*

*(1) to address the structural deficiencies, functional obsolescence, or physical deterioration of the bridge; or*

*(2) to correct a major safety defect of the bridge, including seismic retrofitting.*

(b) *BRIDGE INVENTORY.*—

*(1) IN GENERAL.*—*In consultation with the States, the Secretary shall—*

*(A) annually inventory all highway bridges on public roads that cross waterways, other topographical barriers, other highways, and railroads;*

*(B) classify each such bridge according to serviceability, safety, and essentiality for public use; and*

*(C) assign each such bridge a priority for replacement or rehabilitation based on the classification under subparagraph (B).*

*(2) CONSULTATION.*—*In preparing an inventory of highway bridges on Indian reservation roads and park roads under paragraph (1), the Secretary shall consult with the Secretary of the Interior and the States.*

*(3) INVENTORY OF HISTORICAL BRIDGES.*—*At the request of a State, the Secretary may inventory bridges on public roads for historical significance.*

(c) *CERTIFICATION BY THE STATE.*—*Not later than 180 days after the end of each fiscal year beginning with fiscal year 1998, each State shall certify to the Secretary, either that—*

*(1) the State has reserved, from funds apportioned to the State for the preceding fiscal year, to carry out bridge projects eligible under sections 103(b)(5), 119, and 133(b), an amount that is not less than the amount apportioned to the State under this section for fiscal year 1997; or*

*(2) the amount that the State will reserve, from funds apportioned to the State for the period consisting of fiscal years 1998 through 2001, to carry out bridge projects eligible under*

sections 103(b)(5), 119, and 133(b), will be not less than 4 times the amount apportioned to the State under this section for fiscal year 1997.

(d) *USE OF RESERVED FUNDS.*—A State may use funds reserved under subsection (c) to replace, rehabilitate, reconstruct, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate deicer to, or install scour countermeasures on a highway bridge on a public road that crosses a waterway, other topographical barrier, other highway, or railroad.

(e) *OFF-SYSTEM BRIDGES.*—

(1) *REQUIRED EXPENDITURE.*—For each fiscal year, an amount equal to not less than 15 percent of the amount apportioned to a State under this section for fiscal year 1997 shall be expended by the State for projects to replace, rehabilitate, reconstruct, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate deicer to, or install scour countermeasures on highway bridges located on public roads that are functionally classified as local roads or rural minor collectors.

(2) *USE OF FUNDS TO MEET REQUIRED EXPENDITURE.*—Funds reserved under subsection (c) and funds made available under section 104(b)(1) for the National Highway System or under section 104(b)(3) for the surface transportation program may be used to meet the requirement for expenditure under paragraph (1).

(3) *REDUCTION OF REQUIRED EXPENDITURE.*—After consultation with local and State officials in a State, the Secretary may, with respect to the State, reduce the requirement for expenditure under paragraph (1) if the Secretary determines that the State has inadequate needs to justify the expenditure.

(f) *FEDERAL SHARE.*—The Federal share of the cost of a project under this section shall be as determined under section 120(b).

(g) *BRIDGE PERMIT EXEMPTION.*—

(1) *IN GENERAL.*—Subject to paragraph (2), notwithstanding any other provision of law, the General Bridge Act of 1946 (33 U.S.C. 525 et seq.) shall apply to each bridge authorized to be replaced, in whole or in part, under this section.

(2) *EXCEPTION.*—Section 502(b) of the General Bridge Act of 1946 (33 U.S.C. 525(b)) and section 9 of the Act of March 3, 1899 (30 Stat. 1151, chapter 425; 33 U.S.C. 401), shall not apply to any bridge constructed, reconstructed, rehabilitated, or replaced with assistance under this title if the bridge is over waters that are—

(A) not used and not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce; and

(B)(i) not tidal; or

(ii) tidal but used only by recreational boating, fishing, and other small vessels that are less than 21 feet in length.

(h) *INDIAN RESERVATION ROAD BRIDGES.*—

(1) *NATIONWIDE PRIORITY PROGRAM.*—The Secretary shall establish a nationwide priority program for improving deficient Indian reservation road bridges.

(2) *RESERVATION OF FUNDS.*—

(A) *IN GENERAL.*—Of the amounts authorized for Indian reservation roads for each fiscal year, the Secretary, in cooperation with the Secretary of the Interior, shall reserve not less than \$9,000,000 for projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate deicer to, or install scour countermeasures for deficient Indian reservation road bridges, including multiple-pipe culverts.

(B) *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).

(3) *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.

[(o)] (i) *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 for alternative transportation purposes (including bikeway and walkway projects eligible for funding under this title, 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 (regardless of whether the intended use is for motorized vehicular traffic or for alternative public transportation purposes) for the life of the bridge; except that in the case of a bridge which is no longer used for motorized vehicular traffic or for alternative public transportation purposes, 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.]

#### **§ 145. Federal-State relationship**

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.

#### **§ 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)(2)[, and 104(b)(6)] 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.

[(a)]<sup>1</sup> (c) *HOV PASSENGER REQUIREMENTS*.—A [State highway department]State transportation department shall establish the oc-

<sup>1</sup> This section was moved from old Section 102 by the bill.

cupancy 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.

**§ 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 highway department]*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.]

§ 147. *Repealed.*

**§ 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 establish 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 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 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 (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, rec-

reational, or archeological features on the opposite side of the Mississippi River from the Great River Road.]

**§ 148. Repealed.**

**§ 149. Congestion mitigation and air quality improvement program**

(a) [ESTABLISHMENT.—The Secretary shall establish] *IN GENERAL.—The Secretary shall carry out* 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 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] *that is designated as a nonattainment area under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) or classified as a submarginal ozone nonattainment area under that Act, or if the project or program is for a maintenance area, 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 [clauses (xii) and] *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 [an area] *a maintenance area; or 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)); 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] *section 108(f)(1)(A) (other than clause (xvi)) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A));*

(2) if the project or program is included in a State implementation or maintenance 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 *or maintenance of the standard*, whether through reductions in vehicle miles traveled, fuel consumption, or through other factors; [or]

(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 Pro-



tection Agency, determines that the facility or program is likely to contribute to the attainment or maintenance of a national ambient air quality standard; or

*(5) if the project or program is to construct a ferry boat or ferry terminal facility and if the conditions described in section 129(c) are met.*

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 WITHOUT A NONATTAINMENT AREA.—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.]

*(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 and other capital investments associated with the project; and

(B) shall—

(i) include only the incremental cost of an alternative fueled vehicle compared to a conventionally fueled vehicle that would otherwise be borne by a private party; and

(ii) 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.

#### **[§ 150. Allocation of urban system funds**

[The funds apportioned to any State under paragraph (6) of subsection (b) of section 104 of this title that are attributable to urbanized areas of 200,000 population or more shall be made available for expenditure in such urbanized areas for projects in programs approved under subsection (d) of section 105 of this title in accordance with a fair and equitable formula developed by the State which formula has been approved by the Secretary. Such formula shall provide for fair and equitable treatment of incorporated municipalities of 200,000 or more population. Whenever such a formula has not been developed and approved for a State, the funds apportioned to any State under paragraph (6) of subsection (b) of section 104 of this title which are attributable to urbanized areas having a population of 200,000 or more shall be allocated among such urbanized areas within such State for projects in programs approved under subsection (d) of section 105 of this title in the ratio that the population within each such urbanized area bears to the population of all such urbanized areas, or parts thereof, within such State. In the expenditure of funds allocated under the preceding sentence, fair and equitable treatment shall be accorded incorporated municipalities of 200,000 or more population. Funds allocated to an urbanized area under the provisions of this section may, at the request of the Governor and upon approval of the appropriate local officials of the area and the Secretary, be trans-

ferred to the allocation of another such area in the State or to the State for use in any urban area.】

**§ 150. [Repealed]**

**§ 151. National bridge inspection program**

(a) NATIONAL BRIDGE INSPECTION STANDARDS.—The Secretary, in consultation with the 【State highway departments】*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 highway departments】*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 307(a), and section 144 of this title】 *subsections (a) and (b)(1)(B) of section 104 and 【section 307(a)】 section 506.*

**§ 152. Hazard elimination program**

(a) 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.

(b) The Secretary may approve as a project under this section any 【highway safety improvement project】 *safety improvement project, including a project described in subsection (a).*

(c) Funds authorized to carry out this section shall be available for expenditure [on any public road (other than a highway on the Interstate System)] *on—*

- (1) *any public road;*
- (2) *any public transportation vehicle or facility, any publicly owned bicycle or pedestrian pathway or trail, or any other facility that the Secretary determines to be appropriate; 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 [apportioned to the States as provided in section 402(c) of this title. Such funds shall be] available for obligation in the same manner and to the same extent as if such funds were apportioned under section 104(b)(1), 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 [highway] 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 [highway] 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 [highway] 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.

### **§ 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 highway 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 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.

**§ 154. [Repealed by Public Law 104-59]**

**§ 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.]

**§ 155. *Repealed.***

**§ 156. Income from airspace rights-of-way**

[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.】

**§ 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.

**【§ 157. Minimum allocation**

**【(a) GENERAL RULES.—**

**【(1) FISCAL YEARS 1984–1987.**—In the fiscal year ending September 30, 1983, as soon as practicable after the date of enactment of this Act, and in each of the fiscal years ending September 30, 1984, September 30, 1985, and September 30, 1986, on October 1, the Secretary of Transportation shall allocate among the States, as defined in section 101 of this title amounts sufficient to insure that a State's percentage of the total apportionments in each such fiscal year of Interstate highway substitute, primary, secondary, Interstate, urban, bridge replacement and rehabilitation, hazard elimination, and rail-highway crossings funds under sections 103(e)(4), 104(b), 144, and 152 of this title and section 203 of the Highway Safety Act of 1973, as amended, shall not be less than 85 per centum of the percentage of estimated tax payments attributable to highway users in that State paid into the Highway Trust Fund, other than the Mass Transit Account, in the latest fiscal year for which data is available.

**【(2) FISCAL YEARS 1987 AND 1988.**—In fiscal years 1987 and 1988, on October 1, or as soon as possible thereafter, the Secretary shall allocate among the States amounts sufficient to ensure that a State's percentage of the total apportionments in each such fiscal year and allocations for the prior fiscal year for Federal-aid highway programs (except allocations for emergency relief in accordance with section 125 of this title, the Interstate construction discretionary program in accordance with section 118(b)(2) of this title, forest highways, Indian reservation roads, and parkways and park roads in accordance with section 202 of this title, highway related safety grants authorized by section 402 of this title, nonconstruction safety grants authorized by sections 402, 406, and 408 of this title,

and Bureau of Motor Carrier Safety Grants authorized by section 31104 of title 49) shall not be less than 85 percent of the percentage of estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund, other than the Mass Transit Account, in the latest fiscal year for which data are available.

[(3) FISCAL YEARS 1989–1991.—

[(A) GENERAL RULE.—In fiscal year 1989, 1990, and 1991 on October 1, or as soon as possible thereafter, the Secretary shall allocate among the States amounts sufficient to ensure that a State's percentage of the total apportionments in each such fiscal year and allocations for the prior fiscal year for Federal-aid highway programs (except allocations for forest highways, Indian reservation roads, and parkways and park roads in accordance with section 202 of this title, highway related safety grants authorized by section 402 of this title, nonconstruction safety grants authorized by sections 402, 406, and 408 of this title, and Bureau of Motor Carrier Safety Grants authorized by section 31104 of title 49) shall not be less than 85 percent of the percentage of estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund, other than the Mass Transit Account, in the latest fiscal year for which data are available.

[(B) EXCEPTION FOR FISCAL YEAR 1989.—Notwithstanding subparagraph (A), the amount allocated to the State of California under this paragraph in fiscal year 1989 shall be the amount which would be allocated to such State under this subsection if paragraph (2) were in effect for such fiscal year.

[(4) THEREAFTER.—In fiscal year 1992 and each fiscal year thereafter on October 1, or as soon as possible thereafter, the Secretary shall allocate among the States amounts sufficient to ensure that a State's percentage of the total apportionments in each such fiscal year and allocations for the prior fiscal year for Interstate construction, Interstate maintenance, Interstate highway substitute, National Highway System, surface transportation program, bridge program, scenic byways, and grants for safety belts and motorcycle helmets shall not be less than 90 percent of the percentage of estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund, other than the Mass Transit Account, in the latest fiscal year for which data are available.

[(b) Amounts allocated pursuant to subsection (a) of this section shall be available for obligation when allocated for the year authorized plus the three succeeding fiscal years, shall be subject to the provisions of this title 23 and may be obligated for Interstate highway substitute, National Highway, surface transportation program, Interstate, congestion mitigation and air quality improvement program, bridge, hazard elimination, and rail-highway crossings projects. ½ of the amounts allocated pursuant to subsection (a) after September 30, 1991, shall be subject to section 133(d)(3) of this title. Obligation limitations for Federal-aid highways and highway safety construction programs established by this Act or

any subsequent Act shall not apply to obligations made under this section, except where the provision of law establishing such limitation specifically amends or limits the applicability of this sentence. Sums allocated pursuant to this section shall not be considered to be sums allocated for purposes of section 104(b) of the Highway Improvement Act of 1982 and section 4102(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 and section 105(c) of the Federal-Aid Highway Act of 1987 and section 1002(c) of the Intermodal Surface Transportation Efficiency Act of 1991.

[(c) LIMITATION ON PLANNING EXPENDITURES.—One-half of 1 percent of amounts allocated to each State under this section in any fiscal year may be available for expenditure for the purpose of carrying out the requirements of section 134 of this title (relating to transportation planning). 1½ percent of the amounts allocated to each State under this section in any fiscal year may be available for expenditure for the purpose of carrying out activities referred to in subsection (c) of section 307 of this title (relating to transportation planning and research).]

[(d) TREATMENT OF WITHHELD APPORTIONMENTS.—For purposes of subsection (a), any funds which, but for section 154(f) or 158(a) of this title or any other provision of law under which Federal-aid highway funds are withheld from apportionment, would be apportioned to a State in a fiscal year under a section referred to in subsection (a) shall be treated as being apportioned in such year.]

[(e) In order to carry out this section there is authorized to be appropriated out of the Highway Trust Fund, other than the Mass Transit Account, such sums as may be necessary for each of the fiscal years ending on or after September 30, 1983.]

### **§ 157. [Repealed]**

### **§ 158. National minimum drinking age**

(a) WITHHOLDING OF FUNDS FOR NONCOMPLIANCE.—

[(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.]

[(2)] (1) [AFTER THE FIRST YEAR] *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)(2), 104(b)(5), and 104(b)(6)] *and 104(b)(2)* 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.

[(3)] (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 pur-

chase 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 [paragraphs (1) and (2) of this subsection] *paragraph 1* in each fiscal year in which such law is in effect.

[(b) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

[(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—

[(A) FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 1988.—Any funds withheld under this section from apportionment to any State on or before September 30, 1988, shall remain available for apportionment to such State as follows:

[(i) If such funds would have been apportioned under section 104(b)(5)(A) of this title 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) of this title 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 section 104(b)(1), 104(b)(2), or 104(b)(6) of this title 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, 1988.—No funds withheld under this section from apportionment to any State after September 30, 1988, 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 this section from apportionment are to remain available for apportionment to a State under paragraph (1)(A), the State makes effective a law which is in compliance with subsection (a), the Secretary shall on the day following the effective date of such law apportion to such State the withheld funds remaining available for apportionment to such 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 apportioned under section 104(b)(5)(A) of this title shall remain available until the end of the fiscal year succeeding the fiscal year in which such funds are so apportioned.

[(B) Funds apportioned under section 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) of this title shall remain available until the end of the third fiscal year suc-

ceeding 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) of this title, shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of this title.

¶(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under this section from apportionment are available for apportionment to a State under paragraph (1), the State has not made effective a law which is in compliance with subsection (a), such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5) of this title, such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of this title.¶

(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 1954,

(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.

#### **§ 159. Revocation or suspension of drivers’ licenses of individuals convicted of drug offenses**

(a) WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE.—

(1) BEGINNING IN FISCAL YEAR 1994.—For each fiscal year the Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and ¶(5) of ¶ (5) *(as in effect on the day before the enactment of the Intermodal Surface Transportation Efficiency Act of 1997)* 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) of ¶ (5) *(as in effect on the day before the enactment of the Intermodal Surface Transportation Efficiency Act of 1997)* 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 NON-COMPLIANCE.—

(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)]** *section 104(b)(5)(A) (as in effect on the day before the enactment of the Intermodal Surface Transportation Efficiency Act of 1997)* 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)]** *section 104(b)(5)(B) (as in effect on the day before the enactment of the Intermodal Surface Transportation Efficiency Act of 1997)* 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) of **[section 104(b)(5)(A)]** *section 104(b)(5)(A) (as in effect on the day before the enactment of the Intermodal Surface*

*Transportation Efficiency Act of 1997*) 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) 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)]~~ (5)(B) (as in effect on the day before the enactment of the *Intermodal Surface Transportation Efficiency Act of 1997*) 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)]~~ 104(b)(5) (as in effect on the day before the enactment of the *Intermodal Surface Transportation Efficiency Act of 1997*), 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)]~~ 104(b)(5) (as in effect on the day before the enactment of the *Intermodal Surface Transportation Efficiency Act of 1997*), 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.

**§ 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



States	Original cost in millions	Reimbursement percentage	Reimbursable amount in millions
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
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
 TOTALS .....	 \$4,967	 100.00	 \$29,384

(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.

## **§ 161. Operation of motor vehicles by intoxicated minors**

(a) **WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE.**—

(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 (5)(B)~~ *paragraphs (1), (3), and (5)(B) of section 104(b)* 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 (5)(B) 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 NON-COMPLIANCE.—

(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.

## **§ 162. State infrastructure bank program**

(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.

(b) COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—

(A) PURPOSE OF AGREEMENTS.—Subject to this section, the Secretary may enter into cooperative agreements with 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.

(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) and (3) of section 104(b), excluding funds set aside under paragraphs (1) and (2) of section 133(d); and

(ii) the total amount of funds allocated to the State under section 105 and under section 1102 of the Intermodal Surface Transportation Efficiency Act of 1997;

(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) under sections 5307, 5309, and 5311 of title 49; and

(C) the total amount of funds made available to the State under subtitle V of title 49.

(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) and attributed to urbanized areas of a State with a population of over 200,000 individuals under section 133(d)(2) 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 this title for capital projects (as defined in section 5302 of title 49), or for any other project that the Secretary determines to be appropriate.

(2) *INTERSTATE FUNDS.*—Funds contributed to an infrastructure bank from funds apportioned to a State under subparagraph (A) or (B) of section 104(b)(1) may be used only to provide assistance with respect to projects eligible for assistance under those subparagraphs.

(3) *RAIL PROGRAM FUNDS.*—Funds contributed to an infrastructure bank from funds made available to a State under subtitle V of title 49 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);

(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 Highway System Designation Act of 1995 (Public Law 104–59) to comply with this section.

(i) **APPLICABILITY OF FEDERAL LAW.**—

(1) **IN GENERAL.**—The requirements of this title or title 49 that would otherwise apply to funds made available under that title and projects assisted with those funds shall apply to—

(A) funds made available under that title and contributed to an infrastructure bank established under this section, including the non-Federal contribution required under section (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 that title (other than sections 113 and 114 of this

title and section 5333 of title 49) is not consistent with the objectives of this section.

(2) *REPAYMENTS.*—The requirements of this title or title 49 shall not apply to repayments from non-Federal sources to an infrastructure bank from projects assisted by the bank. Such a repayment shall not 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.

**§ 163. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence**

(a) *DEFINITIONS.*—In this section:

(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 within 5 years after a conviction for that offense whose alcohol concentration with respect to the second or subsequent offense was determined on the basis of a chemical test to be equal to or greater than 0.15 shall receive—

(A) a license suspension for not less than 1 year;

(B) an assessment of the individual's degree of abuse of alcohol and treatment as appropriate; and

(C) either—

(i) an assignment of 30 days of community service;

or

(ii) 5 days of imprisonment.

(b) *TRANSFER OF FUNDS.*—

(1) *FISCAL YEARS 2001 AND 2002.*—

(A) *IN GENERAL.*—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 paragraphs (1) and (3) of section 104(b) to the apportionment of the State under section 402 to be used for alcohol-impaired driving programs.

(B) *DERIVATION OF AMOUNT TO BE TRANSFERRED.*—An amount transferred under subparagraph (A) may be derived—

(i) from the apportionment of the State under section 104(b)(1);

(ii) from the apportionment of the State under section 104(b)(3); or

(iii) partially from the apportionment of the State under section 104(b)(1) and partially from the apportionment of the State under section 104(b)(3).

(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 3 percent of the funds apportioned to the State on that date under each of paragraphs (1) and (3) of section 104(b) to the apportionment of the State under section 402 to be used for alcohol-impaired driving programs.

(3) *FEDERAL SHARE.*—The Federal share of the cost of a project carried out under section 402 with funds transferred under paragraph (1) or (2) shall be 100 percent.

(4) *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.

(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 under section 402 shall apply to funds transferred under this subsection to the apportionment of a State under that section.

**§ 164. Safety incentive grants for use of seat belts**

(a) **DEFINITIONS.**—In this section:

(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 1995 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 medicaid 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 1995 through 1997, by the State, as adjusted 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 30 days after the date of enactment of this section, and not later than 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 year (referred to in this subsection 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 1995 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 30 days after the date of enactment of this section, and not later than 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 30 days after the date of enactment of this section, and not later than 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 FUNDS.*—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 the Intermodal Surface Transportation Efficiency Act of 1997, 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) *FUNDING.*—

(1) *AUTHORIZATION OF CONTRACT AUTHORITY.*—There shall be available from the Highway Trust Fund (other than the

*Mass Transit Account*) to carry out this section \$60,000,000 for fiscal year 1998, \$70,000,000 for fiscal year 1999, \$80,000,000 for fiscal year 2000, \$90,000,000 for fiscal year 2001, and \$100,000,000 for each of fiscal years 2002 and 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.*—To the extent that the amounts made available for any fiscal year under paragraph (1) exceed the total amounts to be allocated under subsection (c) for the fiscal year, the excess amounts—

(A) shall be apportioned in accordance with section 104(b)(3);

(B) 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

(C) shall be available for any purpose eligible for funding under section 133.

(4) *ADMINISTRATIVE EXPENSES.*—Not more than 2 percent of the funds made available to carry out this section may be used to pay the necessary administrative expenses incurred in carrying out this section.

#### **§ 165. 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 scenic 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 byways 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) *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 byways 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.

(f) *AUTHORIZATION OF CONTRACT AUTHORITY.*—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$17,000,000 for fiscal year 1998, \$17,000,000 for fiscal year 1999, \$19,000,000 for fiscal year 2000, \$19,000,000 for fiscal year 2001, \$21,000,000 for fiscal year 2002, and \$23,000,000 for fiscal year 2003.

## Chapter 2.—OTHER HIGHWAYS

Sec.

- 201. Authorizations.
- 202. Allocations.
- 203. Availability of funds.
- 204. Federal lands highways program.
- 205. Forest development roads and trails.
- 206. ~~Repealed.~~ *Recreational trails program.*
- 207. ~~Repealed.~~ *Cooperative Federal Lands Transportation Program.*
- 208. Repealed.
- 209. Repealed.
- 210. Defense access roads.
- 211. ~~Repealed by P.L. 100–17.~~
- 212. Inter-American Highway.
- 213. ~~Repealed by P.L. 100–17.~~
- 214. Public lands development roads and trails.
- 215. Territories highway development program.
- 216. Darien Gap Highway.
- 217. Bicycle transportation and pedestrian walkways.
- 218. Alaska Highway.

### § 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, 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

### § 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 highway departments~~ *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 planning and the impact of such planning on existing transportation facilities.

(d) On October 1 of each fiscal year, 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.

### **§ 203. Availability of funds**

Funds authorized for,<sup>1</sup> forest development roads and trails, public lands development roads and trails, park road, parkways, 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,<sup>1</sup> forest development roads and trails, public lands development roads and trails, park road, parkways, 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 the pay the Federal share of the cost of the project.*

### **§ 204. Federal Lands Highways Program**

[(a) 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

<sup>1</sup> So in law. The comma probably should be deleted. See section 1032(f) of P.L. 102-240, which struck the phrase "forest highways" each place it appears in section 203.

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.】

(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 safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program.*

(b) 【Funds available for public lands highways shall be used by the Secretary to pay for the cost of construction and improvement 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.】 *Funds available for public lands highways, park roads and parkways, and In-*

*dian 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.* 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 [326] 506.

(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 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 Interior] *Secretary of the appropriate 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 approved 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 TO SECRETARY OF THE INTERIOR.—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.]

(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 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.】 *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.

#### **§ 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

#### **§ 206. Recreational trails program**

(a) *DEFINITIONS.*—

(1) *MOTORIZED RECREATION.*—*The term “motorized recreation” means off-road recreation using any motor-powered vehicle, except for a motorized wheelchair.*

(2) *RECREATIONAL TRAIL; TRAIL.*—*The term “recreational trail” or “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 (referred to in this section as the "program").

(c) *STATE RESPONSIBILITIES.*—To be eligible for apportionments under this section—

(1) a State may use apportionments received under this section for construction of new trails crossing Federal lands only if the construction is—

(A) permissible under other law;

(B) necessary and required by a statewide comprehensive outdoor recreation plan required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–4 et seq.);

(C) approved by the administering agency of the State designated under paragraph (2); and

(D) approved by each Federal agency charged with management of the affected lands, which 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.);

(2) the Governor of a State shall designate the State agency or agencies that will be responsible for administering apportionments received under this section; and

(3) the State shall establish within the State a State trail advisory committee that represents both motorized and non-motorized trail users.

(d) *USE OF APPORTIONED FUNDS.*—

(1) *IN GENERAL.*—Funds made available under this section shall be obligated for trails and trail-related projects that—

(A) have been planned and developed under the laws, policies, and administrative procedures of each State; and

(B) are identified in, or further a specific goal of, a trail plan or trail plan element included or referenced in a metropolitan transportation plan required under section 134 or a statewide transportation plan required under section 135, consistent with the statewide comprehensive outdoor recreation plan required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–4 et seq.).

(2) *PERMISSIBLE USES.*—Permissible uses of funds made available under this section include—

(A) maintenance and restoration of existing trails;

(B) development and rehabilitation of trailside and trailhead facilities and trail linkages;

(C) purchase and lease of trail construction and maintenance equipment;

(D) construction of new trails;

(E) acquisition of easements and fee simple title to property for trails or 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 received by the State for a fiscal year; and

(G) operation of educational programs to promote safety and environmental protection as these objectives relate to the use of trails.

(3) *USE OF APPORTIONMENTS.*—

(A) *IN GENERAL.*—Except as provided in subparagraphs (B), (C), and (D), of the apportionments received for a fiscal year by a State under this section—

(i) 40 percent shall be used for trail or trail-related projects that facilitate diverse recreational trail use within a 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, and in which non-highway recreational fuel use accounts for less than 1 percent of all such fuel use in the United States, shall be exempted from the requirements of subparagraph (A) upon application to the Secretary by the State demonstrating that the State meets the conditions of this subparagraph.

(C) *WAIVER AUTHORITY.*—Upon the request of a State trail advisory committee established under subsection (c)(3), the Secretary may waive, in whole or in part, the requirements of subparagraph (A) with respect to the State if the State certifies to the Secretary that the State does not have sufficient projects to meet the requirements 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).

(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 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; and

(B) the share attributable to the Secretary and the Federal agency jointly may not exceed 95 percent.

(3) *USE OF FUNDS FROM FEDERAL PROGRAMS TO PROVIDE NON-FEDERAL SHARE.*—Notwithstanding any other provision of

law, 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; may be credited toward the non-Federal share of the cost of the project.

(4) *PROGRAMMATIC NON-FEDERAL SHARE.*—A State may allow adjustments to the non-Federal share of an individual project 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 a 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 under 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 apportioned 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 apportioned 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 trails predominantly used by nonmotorized trail users and on which, as of May 1, 1991, motorized use is prohibited or has 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 made available under 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 under 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) *APPORTIONMENT.*—

(1) *DEFINITION OF ELIGIBLE STATE.*—In this subsection, the term “eligible State” means a State that meets the requirements of subsection (c).

(2) *APPORTIONMENT.*—Subject to subsection (j), for each fiscal year, the Secretary shall apportion—

(A) 50 percent of the amounts made available to carry out this section equally among eligible States; and

(B) 50 percent of the amounts made available to carry out this section among eligible States in proportion to the quantity of nonhighway recreational fuel used in each eligible State during the preceding year.

(j) *ADMINISTRATIVE COSTS.*—

(1) *IN GENERAL.*—Whenever an apportionment is made under subsection (i) of the amounts made available to carry out this section, the Secretary shall first deduct an amount, not to exceed 1 percent of the authorized amounts, to pay the costs to the Secretary for administration of, and research authorized under, the program.

(2) *USE OF CONTRACTS.*—To carry out research funded under paragraph (1), the Secretary may—

(A) enter into contracts with for-profit organizations; and

(B) enter into contracts, partnerships, or cooperative agreements with other government agencies, institutions of higher learning, or nonprofit organizations.

(k) *AUTHORIZATION OF CONTRACT AUTHORITY.*—

(1) *IN GENERAL.*—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry

out this section \$17,000,000 for fiscal year 1998, \$20,000,000 for fiscal year 1999, \$22,000,000 for fiscal year 2000, \$23,000,000 for fiscal year 2001, \$24,000,000 for fiscal year 2002, and \$25,000,000 for fiscal year 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, except that the Federal share of the cost of a project under this section shall be determined in accordance with this section.

### **§207. Cooperative Federal Lands Transportation Program**

(a) *IN GENERAL.*—There is established the Cooperative Federal Lands Transportation Program (referred to in this section as the “program”). Funds available for the program may be used for projects, or portions of projects, on highways that are owned or maintained by States or political subdivisions of States and that cross, are adjacent to, or lead to federally owned land or Indian reservations (including Army Corps of Engineers reservoirs), as determined by the State. Such projects shall be proposed by a State and selected by the Secretary. A project proposed by a State under this section shall be on a highway or bridge owned or maintained by the State, or 1 or more political subdivisions of the State, and may be a highway or bridge construction or maintenance project eligible under this title or any project of a type described in section 204(h).

(b) *DISTRIBUTION OF FUNDS FOR PROJECTS.*—

(1) *IN GENERAL.*—

(A) *IN GENERAL.*—The Secretary—

(i) after consultation with the Administrator of General Services, the Secretary of the Interior, and other agencies as appropriate (including the Army Corps of Engineers), shall determine the percentage of the total land in each State that is owned by the Federal Government or that is held by the Federal Government in trust;

(ii) shall determine the sum of the percentages determined under clause (i) for States with respect to which the percentage is 4.5 or greater; and

(iii) shall determine for each State included in the determination under clause (ii) the percentage obtained by dividing—

(I) the percentage for the State determined under clause (i); by

(II) the sum determined under clause (ii).

(B) *ADJUSTMENT.*—The Secretary shall—

(i) reduce any percentage determined under subparagraph (A)(iii) that is greater than 7.5 percent to 7.5 percent; and

(ii) redistribute the percentage points equal to any reduction under clause (i) among other States included in the determination under subparagraph (A)(ii) in proportion to the percentages for those States determined under subparagraph (A)(iii).

(2) *AVAILABILITY TO STATES.*—Except as provided in paragraph (3), for each fiscal year, the Secretary shall make funds

available to carry out eligible projects in a State in an amount equal to the amount obtained by multiplying—

(A) the percentage for the State, if any, determined under paragraph (1); by

(B) the funds made available for the program for the fiscal year.

(3) *SELECTION OF PROJECTS.*—The Secretary may establish deadlines for States to submit proposed projects for funding under this section, except that in the case of fiscal year 1998 the deadline may not be earlier than January 1, 1998. For each fiscal year, if a State does not have pending, by that deadline, applications for projects with an estimated cost equal to at least 3 times the amount for the State determined under paragraph (2), the Secretary may distribute, to 1 or more other States, at the Secretary's discretion,  $\frac{1}{3}$  of the amount by which the estimated cost of the State's applications is less than 3 times the amount for the State determined under paragraph (2).

(c) *TRANSFERS.*—

(1) *IN GENERAL.*—Notwithstanding any other provision of law, a State and the Secretary may agree to transfer amounts made available to a State under this section to the allocations of the State under section 202 for use in carrying out projects on any Federal lands highway that is located in the State.

(2) *SPECIAL RULE.*—This paragraph applies to a State that contains a national park that was visited by more than 2,500,000 people in 1996 and comprises more than 3,000 square miles of land area, including surface water, that is located in the State. For such a State, 50 percent of the amount that would otherwise be made available to the State for each fiscal year under the program shall be made available only for eligible highway uses in the national park and within the borders of the State. For the purpose of making allocations under section 202(c), the Secretary may not take into account the past or future availability, for use on park roads and parkways in a national park, of funds made available for use in a national park by this paragraph.

(d) *RIGHTS-OF-WAY ACROSS FEDERAL LAND.*—Nothing in this section affects any claim for a right-of-way across Federal land.

(e) *AUTHORIZATION OF CONTRACT AUTHORITY.*—

(1) *IN GENERAL.*—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$74,000,000 for each of fiscal years 1998 through 2003.

(2) *CONTRACT AUTHORITY.*—Funds authorized under this subsection shall be made available for obligation in the same manner as if the funds were apportioned under chapter 1.

[§§ [206]208–209 repealed.]

## § 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 de-

fense 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 highway department]*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 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 highway department]*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 highway department]*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 ~~the~~ *State highway department* *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 the State law to receive such funds, to be disbursed solely upon vouchers approved by the ~~the~~ *State highway department* *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 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 ~~the~~ *State highway department* *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

#### **§ 211. [Repealed by Public Law 100-17]**

#### **§ 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 countries 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 for 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

#### **§ 213. [Repealed by Public Law 100-17]**

#### **§ 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.

#### **§ 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.

#### **§ 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 obligation 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.

#### **§ 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 [(other than the Interstate 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 lo-

cated on a highway[, other than a highway access to which is fully controlled,] 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.**—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.]

(g) **PLANNING AND DESIGN.**—

(1) *IN GENERAL.*—*Bicyclists and pedestrians shall be given consideration in the comprehensive transportation plans developed by each metropolitan planning organization and State in accordance with sections 134 and 135, respectively.*

(2) *CONSTRUCTION.*—*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.*

(3) *SAFETY AND CONTIGUOUS ROUTES.*—*Transportation plans and projects shall provide consideration for safety and contiguous routes for bicyclists and pedestrians.”;*

(h) **USE OF MOTORIZED VEHICLES.**—[No motorized vehicles shall] *Motorized vehicles may not be permitted on trails and pedestrian walkways under this section, except for—*

(1) maintenance purposes;

(2) when snow conditions and State or local regulations permit, snowmobiles;

[(3) when State and local regulations permit, motorized wheelchairs; and]

(3) *wheelchairs that are powered; and*

(4) 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) **BICYCLE TRANSPORTATION FACILITY DEFINED.**—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.]

(j) **DEFINITIONS.**—*In this section:*

(1) *BICYCLE TRANSPORTATION FACILITY.*—*The term “bicycle transportation facility” means a new or improved lane, path, or*

*shoulder for use by bicyclists or a traffic control device, shelter, or parking facility for bicycles.*

(2) *PEDESTRIAN.*—*The term “pedestrian” means any person traveling by foot or any mobility impaired person using a wheelchair.*

(3) *WHEELCHAIR.*—*The term “wheelchair” means a mobility aid, usable indoors, and designed for and used by individuals with mobility impairments, whether operated manually or powered.*

### **§ 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 the south Alaskan border, 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 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 shall not apply to projects authorized by the preceding sentence. No expenditures shall be made for the construction of such highways 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 pursuant to this section shall be under the general supervision of the Secretary.

### **Chapter 3.—GENERAL PROVISIONS**

Sec.

301. Freedom from tolls.

302. [State highway department] *State transportation department.*

303. Management systems.

- 304. Participation by small business enterprises.
- 305. Archeological and paleontological salvage.
- 306. Mapping.
- 307. **[Research and planning.]** *[Repealed]*
- 308. Cooperation with Federal and State agencies and foreign countries.
- 309. Cooperation with other American Republics.
- 310. Civil Defense.
- 311. Highway improvements strategically important to the national defense.
- 312. Detail of Army, Navy, and Air Force officers.
- 313. *[Repealed P.L. 89-564.]*
- 314. Relief of employees in hazardous work.
- 315. Rules, regulations, and recommendations.
- 316. Consent by United States to conveyance of property.
- 317. Appropriation for highway purposes of lands or interests in lands owned by the United States.
- 318. Highway relocation due to airport.
- 319. Landscaping and scenic enhancement.
- 320. Bridges on Federal dams.
- 321. **[National Highway Institute.]** *[Repealed]*
- 322. **[Repealed by Public Law 100-17.]** *Magnetic levitation transportation technology deployment program.*
- 323. Donations.
- 324. **[Prohibition of discrimination on the basis of sex.]** *[Repealed]*
- 325. **[International highway transportation outreach program.]**
- 326. **[Education and training program.]** *[Repealed]*

### **§ 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.

### **§ 302. [State highway department]*State transportation department***

**[(a)]** Any State desiring to avail itself of the provisions of this title shall have a **[State highway department]***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. **[Among other things, the organization shall include a secondary road unit. In meeting the provisions of this subsection, a State may engage to the extent necessary or desirable, the services of private engineering firms.]** *Compliance with this section shall have no effect on the eligibility of costs.*

**[(b)]** The **[State highway department]***State transportation 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]***State transportation 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] *section 104(b)(1)(B) 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 307. Research and planning**

[(a) RESEARCH AND TECHNOLOGY PROGRAM.—

[(1) AUTHORITY OF THE SECRETARY.—

[(A) IN GENERAL.—The Secretary may engage in research, development, and technology transfer activities with respect to motor carrier transportation and all phases of highway planning and development (including construction, operation, modernization, development, design, maintenance, safety, financing, and traffic conditions) and the effect thereon of State laws and may test, develop, or as-

sist in testing and developing any material, invention, patented article, or process.

[(B) COOPERATION, GRANTS, AND CONTRACTS.—The Secretary may carry out this section either independently or in cooperation with other Federal departments, agencies, and instrumentalities or by making grants to, and entering into contracts and cooperative agreements with, the National Academy of Sciences, the American Association of State Highway and Transportation Officials, or any State agency, authority, association, institution, corporation (profit or nonprofit), organization, or person.

[(C) RESEARCH FELLOWSHIPS.—

[(i) GENERAL AUTHORITY.—The Secretary may, acting either independently or in cooperation with other Federal departments, agencies, and instrumentalities, make grants for research fellowships for any purpose for which research is authorized by this section.

[(ii) 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 engineering and research. Such program shall be known as the “Dwight David Eisenhower Transportation Fellowship Program”. Of the funds made available pursuant to paragraph (3) for each fiscal year beginning after September 30, 1991, the Secretary shall expend not less than \$2,000,000 per fiscal year to carry out such program.

[(2) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

[(A) IN GENERAL.—For the purposes of encouraging innovative solutions to highway problems and stimulating the marketing of new 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, foreign governments, colleges and universities, corporations, institutions, partnerships, sole proprietorships, and trade associations which are incorporated or established under the laws of any State.

[(B) AGREEMENTS.—In carrying out this paragraph, the Secretary may enter into cooperative research and development agreements, as such term is defined under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a).

[(C) FEDERAL SHARE.—The Federal share payable on account of activities carried out under a cooperative research and development agreement entered into under this paragraph shall not exceed 50 percent of the total cost of such activities; except that, if there is substantial public interest or benefit, the Secretary may approve a higher Federal share. All costs directly incurred by the non-Federal partners, including personnel, travel, and hardware development costs, shall be treated as part of the non-Fed-

eral share of the cost of such activities for purposes of the preceding sentence.

[(D) UTILIZATION OF TECHNOLOGY.—The research, development, or utilization of any technology pursuant to a cooperative research and development agreement entered into under this paragraph, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wydler Technology Innovation Act of 1980.

[(3) FUNDS.—

[(A) IN GENERAL.—The funds necessary to carry out this subsection and subsections (b), (d), and (e) shall be taken by the Secretary out of administrative funds deducted pursuant to section 104(a) of this title and such funds as may be deposited by any cooperating organization or person in a special account of the Treasury of the United States established for such purposes.

[(B) MINIMUM EXPENDITURES ON LONG-TERM RESEARCH PROJECTS.—Not less than 15 percent of the funds made available under this paragraph shall be expended on long-term research projects which are unlikely to be completed within 10 years.

[(4) WAIVER OF ADVERTISING REQUIREMENTS.—The provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) shall not be applicable to contracts or agreements entered into under this section.

[(b) MANDATORY CONTENTS OF RESEARCH PROGRAM.—

[(1) INCLUSION OF CERTAIN STUDIES.—The Secretary shall include in the highway research program under subsection (a) studies of economic highway geometrics, structures, and desirable weight and size standards for vehicles using the public highways and of the feasibility of uniformity in State regulations with respect to such standards. The highway research program shall also include studies to identify and measure, quantitatively and qualitatively, those factors which relate to economic, social, environmental, and other impacts of highway projects.

[(2) SHRP RESULTS.—

[(A) IMPLEMENTATION.—The highway research program under subsection (a) shall include a program to implement results of the strategic highway research program carried out under subsection (d) (including results relating to automatic intrusion alarms for street and highway construction work zones) and to continue the long-term pavement performance tests being carried out under such program.

[(B) MINIMUM FUNDING.—Of amounts deducted under section 104(a) of this title, the Secretary shall expend not less than \$12,000,000 in fiscal year 1992, \$16,000,000 in fiscal year 1993, and \$20,000,000 per fiscal year for each of fiscal years 1994, 1995, 1996, and 1997 to carry out this paragraph.

[(3) SURFACE TRANSPORTATION SYSTEM PERFORMANCE INDICATORS.—The highway research program under subsection

(a) shall include a coordinated long-term program of research for the development, use, and dissemination of performance indicators to measure the performance of the surface transportation system of the United States, including indicators for productivity, efficiency, energy use, air quality, congestion, safety, maintenance, and other factors which reflect the overall performance of such system.

[(4) SHORT HAUL PASSENGER TRANSPORTATION SYSTEMS.—The Secretary shall conduct necessary systems research in order to develop a concept for a lightweight, pneumatic tire multiple-unit, battery-powered system, in conjunction with recharging stations at strategic locations. The Secretary shall create a potential systems concept and, as part of the surface transportation research and development plan under subsection (b), make recommendations to Congress by January 15, 1993.

[(5) SUPPORTING INFRASTRUCTURE.—The Secretary shall establish a program to strengthen and expand surface transportation infrastructure research and development. The program shall include the following elements:

[(A) Methods and materials for improving the durability of surface transportation infrastructure facilities and extending the life of bridge structures, including new and innovative technologies to reduce corrosion.

[(B) Expansion of the Department of Transportation's inspection and mobile nondestructive examination capabilities, including consideration of the use of high energy field radiography for more thorough and more frequent inspections of bridge structures as well as added support to [State highway departments] *State transportation departments*.

[(C) The Secretary shall determine whether or not to initiate a construction equipment research and development program directed toward the reduction of costs associated with the construction of highways and mass transit systems. The Secretary shall transmit to Congress a report containing such determination on or before July 1, 1992.

[(D) The Secretary shall undertake or supervise surface transportation infrastructure research to develop—

[(i) nondestructive evaluation equipment for use with existing infrastructure facilities and for next generation infrastructure facilities that utilize advanced materials;

[(ii) information technologies, including—

[(I) appropriate computer programs to collect and analyze data on the status of the existing infrastructure facilities for enhancing management, growth, and capacity; and

[(II) dynamic simulation models of surface transportation systems for predicting capacity, safety, and infrastructure durability problems, for evaluating planned research projects, and for testing the strengths and weaknesses of proposed re-

visions in surface transportation operations programs; and

[(iii) new and innovative technologies to enhance and facilitate field construction and rehabilitation techniques for minimizing disruption during repair and maintenance of existing structures.

[(c) STATE PLANNING AND RESEARCH.—

[(1) GENERAL RULE.—2 percent of the sums apportioned for each fiscal year beginning after September 30, 1991, to any State under sections 104 and 144 of this title and for highway projects under section 103(e)(4) of this title shall be available for expenditure by the [State highway department]*State transportation department*, in consultation with the Secretary, only for the following purposes:

[(A) Engineering and economic surveys and investigations.

[(B) The planning of future highway programs and local public transportation systems and for planning for the financing thereof, including statewide planning under section 135 of this title.

[(C) Development and implementation of management systems under section 303 of this title.

[(D) Studies of the economy, safety, and convenience of highway usage and the desirable regulation and equitable taxation thereof.

[(E) Research, development, and technology transfer activities necessary in connection with the planning, design, construction, and maintenance of highway, public transportation, and intermodal transportation systems and study, research, and training on engineering standards and construction materials for such systems, including evaluation and accreditation of inspection and testing and the regulation and taxation of their use.

[(2) MINIMUM EXPENDITURES ON RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—Not less than 25 percent of the funds which are apportioned to a State for a fiscal year and are subject to paragraph (1) shall be expended by the State for research, development, and technology transfer activities described in paragraph (1) relating to highway, public transportation, and intermodal transportation systems unless the State certifies to the Secretary for such fiscal year that total expenditures by the State for transportation planning under sections 134 and 135 will exceed 75 percent of the amount of such funds and the Secretary accepts such certification.

[(3) FEDERAL SHARE.—The Federal share payable on account of any project financed with funds which are subject to paragraph (1) 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.

[(4) ADMINISTRATION OF SUMS.—Funds which are subject to paragraph (1) shall be combined and administered by the Secretary as a single fund which shall be available for obliga-

tion for the same period as funds apportioned under section 104(b)(1) of this title.

**[(d) STRATEGIC HIGHWAY RESEARCH PROGRAM.—**

**[(1) ESTABLISHMENT.—**The Secretary, in consultation with the American Association of State Highway and Transportation Officials, shall carry out such research, development, and technology transfer activities as the Secretary determines to be strategically important to the national highway transportation system.

**[(2) COOPERATIVE AGREEMENTS.—**The Secretary may make grants to, and enter into cooperative agreements with, the American Association of State Highway and Transportation Officials and the National Academy of Sciences to carry out such activities under this subsection as the Secretary determines are appropriate. Advance payments may be made as necessary to carry out the program under this subsection.

**[(3) PERIOD OF AVAILABILITY.—**Funds set aside to carry out this subsection shall remain available for the fiscal year in which such funds are made available and the three succeeding fiscal years.

**[(4) SET ASIDE.—**As soon as practicable after the date of the enactment of the Federal-Aid Highway Act of 1987 in fiscal year 1987 and on October 1 of each of fiscal years 1988, 1989, 1990, and 1991, the Secretary shall set aside to carry out this subsection not to exceed  $\frac{1}{4}$  of 1 percent of the funds authorized to be appropriated for such fiscal year for the Federal-aid systems, for highway assistance programs under section 103(e)(4) of this title, for bridge replacement and rehabilitation under section 144 of this title, for elimination of hazards under section 152 of this title, and for elimination of hazards of railway-highway crossings under section 130 of this title. 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  $\frac{1}{4}$  of 1 percent) in the year next preceding the fiscal year for which such funds are authorized for such System.

**[(5) ANNUAL REPORT.—**The Secretary shall transmit a report annually beginning on January 1, 1988, to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives which provides information on the progress and research findings the program conducted under this subsection.

**[(6) LIMITATION OF REMEDIES.—**

**[(A) SAME REMEDY AS IF UNITED STATES.—**The remedy against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for injury, loss of property, personal injury, or death shall apply to any claim against the National Academy of Sciences for money damages for injury, loss of property, personal injury, or death caused by any negligent or wrongful act or omission arising from activities conducted under or in connection with this subsection. Any such claim shall be subject to the limitations and exceptions which would be applicable to such

claim if such claim were against the United States. With respect to any such claim, the Secretary shall be treated as the head of the appropriate Federal agency for purposes of sections 2672 and 2675 of such title.

[(B) EXCLUSIVENESS OF REMEDY.—The remedy referred to in subparagraph (A) shall be exclusive of any other civil action or proceeding for the purpose of determining liability arising from any such act or omission without regard to when the act or omission occurred.

[(C) TREATMENT.—Employees of the National Academy of Sciences and other individuals appointed by the President of the National Academy of Sciences and acting on its behalf in connection with activities carried out under this subsection shall be treated as if they are employees of the Federal Government under section 2671 of title 28, United States Code, for purposes of a civil action or proceeding with respect to a claim described in subparagraph (A); and the civil action or proceeding shall proceed in the same manner as any proceeding under chapter 171 of such title, or any proceeding under chapter 171 of such title or action against the United States filed pursuant to section 1346(b) of such title, and shall be subject to the limitations and exceptions applicable to such a proceeding or action.

[(D) REMOVAL.—Upon certification by the Attorney General that a civil action or proceeding with respect to a claim described in subparagraph (A) is being brought in a State court, such civil action or proceeding shall be removed from the State court without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceeding shall be deemed a tort action brought against the United States under the provisions of title 28, United States Code. For purposes of removal, the certification of the Attorney General under this subparagraph shall be conclusive.

[(E) SOURCES OF PAYMENTS.—Payment of any award, compromise, or settlement of a civil action or proceeding with respect to a claim described in subparagraph (A) shall be paid first out of insurance maintained by the National Academy of Sciences, second from funds made available to carry out this subsection, and then from sums made available under section 1304 of title 31, United States Code. For purposes of such section, such an award, compromise, or settlement shall be deemed to be a judgment, award, or settlement payable under section 2414 or 2672 of title 28, United States Code. The Secretary may establish a reserve of funds made available to carry out this subsection for making payments under this paragraph.

[(e) APPLIED RESEARCH AND TECHNOLOGY PROGRAM.—

[(1) ESTABLISHMENT.—The Secretary shall establish and implement in accordance with this subsection an applied research and technology program for the purpose of accelerating testing, evaluation, and implementation of technologies which are designed to improve the durability, efficiency, environ-



mental impact, productivity, and safety of highway, transit, and intermodal transportation systems.

[(2) GUIDELINES.—Not later than 18 months after the date of the enactment of this subsection, the Secretary shall issue guidelines to carry out this subsection. Such guidelines shall include:

[(A) TECHNOLOGIES.—Guidelines on the selection of both foreign and domestic technologies to be tested.

[(B) TEST LOCATIONS.—Guidelines on the selection of locations at which tests will be conducted. Such guidelines shall ensure that testing is conducted in a range of climatic, traffic, geographic, and environmental conditions, as appropriate for the technology being tested.

[(C) DATA.—Guidelines for the scientific collection, evaluation, and dissemination of appropriate test data.

[(3) TECHNOLOGIES.—Technologies which may be tested under this subsection include, but are not limited to—

[(A) accelerated construction materials and procedures;

[(B) environmentally beneficial materials and procedures;

[(C) materials and techniques which provide enhanced serviceability and longevity under adverse climactic, environmental, and load effects;

[(D) technologies which increase the efficiency and productivity of vehicular travel; and

[(E) technologies and techniques which enhance the safety and accessibility of vehicular transportation systems.

[(4) HEATED BRIDGE TECHNOLOGIES.—

[(A) PROJECTS.—As part of the program under this subsection, the Secretary shall carry out projects to assess the state of technology with respect to heating the decks of bridges and the feasibility of, and costs and benefits associated with, heating the decks of bridges. Such projects shall be carried out by installing heating equipment on the decks of bridges which are being replaced or rehabilitated under section 144 of this title.

[(B) MINIMUM NUMBER OF BRIDGES.—The number of bridges for which heating equipment is installed under this subsection in a fiscal year shall not be less than 10 bridges.

[(5) ELASTOMER MODIFIED ASPHALT.—As part of the program under this subsection, the Secretary shall carry out a project in the State of New Jersey to demonstrate the environmental and safety benefits of elastomer modified asphalt.

[(6) HIGH PERFORMANCE BLENDED HYDRAULIC CEMENT.—As part of the program under this subsection, the Secretary shall carry out a project in the State of Missouri to demonstrate the durability and construction efficiency of high performance blended hydraulic cement.

[(7) THIN BONDED OVERLAY AND SURFACE LAMINATION OF PAVEMENT.—As part of the program under this subsection, the Secretary shall carry out projects to assess the state of tech-

nology with respect to thin bonded overlay (including inorganic bonding systems) and surface lamination of pavement, and to assess the feasibility of, and costs and benefits associated with, the repair, rehabilitation, and upgrading of highways and bridges with overlay. Such projects shall be carried out so as to minimize overlay thickness, minimize initial laydown costs, minimize time out of service, and maximize lifecycle durability.

[(8) ALL WEATHER PAVEMENT MARKINGS.—As part of the program under this subsection, the Secretary shall carry out a program to demonstrate the safety and durability of all weather pavement markings.

[(9) TESTING OF HIGHWAY TECHNOLOGIES.—Projects carried out under this subsection to test technologies related to highways shall be carried out on highways on the Federal-aid system.

[(10) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to States and localities in carrying out projects under this subsection.

[(11) ANNUAL REPORT.—Not later than 1 year after the date of the enactment of this subsection, and annually thereafter, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the progress and research findings of the program carried out under this subsection.

[(12) FEDERAL SHARE.—The Federal share of the cost of a project carried out under this subsection shall not exceed 80 percent.

[(13) FUNDING.—The Secretary shall expend from administrative and research funds deducted under section 104(a) of this title and funds made available under section 5313(a) of title 49, \$35,000,000 for fiscal year 1992 and \$41,000,000 per fiscal year for each of fiscal years 1993, 1994, 1995, 1996, and 1997 to carry out this subsection. Of such amounts, in each of fiscal years 1992, 1993, 1994, 1995, 1996, and 1997, the Secretary shall expend not less than \$4,000,000 per fiscal year to carry out projects related to heated bridge technologies under paragraph (4), not less than \$2,500,000 per fiscal year to carry out projects related to thin bonded overlay and surface lamination of pavements under paragraph (7), and not less than \$2,000,000 per fiscal year to carry out projects related to all weather pavement markings under paragraph (8). Amounts made available under this subsection shall remain available until expended and shall not be subject to any obligation limitation.

[(f) SEISMIC RESEARCH PROGRAM.—

[(1) ESTABLISHMENT.—The Secretary shall establish a program to study the vulnerability of highways, tunnels, and bridges on the Federal-aid system to earthquakes and develop and implement cost-effective methods of retrofitting such highways, tunnels, and bridges to reduce such vulnerability.

[(2) COOPERATION WITH NATIONAL CENTER FOR EARTHQUAKE ENGINEERING RESEARCH.—The Secretary shall conduct the program under this section in cooperation with the Na-

tional Center for Earthquake Engineering Research at the University of Buffalo.

[(3) COOPERATION WITH AGENCIES PARTICIPATING IN NATIONAL HAZARDS REDUCTION PROGRAM.—The Secretary shall further conduct the program under this section in consultation and cooperation with Federal departments and agencies participating in the National Hazards Reduction Program established by section 5 of the Earthquake Hazards Reduction Act of 1977 and shall take such actions as may be necessary to ensure that the program under this subsection is consistent with—

[(A) planning and coordination activities of the Federal Emergency Management Agency under section 5(b)(1) of such Act; and

[(B) the plan developed by the Director of the Federal Emergency Management Agency under section 8(b) of such Act.

[(4) FUNDING.—Of amounts deducted under section 104(a) of this title, the Secretary shall expend not more than \$2,000,000 per fiscal year in each of fiscal years 1992, 1993, 1994, 1995, 1996, and 1997 to carry out this subsection.

[(5) REPORT.—Not later than 2 years after the date of the enactment of this section, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the progress and research findings of the program carried out under this section.

[(g) As used in this section the term “safety” includes, but is not limited to, highway safety systems, research, and development relating to vehicle, highway, and driver characteristics, accident investigations, communications, emergency medical care, and transportation of the injured.

[(h) 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 in January 1983, and in January of every second year thereafter, estimates of the future highway needs of the Nation. The biennial reports required under this subsection shall provide the means, including all necessary information, to relate and compare the conditions and service measures used in different years when such measures are changed.]

### **§ 307. *[Repealed]***

### **§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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 consulta-

tion regarding highway needs for the national defense. Travel and subsistence expenses of offices 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.

**§ 313. [Repealed P.L. 89-564]**

**§ 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.

**§ 315. Rules, regulations, and recommendations**

Except as provided in sections 204(d), 205(a), 206(b), 207(b), and 208(c)<sup>1</sup> 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 highway departments~~ *State transportation departments* as he deems necessary for preserving and protecting the highways and insuring the safety to traffic thereon.

**§ 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 highway department~~ *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.

**§ 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

<sup>1</sup>Section 133(b)(18) of P.L. 100-17, 101 Stat. 172, amended this section by striking "204(d), 205(a), 207(b), and 208(c)" and inserting "204(f) and 205(a)". The amendment could not be executed.

transferred to the [State highway department]*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 highway department]*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.

### **§ 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 or 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 highway department]*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.

### **§ 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  $\frac{1}{4}$  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.

**§ 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 programs, 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.

### **§ 321. National Highway Institute**

[(a) ESTABLISHMENT; DUTIES; PROGRAMS.—

[(1) ESTABLISHMENT.—The Secretary shall establish and operate in the Federal Highway Administration a National Highway Institute (hereinafter in this section referred to as the “Institute”).

[(2) DUTIES.—The Institute shall develop and administer, in cooperation with the State transportation or highway departments, and any national or international entity, training programs of instruction for Federal Highway Administration, State and local transportation and highway department employees, State and local police, public safety and motor vehicle employees, and United States citizens and foreign nationals engaged or to be engaged in highway work of interest to the United States. The Secretary shall administer, through the Institute, the authority vested in the Secretary by this title or by any other provision of law for the development and conduct of education and training programs relating to highways.

[(3) TYPES OF PROGRAMS.—Programs which the Institute may develop and administer may include courses in modern developments, techniques, management, and procedures relating to highway planning, environmental factors, acquisition of rights-of-way, relocation assistance, engineering, safety, construction, maintenance, contract administration, motor carrier activities, and inspection.

[(b) SET-ASIDE; FEDERAL SHARE.—Not to exceed  $\frac{1}{16}$  of 1 percent of all funds apportioned to a State under section 104(b)(3) for the surface transportation program shall be available for expenditure by the [State highway department] *State transportation department* for payment of not to exceed 80 percent of the cost of tuition and direct educational expenses (but not travel, subsistence, or salaries) in connection with the education and training of State and local highway department employees as provided in this section.

[(c) FEDERAL RESPONSIBILITY.—Education and training of Federal, State, and local highway employees authorized by this section shall be provided—

[(1) by the Secretary at no cost to the States and local governments for those subject areas which are a Federal program responsibility; or

[(2) in any case in which education and training are to be paid for under subsection (b), by the State (subject to the ap-

proval of the Secretary) through grants and contracts with public and private agencies, institutions, individuals, and the Institute; except that private agencies and individuals shall pay the full cost of any education and training received by them.

[(d) TRAINING FELLOWSHIPS; COOPERATION.—The Institute is authorized, subject to approval of the Secretary, to engage in all phases of contract authority for training purposes authorized by this section, including the granting of training fellowships. The Institute is also authorized to carry out its authority independently or in cooperation with any other branch of the Government, State agency, authority, association, institution, corporation (profit or nonprofit), any other national or international entity, or any other person.

[(e) COLLECTION OF FEES.—

[(1) GENERAL RULE.—The Institute may, in accordance with this subsection, assess and collect fees solely to defray the costs of the Institute in developing and administering education and training programs under this section.

[(2) LIMITATION.—Fees may be assessed and collected under this subsection only in a manner which may reasonably be expected to result in the collection of fees during any fiscal year in an aggregate amount which does not exceed the aggregate amount of the costs referred to in paragraph (1) for the fiscal year.

[(3) PERSONS SUBJECT TO FEES.—Fees may be assessed and collected under this subsection only with respect to—

[(A) persons and entities for whom education or training programs are developed or administered under this section; and

[(B) persons and entities to whom education or training is provided under this section.

[(4) AMOUNT OF FEES.—The fees assessed and collected under this subsection shall be established in a manner which ensures that the liability of any person or entity for a fee is reasonably based on the proportion of the costs referred to in paragraph (1) which relate to such person or entity.

[(f) FUNDS.—The funds required to carry out this section may be from the sums deducted for administration purposes under section 104(a). The sums provided pursuant to this subsection may be combined or held separate from the fees or memberships collected under subsection (e) and may be administered by the Secretary as a fund which shall be available until expended.

[(g) CONTRACTS.—The provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) shall not be applicable to contracts or agreements made under the authority of this section.]

**§ 321. [Repealed]**

**§ 322. [Repealed by Public Law 100-17]**

**§ 322. *Magnetic levitation transportation technology deployment program***

(a) DEFINITIONS.—*In this section:*

(1) *ELIGIBLE PROJECT COSTS.*—The term “eligible project costs” 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.

(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 (Public Law 102-240; 105 Stat. 1978).

(b) *ASSISTANCE.*—

(1) *IN GENERAL.*—The Secretary shall make available financial assistance to provide the Federal share of full project costs of eligible projects selected under this section.

(2) *FEDERAL SHARE.*—The Federal share of full project costs under paragraph (1) shall be not more than  $\frac{2}{3}$ .

(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 the Intermodal Surface Transportation Efficiency Act of 1997, 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)(A); and

(B) the amounts made available by States under subsection (h)(4);

(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  $\frac{1}{3}$  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.**—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 eligible project for financial assistance.

(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) **AUTHORIZATION OF CONTRACT AUTHORITY.**—

(i) **IN GENERAL.**—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$10,000,000 for fiscal year 1999 and \$20,000,000 for fiscal year 2000.

(ii) **CONTRACT AUTHORITY.**—Funds authorized under 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) 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 \$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.*

**(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 Infrastructure Finance and Innovation Act of 1997, including loans, loan guarantees, and lines of credit.*

### **§ 323. Donations**

**(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 [DONATED] Acquired Lands.**—

**[(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.]*

(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 obtained by the State, without violation of Federal law; and

(B) is incorporated into the project.

(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 a Federal, State, or local government.]

[(4)] (3) *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 [to which the donation is applied].

(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 highway department] *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 assessment 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 re-vested 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.

**§ 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.]

**§ 324. [Repealed]**

**§ 325. International highway transportation outreach program**

[(a) ACTIVITIES.—The Secretary is authorized to engage in activities to inform the domestic highway community of technological innovations abroad that could significantly improve highway transportation in the United States, to promote United States highway transportation expertise internationally, and to increase transfers of United States highway transportation technology to foreign countries. Such activities may include—

[(1) development, monitoring, assessment, and dissemination domestically of information about foreign highway transportation innovations 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 other countries about the technical quality of American highway transportation goods and services through participation in trade shows, seminars, expositions, and other such activities;

[(4) offering those Federal Highway Administration technical services which cannot be readily obtained from the United States private sector to be incorporated into the proposals of United States firms undertaking foreign highway transportation projects if the costs for assistance will be recovered under the terms of each project; and

[(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 the date of the enactment of this section, and in Greece and Turkey.

[(b) COOPERATION.—The Secretary may carry out the authority granted by this section, in cooperation with appropriate United States Government agencies and any State or local agency, authority, association, institution, corporation (profit or nonprofit), foreign government, multinational institution, or any other organization or person.

[(c) FUNDS.—The funds available to carry out the provisions of this section shall include funds deposited in a special account with the Secretary of the Treasury for such purposes by any cooperating organization or person. The funds shall be available for promotional materials, travel, reception and representation expenses

necessary to carry out the activities authorized by this section. Reimbursements for services provided under this section shall be credited to the appropriation concerned.】

**§ 325. [Repealed]**

**【§ 326. Education and training program**

【(a) **AUTHORITY.**—The Secretary is authorized to carry out a transportation assistance program that will provide highway and transportation agencies in (1) urbanized areas of 50,000 to 1,000,000 population, and (2) rural areas, access to modern highway technology.

【(b) **GRANTS AND CONTRACTS.**—The Secretary may make grants and enter into contracts for education and training, technical assistance, and related support service that will—

【(1) assist rural local transportation agencies to develop and expand their expertise in road and transportation areas (including pavement, bridge and safety management systems), to improve roads and bridges, to enhance programs for the movement of passengers and freight, to deal effectively with special road related problems by preparing and providing training packages, manuals, guidelines, and technical resource materials, and developing a tourism and recreational travel technical assistance program;

【(2) identify, package, and deliver usable highway technology to local jurisdictions to assist urban transportation agencies in developing and expanding their ability to deal effectively with road related problems; and

【(3) establish, in cooperation with State transportation or highway departments and universities (A) urban technical assistance program centers in States with 2 or more urbanized areas of 50,000 to 1,000,000 population, and (B) rural technical assistance program centers.

Not less than 2 centers under paragraph (3) shall be designated to provide transportation assistance that may include, but is not necessarily limited to, a “circuit-rider” program, providing training on intergovernmental transportation planning and project selection, and tourism recreational travel to American Indian tribal governments.

【(c) **FUNDS.**—The funds required to carry out the provisions of this section shall be taken out of administrative funds deducted under section 104(a). The sum of \$6,000,000 per fiscal year for each of the fiscal years 1992, 1993, 1994, 1995, 1996, and 1997 shall be set aside from such administrative funds for the purpose of providing technical and financial support for these centers, including up to 100 percent for services provided to American Indian tribal governments.】

**§ 326. [Repealed]**

**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. [Repealed]
- 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.

#### **§ 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 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

#### **§ 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 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 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. 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, 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)(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.

(3) 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 (5), 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.

(4) WAIVER.—The Secretary may waive the requirement of paragraph (3)(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.

(5) 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 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 implementing 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 approved 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 payable under this Act to the extent necessary. In applying such provisions of chapter 1 in carrying out this section the term “[State highway department] *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 by Public Law 97-35, §1107(c).]

(i) 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.

(j) RULEMAKING PROCESS.—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.

(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.

#### **§ 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,
- (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.

(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.

#### **§ 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 such staff and facilities as are necessary to carry out the functions of such Committee.

**§ 405. [Repealed by Public Law 94-280]**

**§ 406. [Repealed by section 202(9) of the Highway Safety Act of 1978]**

**§ 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.

**§ 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.

#### **§ 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.

#### **§ 410. Alcohol-impaired driving countermeasures.**

(a) GENERAL AUTHORITY.—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) MAINTENANCE OF EFFORT.—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 re-

quire 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 2 fiscal years preceding the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991.

(c) MAXIMUM PERIOD OF ELIGIBILITY; FEDERAL SHARE FOR GRANTS.—No State may receive grants under this section in more than 5 fiscal years beginning after September 30, 1992. 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 percent of the cost of implementing and enforcing in such fiscal year a program adopted by the State pursuant to subsection (a);

(2) in the second fiscal year the State receives a grant under this section, 50 percent 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 percent of the cost of implementing and enforcing in such fiscal year such program.

(d) BASIC GRANT ELIGIBILITY.—A State is eligible for a basic grant under this section in a fiscal year only if such State provides for 5 or more of the following:

(1) Establishes an expedited driver's license suspension or revocation system for persons who operate motor vehicles while under the influence of alcohol which requires that—

(A) when a law enforcement officer has probable cause under State law to believe a person has committed an alcohol-related traffic offense and such person is determined, on the basis of a chemical test, to have been under the influence of alcohol while operating the motor vehicle or refuses to submit to such a test as proposed by the officer, the officer shall serve such person with a written notice of suspension or revocation of the driver's license of such person and take possession of such driver's license;

(B) the notice of suspension or revocation referred to in subparagraph (A) shall provide information on the administrative procedures under which the State may suspend or revoke in accordance with the objectives of this section a driver's license of a person for operating a motor vehicle while under the influence of alcohol and shall specify any rights of the operator under such procedures;

(C) the State shall provide, in the administrative procedures referred to in subparagraph (B), for due process of law, including the right to an administrative review of a driver's license suspension or revocation;

(D) after serving notice and taking possession of a driver's license in accordance with subparagraph (A), the law enforcement officer immediately shall report to the State entity responsible for administering drivers' licenses all information relevant to the action taken in accordance with this clause;

(E) in the case of a person who, in any 5-year period beginning after December 18, 1991, is determined on the

basis of a chemical test to have been operating a motor vehicle under the influence of alcohol or is determined to have refused to submit to such a test as proposed by the law enforcement officer, the State entity responsible for administering drivers' licenses, upon receipt of the report of the law enforcement officer—

(i) shall suspend the driver's license of such person for a period of not less than 90 days if such person is a first offender in such 5-year period; and

(ii) shall suspend the driver's license of such person for a period of not less than 1 year, or revoke such license, if such person is a repeat offender in such 5-year period; and

(F) the suspension and revocation referred to under subparagraph (D) shall take effect not later than 30 days after the day on which the person first received notice of the suspension or revocation in accordance with subparagraph (B).

(2)(A) For each of the first three fiscal years in which a grant is received, 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

(B) For each of the last two fiscal years in which a grant is received, any person with a blood alcohol concentration of 0.08 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

(3)(A) A statewide program for stopping motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether or not the operators of such motor vehicles are driving while under the influence of alcohol.

(B) A State shall be treated as having met the requirement of this paragraph if—

(i) the State provides to the Secretary a written certification that the highest court of the State has issued a decision indicating that implementation of subparagraph (A) would constitute a violation of the constitution of the State; and

(ii) the State demonstrates to the satisfaction of the Secretary that—

(I) the alcohol fatal crash involvement rate in the State has decreased in each of the 3 most recent calendar years for which statistics for determining such rate are available; and

(II) the alcohol fatal crash involvement rate in the State has been lower than the average such rate for all States in each of such calendar years.

(4) 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, or an equivalent amount of non-Federal funds are provided, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

(5) An effective system for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages. 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 years of age or older.

(6) Establishment of a mandatory sentence, which shall not be subject to suspension or probation, of (A) imprisonment for not less than 48 consecutive hours, or (B) not less than 10 days of community service, of any person convicted of driving while intoxicated more than once in any 5-year period.

(7) Any individual 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 or driving under the influence of alcohol.

(e) AMOUNT OF BASIC GRANT.—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 (d) shall equal 30 percent of the amount apportioned to such State for fiscal year 1992 under section 402 of this title.

(f) SUPPLEMENTAL GRANTS.—

(1) OPEN CONTAINER LAWS.—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 makes unlawful the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway, except—

(A) as allowed in the passenger area, by persons (other than the driver), of any motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers; or

(B) as otherwise specifically allowed by such State, with the approval of the Secretary, but in no event may the driver of such motor vehicle be allowed to possess or consume an alcoholic beverage in the passenger area.

(2) SUSPENSION OF REGISTRATION AND RETURN OF LICENSE PLATES.—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 for the suspension of the registration of, and the return to such State of the license plates for an individual who—

(A) has been convicted on more than 1 occasion of an alcohol-related traffic offense within any 5-year period beginning after the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991; or

(B) has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for such an offense.



A State may provide limited exceptions to such suspension of registration or return of license plates on an individual basis to avoid undue hardship to any individual (including any family member of the convicted individual and any co-owner of the motor vehicle) who is completely dependent on the motor vehicle for the necessities of life. Such exceptions may not result in unrestricted reinstatement of the registration of the motor vehicle, unrestricted return of the license plates of the motor vehicle, or unrestricted return of the motor vehicle.

(3) MANDATORY BLOOD ALCOHOL CONCENTRATION TESTING PROGRAMS.—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 for mandatory blood alcohol concentration testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in an accident resulting in the loss of human life or, as determined by the Secretary, serious bodily injury, has committed an alcohol-related traffic offense.

(4) DRUGGED DRIVING PREVENTION.—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—

(A) provides for laws concerning drugged driving under which—

(i) a person shall not drive or be in actual physical control of a motor vehicle while under the influence of alcohol, a controlled substance, a combination of controlled substances, or any combination of alcohol and controlled substances;

(ii) any person who operates a motor vehicle upon the highways of the State shall be deemed to have given consent to a test or tests of his or her blood, breath, or urine for the purpose of determining the blood alcohol concentration or the presence of controlled substances in his or her body; and

(iii) the driver's license of a person shall be suspended promptly, for a period of not less than 90 days in the case of a first offender and not less than 1 year in the case of any repeat offender, when a law enforcement officer has probable cause under State law to believe such person has committed a traffic offense relating to controlled substances use, and such person (I) is determined, on the basis of 1 or more chemical tests, to have been under the influence of controlled substances while operating a motor vehicle, or (II) refuses to submit to such a test as proposed by the officer;

(B) has in effect a law which provides that—

(i) any person convicted of a first violation of driving under the influence of controlled substances or alcohol, or both, shall receive—

(I) a mandatory license suspension for a period of not less than 90 days; and

(II) either an assignment of 100 hours of community service or a minimum sentence of imprisonment for 48 consecutive hours;

(ii) any person convicted of a second violation of driving under the influence of controlled substances or alcohol, or both, within 5 years after a conviction for the same offense shall receive a mandatory minimum sentence of imprisonment for 10 days and license revocation for not less than 1 year;

(iii) any person convicted of a third or subsequent violation of driving under the influence of controlled substances or alcohol, or both, within 5 years after a prior conviction for the same offense shall—

(I) receive a mandatory minimum sentence of imprisonment for 120 days; and

(II) have his or her license revoked for not less than 3 years; and

(iv) any person convicted of driving with a suspended or revoked license or in violation of a restriction imposed as a result of a conviction for driving under the influence of controlled substances or alcohol, or both, shall receive a mandatory sentence of imprisonment for at least 30 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;

(C) provides for an effective system, as determined by the Secretary, for—

(i) the detection of driving under the influence of controlled substances;

(ii) the administration of a chemical test or tests to any driver who a law enforcement officer has probable cause under State law to believe has committed a traffic offense relating to controlled substances use; and

(iii) in instances where such probable cause exists, the prosecution of (I) those persons who are determined, on the basis of 1 or more chemical tests, to have been operating a motor vehicle while under the influence of controlled substances and (II) those persons who refuse to submit to such a test as proposed by a law enforcement officer; and

(D) has in effect 2 of the following programs:

(i) An effective educational program, as determined by the Secretary, for the prevention of driving under the influence of controlled substances.

(ii) An effective program, as determined by the Secretary, for training law enforcement officers to detect driving under the influence of controlled substances.

(iii) An effective program, as determined by the Secretary, for the rehabilitation and treatment of those convicted of driving under the influence of controlled substances.

(5) BLOOD ALCOHOL CONCENTRATION LEVEL PERCENTAGE.—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 requires that any person with a blood alcohol concentration of .08 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated in each of the first three fiscal years in which a basic grant is received.

(6) VIDEO EQUIPMENT FOR DETECTION OF DRUNK AND DRUGGED DRIVERS.—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 a program to acquire video equipment to be used in detecting persons who operate motor vehicles while under the influence of alcohol or a controlled substance and in effectively prosecuting those persons, and to train personnel in the use of that equipment.

(g) ADMINISTRATIVE EXPENSES.—Funds authorized to be appropriated to carry out this section shall be subject to a deduction not to exceed 5 percent for the necessary costs of administering the provisions of this section.

(h) APPLICABILITY OF CHAPTER 1.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, all provisions of chapter 1 of this title that are applicable to National Highway System 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.

(2) INCONSISTENT PROVISIONS.—If the Secretary determines that a provision of chapter 1 of this title is inconsistent with this section, such provision shall not apply to funds authorized to be appropriated to carry out this section.

(3) CREDIT FOR STATE AND LOCAL EXPENDITURES.—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.

(4) INCREASED FEDERAL SHARE FOR CERTAIN INDIAN TRIBE PROGRAMS.—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, the Sec-

retary may increase the Federal share of the cost thereof payable under this title to the extent necessary.

(5) TREATMENT OF TERM “STATE ~~【HIGHWAY】~~*transportation department*”—In applying provisions of chapter 1 in carrying out this section, the term “~~【State highway department】~~*State transportation department*” as used in such provisions shall mean the Governor of a State and, in the case of an Indian tribe program, the Secretary of the Interior.

(i) DEFINITIONS.—For the purposes of this section, the following definitions apply:

(1) ALCOHOLIC BEVERAGE.—The term “alcoholic beverage” has the meaning such term has under section 158(c) of this title.

(2) CONTROLLED SUBSTANCES.—The term “controlled substances” has the meaning such term has under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

(3) MOTOR VEHICLE.—The term “motor vehicle” has the meaning such term has under section 154(b) of this title.

(4) OPEN ALCOHOLIC BEVERAGE CONTAINER.—The term “open alcoholic beverage container” means any bottle, can, or other receptacle—

(A) which contains any amount of an alcoholic beverage; and

(B)(i) which is open or has a broken seal, or

(ii) the contents of which are partially removed.

(j) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out this section, there is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) \$25,000,000 for each of fiscal years 1994 through 1997, and an additional \$500,000 for fiscal year 1997. Amounts made available to carry out this section are authorized to remain available until expended.

## CHAPTER 5—RESEARCH AND TECHNOLOGY

### SUBCHAPTER I—RESEARCH AND TRAINING

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## SUBCHAPTER II—INTELLIGENT TRANSPORTATION SYSTEMS

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## SUBCHAPTER III—FUNDING

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## SUBCHAPTER I—RESEARCH AND TRAINING

**§ 501. Definition of safety**

*In this chapter, 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.*

**§ 502. Research and technology program****(a) GENERAL AUTHORITY AND COLLABORATIVE AGREEMENTS.—****(1) AUTHORITY OF THE SECRETARY.—****(A) IN GENERAL.—The Secretary—**

*(i) shall carry out research, development, and technology transfer activities with respect to—*

*(I) motor carrier transportation;*

*(II) all phases of transportation planning and development (including construction, operation, modernization, development, design, maintenance, safety, financing, and traffic conditions); and*

*(III) the effect of State laws on the activities described in subclauses (I) and (II); and*

*(ii) may test, develop, or assist in testing and developing any material, invention, patented article, or process.*

**(B) COOPERATION, GRANTS, AND CONTRACTS.—The Secretary may carry out this section—**

*(i) independently;*

*(ii) in cooperation with other Federal departments, agencies, and instrumentalities; or*

*(iii) 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 State agency, authority, association, institution, for-profit or nonprofit corporation, organization, foreign country, or person.

(C) *TECHNICAL INNOVATION.*—The Secretary shall develop and carry out programs to facilitate the application of such products of research and technical innovations as will improve the safety, efficiency, and effectiveness of the transportation system.

(D) *FUNDS.*—

(i) *IN GENERAL.*—Except as otherwise specifically provided in other sections of this chapter—

(I) to carry out this subsection, the Secretary shall use—

(aa) funds made available under section 541 for research, technology, and training; and

(bb) such funds as may be deposited by any cooperating organization or person in a special account of the Treasury established for this purpose; and

(II) the funds described in item (aa) 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.

(ii) *USE OF FUNDS.*—The Secretary shall use funds described in clause (i) to develop, administer, communicate, and promote the use of products of research, development, and technology transfer programs under this section.

(2) *COLLABORATIVE RESEARCH AND DEVELOPMENT.*—

(A) *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 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.

(B) *AGREEMENTS.*—In carrying out this paragraph, 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)).

(C) *FEDERAL SHARE.*—

(i) *IN GENERAL.*—The Federal share of the cost of activities carried out under a cooperative research and development agreement entered into under this paragraph shall not exceed 50 percent, except that if there is substantial public interest or benefit, the Secretary may approve a greater Federal share.

(ii) *NON-FEDERAL SHARE.*—All costs directly incurred by the non-Federal partners, including person-

*nel, travel, and hardware development costs, shall be credited toward the non-Federal share of the cost of the activities described in clause (i).*

*(D) USE OF TECHNOLOGY.—The research, development, or use of a technology under a cooperative research and development agreement entered into under this paragraph, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).*

*(3) 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.*

*(b) MANDATORY ELEMENTS OF PROGRAM.—The Secretary shall include in the surface transportation research, development, and technology transfer programs under this subsection and as specified elsewhere in this title—*

*(1) a coordinated long-term program of research for the development, use, and dissemination of performance indicators to measure the performance of the surface transportation systems of the United States, including indicators for productivity, efficiency, energy use, air quality, congestion, safety, maintenance, and other factors that reflect the overall performance of the system; and*

*(2) a program to strengthen and expand surface transportation infrastructure research, development, and technology transfer, which shall include, at a minimum—*

*(A) methods and materials for improving the durability of surface transportation infrastructure facilities and extending the life of bridge structures, including new and innovative technologies to reduce corrosion;*

*(B) a research and development program directed toward the reduction of costs, and the mitigation of impacts, associated with the construction of highways and mass transit systems;*

*(C) a surface transportation research program to develop nondestructive evaluation equipment for use with existing infrastructure facilities and with next-generation infrastructure facilities that use advanced materials;*

*(D)(i) information technology, including appropriate computer programs to collect and analyze data on the status of infrastructure facilities described in subparagraph (C) with respect to enhancing management, growth, and capacity; and*

*(ii) dynamic simulation models of surface transportation systems for—*

*(I) predicting capacity, safety, and infrastructure durability problems;*

*(II) evaluating planned research projects; and*

*(III) testing the strengths and weaknesses of proposed revisions to surface transportation operation programs;*

*(E) new innovative technologies to enhance and facilitate field construction and rehabilitation techniques for*

*minimizing disruption during repair and maintenance of structures;*

*(F) initiatives to improve the ability of the United States to respond to emergencies and natural disasters and to enhance national defense mobility; and*

*(G) an evaluation of traffic calming measures that promote community preservation, transportation mode choice, and safety.*

*(c) REPORT ON GOALS, MILESTONES, AND ACCOMPLISHMENTS.—The goals, milestones, and accomplishments relevant to each of the mandatory program elements described in subsection (b) shall be specified in the report required under section 5221(d) of title 49.*

### **§503. Advanced research program**

*(a) ESTABLISHMENT.—*

*(1) IN GENERAL.—The Secretary shall establish an advanced research program within the Federal Highway Administration to address longer-term, higher-risk research that shows potential benefits for improving the durability, mobility, efficiency, environmental impact, productivity, and safety of transportation systems.*

*(2) DEVELOPMENT OF PARTNERSHIPS.—In carrying out the program, the Secretary shall attempt to develop partnerships with the public and private sectors.*

*(b) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—Under the program, the Secretary may make grants and enter into cooperative agreements and contracts for advanced research.*

*(c) AUTHORIZATION OF CONTRACT AUTHORITY.—*

*(1) IN GENERAL.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$5,000,000 for fiscal year 1998, \$7,000,000 for fiscal year 1999, \$9,000,000 for fiscal year 2000, and \$10,000,000 for each of fiscal years 2001 through 2003.*

*(2) CONTRACT AUTHORITY.—Funds authorized under 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 any activity funded under this subsection shall be determined by the Secretary.*

### **§504. Long-term pavement performance program**

*(a) 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 (Public Law 102-240) through the midpoint of a planned 20-year life of the long-term pavement performance program (referred to in this section as the “program”).*

*(b) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—Under the program, the Secretary shall make grants and enter into cooperative agreements and contracts to—*

*(1) monitor, material-test, and evaluate highway test sections in existence as of the date of the grant, agreement, or contract;*



(2) analyze the data obtained in carrying out paragraph (1); and

(3) prepare products to fulfill program objectives and meet future pavement technology needs.

(c) *AUTHORIZATION OF CONTRACT AUTHORITY.*—

(1) *IN GENERAL.*—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$15,000,000 for each of fiscal years 1998 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, except that—

(A) the Federal share of the cost of any activity funded under this section shall be determined by the Secretary; and

(B) the funds 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.

#### **§505. State planning and research program**

(a) *IN GENERAL.*—

(1) *AVAILABILITY OF FUNDS.*—Two percent of the sums apportioned for fiscal year 1998 and each fiscal year thereafter to any State under section 104 (except section 104(f)) and any transfers or additions to the surface transportation program under section 133 shall be available for expenditure by the State transportation department, in consultation with the Secretary, in accordance with this section.

(2) *USE OF FUNDS.*—The sums referred to in paragraph (1) shall be available only for—

(A) intermodal metropolitan, statewide, and nonmetropolitan planning under sections 134 and 135;

(B) development and implementation of management systems referred to in section 303;

(C) studies, research, development, and technology transfer activities necessary for the planning, design, construction, management, operation, maintenance, regulation, and taxation of the use of surface transportation systems, including training and accreditation of inspection and testing on engineering standards and construction materials for the systems; and

(D) studies of the economy, safety, and convenience of surface transportation usage and the desirable regulation and equitable taxation of surface transportation usage.

(b) *MINIMUM EXPENDITURES ON STUDIES, RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.*—

(1) *IN GENERAL.*—Not less than 25 percent of the funds of a State that are subject to subsection (a) shall be expended by the State transportation department for studies, research, development, and technology transfer activities described in subparagraphs (C) and (D) of subsection (a)(2) unless the State certifies to the Secretary for the fiscal year that the total expenditures by the State transportation department for transportation plan-

ning under sections 134 and 135 will exceed 75 percent of the amount of the funds and the Secretary accepts the certification.

(2) *EXEMPTION FROM SMALL BUSINESS 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 financed with funds referred to in 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 FUNDS.*—Funds referred to in subsection (a) shall be combined and administered by the Secretary as a single fund, which shall be available for obligation for the same period as funds apportioned under section 104(b)(1)."

#### **§506. Education and training**

(a) *LOCAL TECHNICAL ASSISTANCE PROGRAM.*—

(1) *AUTHORITY.*—The Secretary shall carry out a transportation assistance program that will provide access to modern highway 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 that will—

(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, 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) 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;

(C) operate, in cooperation with State transportation departments and universities—

(i) local technical assistance program centers 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

(D) allow local transportation agencies and tribal governments, in cooperation with the private sector, to enhance new technology implementation.

(3) AUTHORIZATION OF CONTRACT AUTHORITY.—

(A) IN GENERAL.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) \$7,000,000 for fiscal year 1998, \$7,000,000 for fiscal year 1999, \$7,000,000 for fiscal year 2000, \$8,000,000 for fiscal year 2001, \$8,000,000 for fiscal year 2002, and \$8,000,000 for fiscal year 2003 to be used to develop and administer the program established under this section and to provide technical and financial support for the centers operated under paragraph (2)(C).

(B) CONTRACT AUTHORITY.—Funds authorized under this paragraph 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 any activity under this subsection shall be determined by the Secretary; and

(ii) the funds 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.

(b) NATIONAL HIGHWAY INSTITUTE.—

(1) ESTABLISHMENT; DUTIES; PROGRAMS.—

(A) ESTABLISHMENT.—The Secretary shall establish and operate in the Federal Highway Administration a National Highway Institute (referred to in this subsection as the “Institute”).

(B) DUTIES.—

(i) INSTITUTE.—In cooperation with State transportation departments, United States industry, and any national or international entity, the Institute shall develop and administer education and training programs of instruction for—

(I) Federal Highway Administration, State, and local transportation agency employees;

(II) regional, State, and metropolitan planning organizations;

(III) State and local police, public safety, and motor vehicle employees; and

(IV) United States citizens and foreign nationals engaged or to be engaged in surface transportation work of interest to the United States.

(ii) *SECRETARY.*—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.

(C) *TYPES OF PROGRAMS.*—Programs that the Institute may develop and administer may include courses in modern developments, techniques, methods, regulations, management, and procedures relating to—

- (i) surface transportation;
- (ii) environmental factors;
- (iii) acquisition of rights-of-way;
- (iv) relocation assistance;
- (v) engineering;
- (vi) safety;
- (vii) construction;
- (viii) maintenance;
- (ix) operations;
- (x) contract administration;
- (xi) motor carrier activities;
- (xii) inspection; and
- (xiii) highway finance.

(2) *SET ASIDE; FEDERAL SHARE.*—Not to exceed  $\frac{1}{4}$  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 travel, subsistence, or salaries) in connection with the education and training of employees of State and local transportation agencies in accordance with this subsection.

(3) *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.

(4) *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.

(5) *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.

(6) *FUNDING.*—

(A) *AUTHORIZATION OF CONTRACT AUTHORITY.*—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection \$5,000,000 for fiscal year 1998, \$5,000,000 for fiscal year 1999, \$5,000,000 for fiscal year 2000, \$6,000,000 for fiscal year 2001, \$6,000,000 for fiscal year 2002, and \$6,000,000 for fiscal year 2003.

(B) *RELATION TO FEES.*—The funds provided under this paragraph may be combined with or held separate from the fees collected under paragraph (5).

(C) *CONTRACT AUTHORITY.*—Funds authorized under this paragraph 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 any activity under this subsection shall be determined by the Secretary; and

(ii) the funds shall remain available for obligation for a period of 1 year after the last day of the fiscal year for which the funds are authorized.

(7) *CONTRACTS.*—Section 3709 of the Revised Statutes (41 U.S.C. 5) shall not apply to a contract or agreement entered into under this subsection.

(c) *DWIGHT DAVID EISENHOWER TRANSPORTATION FELLOWSHIP PROGRAM.*—

(1) *GENERAL AUTHORITY.*—*The Secretary, acting independently or in cooperation with other Federal departments, agencies, and instrumentalities, may make grants for fellowships for any purpose for which research, technology, or capacity building is authorized under this chapter.*

(2) *DWIGHT DAVID EISENHOWER TRANSPORTATION FELLOWSHIP PROGRAM.*—

(A) *IN GENERAL.*—*The Secretary shall carry out a transportation fellowship program, to be known as the “Dwight David Eisenhower Transportation Fellowship Program”, for the purpose of attracting qualified students to the field of transportation.*

(B) *TYPES OF FELLOWSHIPS.*—*The program shall offer fellowships at the junior through postdoctoral levels of college education.*

(C) *CITIZENSHIP.*—*Each recipient of a fellowship under the program shall be a United States citizen.*

(3) *AUTHORIZATION OF CONTRACT AUTHORITY.*—

(A) *IN GENERAL.*—*There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection \$2,000,000 for each of fiscal years 1998 through 2003.*

(B) *CONTRACT AUTHORITY.*—*Funds authorized under this paragraph 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 any activity funded under this subsection shall be determined by the Secretary; and*

(ii) *the funds shall remain available for obligation for a period of 1 year after the last day of the fiscal year for which the funds are authorized.*

(d) *HIGHWAY CONSTRUCTION TRAINING PROGRAMS.*—

(1) *USE OF FUNDS BY THE SECRETARY.*—

(A) *IN GENERAL.*—*The Secretary, in cooperation with any other department or agency of the Federal Government, State agency, authority, association, institution, Indian tribal government, for-profit or nonprofit corporation, or other organization or person, may—*

(i) *develop, conduct, and administer highway construction and technology training, including skill improvement, programs; and*

(ii) *develop and fund Summer Transportation Institutes.*

(B) *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 by the Secretary under this subsection.*

(C) *FUNDING.*—

(i) *IN GENERAL.*—*Before making apportionments under section 104(b) for a fiscal year, the Secretary shall deduct such sums as the Secretary determines are*

necessary, but not to exceed \$10,000,000 for each fiscal year, to carry out this subsection.

(ii) *AVAILABILITY.*—Sums deducted under clause (i) shall remain available until expended.

(2) *USE OF FUNDS APPORTIONED TO STATES.*—Notwithstanding any other provision of law, upon request of a State transportation department to the Secretary, not to exceed  $\frac{1}{2}$  of 1 percent of the funds apportioned to the State for a fiscal year under paragraphs (1) and (3) of section 104(b) may be made available to carry out this subsection.

(3) *RESERVATION OF TRAINING POSITIONS FOR INDIVIDUALS RECEIVING WELFARE ASSISTANCE.*—In carrying out this subsection, the Secretary and States may reserve training positions for individuals who receive welfare assistance from a State.

**§507. International highway transportation outreach program**

(a) *ACTIVITIES.*—The Secretary is authorized to engage in activities to inform the domestic highway community of technological innovations abroad that could significantly improve highway transportation in the United States, to promote United States highway transportation expertise, goods, and services internationally, and to increase transfers of United States highway transportation technology to foreign countries. Such activities may include—

(1) development, monitoring, assessment, and dissemination domestically of information about foreign highway transportation innovations 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 other countries about the technical quality of American highway transportation goods and services through participation in trade shows, seminars, expositions, and other such activities;

(4) offering those Federal Highway Administration technical services which cannot be readily obtained from the United States private sector to be incorporated into the proposals of United States firms undertaking foreign highway transportation projects if the costs for assistance will be recovered under the terms of each project; and

(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 the date of the enactment of this section, and in Greece and Turkey.

(b) *COOPERATION.*—The Secretary may carry out the authority granted by this section, in cooperation with appropriate United States Government agencies and any State or local agency, authority, association, institution, corporation (profit or nonprofit), foreign government, multinational institution, or any other organization or person.

(c) *USE OF FUNDS.*—

(1) *FUNDS DEPOSITED IN SPECIAL ACCOUNT.*—Funds available to carry out this section shall include funds deposited by

any cooperating organization or person in a special account for the program established under this section with the Secretary of the Treasury.

(2) *USE OF FUNDS.*—The funds deposited in the special account and other funds available to carry out this section shall be available to pay the cost of any activity eligible under this section, including the cost of promotional materials, travel, reception and representation expenses, and salaries and benefits of officers and employees of the Department of Transportation.

(3) *REIMBURSEMENTS.*—Reimbursements for the salaries and benefits of Federal Highway Administration employees who provide services under this section shall be credited to the special account.

(d) *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).

**§508. National technology deployment initiatives and partnerships program**

(a) *ESTABLISHMENT.*—The Secretary shall develop and administer a national technology deployment initiatives and partnerships program (referred to in this section as the “program”).

(b) *PURPOSE.*—The purpose of the program is to significantly accelerate the adoption of innovative technologies by the surface transportation community.

(c) *DEPLOYMENT GOALS.*—

(1) *ESTABLISHMENT.*—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish not more than 5 deployment goals to carry out subsection (a).

(2) *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, or sustainability.

(3) *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.

(d) *CONTINUATION OF SHRP PARTNERSHIPS.*—Under the program, the Secretary shall continue 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).

(e) *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—



(1) the testing and evaluation of products of the strategic highway research program;

(2) the further development and implementation of technology in areas such as the Superpave system and the use of lithium salts to prevent and mitigate alkali silica reactivity; and

(3) the provision of support for long-term pavement performance product implementation and technology access.

(f) *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.

(g) *FUNDING.*—

(1) *AUTHORIZATION OF CONTRACT AUTHORITY.*—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$50,000,000 for each of fiscal years 1998 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, except that—

(A) the Federal share of the cost of any activity under this section shall be determined by the Secretary; and

(B) the funds 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.

(3) *ALLOCATION.*—To the extent appropriate to achieve the goals established under subsection (c), the Secretary may further allocate funds made available under this subsection to States for their use.

#### **§509. Infrastructure investment needs report**

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 estimates of the future highway and bridge needs of the United States.

#### **§510. Innovative bridge research and construction program**

(a) *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.

(b) *GOALS.*—The goals of the program shall include—

(1) the development of new, cost-effective innovative material highway bridge applications;

(2) the reduction of maintenance costs and life-cycle costs of bridges, including the costs of new construction, replacement, or rehabilitation of deficient bridges;

(3) the development of construction techniques to increase safety and reduce construction time and traffic congestion;

(4) *the development of engineering design criteria for innovative products and materials for use in highway bridges and structures; and*

(5) *the development of highway bridges and structures that will withstand natural disasters, including alternative processes for the seismic retrofit of bridges.*

(c) *GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—*

(1) *IN GENERAL.—Under the program, the Secretary shall make grants to, and enter into cooperative agreements and contracts with—*

(A) *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*

(B) *States to pay the Federal share of the cost of repair, rehabilitation, replacement, and new construction of bridges or structures that demonstrates the application of innovative materials.*

(2) *GRANTS.—*

(A) *APPLICATIONS.—*

(i) *SUBMISSION.—To receive a grant under this section, an entity described in paragraph (1) shall submit an application to the Secretary.*

(ii) *CONTENTS.—The application shall be in such form and contain such information as the Secretary may require.*

(B) *APPROVAL CRITERIA.—The Secretary shall select and approve applications for grants under this section based on whether the project that is the subject of the grant meets the goals of the program described in subsection (b).*

(d) *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 subsection (c) is made available to State and local transportation departments and other interested parties as specified by the Secretary.*

(e) *FEDERAL SHARE.—The Federal share of the cost of a project under this section shall be determined by the Secretary.*

(f) *AUTHORIZATION OF CONTRACT AUTHORITY.—*

(1) *IN GENERAL.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account)—*

(A) *to carry out subsection (c)(1)(A) \$1,000,000 for each of fiscal years 1998 through 2003; and*

(B) *to carry out subsection (c)(1)(B)—*

(i) *\$10,000,000 for fiscal year 1998;*

(ii) *\$15,000,000 for fiscal year 1999;*

(iii) *\$17,000,000 for fiscal year 2000; and*

(iv) *\$20,000,000 for each of fiscal years 2001 through 2003.*

(2) *CONTRACT AUTHORITY.—Funds authorized under this subsection shall be made 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.*

**§511. Study of future strategic highway research program**

*(a) STUDY.—*

*(1) IN GENERAL.—Not later than 120 days after the date of enactment of this section, 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 (referred to in this section 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 section), or a similar effort.*

*(2) 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 to be necessary to the conduct of the study.*

*(b) REPORT.—Not later than 2 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.*

**§512. Transportation and environment cooperative research program**

*(a) IN GENERAL.—The Secretary shall establish and carry out a transportation and environment cooperative research program.*

*(b) ADVISORY BOARD.—*

*(1) ESTABLISHMENT.—In consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, 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.*

*(3) DEVELOPMENT OF RESEARCH PRIORITIES.—In developing recommendations for priorities for research described in paragraph (1), the advisory board shall consider the research recommendations of the National Research Council report entitled “Environmental Research Needs in Transportation”.*

*(4) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory board.*

*(c) NATIONAL ACADEMY OF SCIENCES.—*

*(1) IN GENERAL.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities related to the research,*

technology, and technology transfer activities described in subsection (b)(1) as the Secretary determines to be appropriate.

(2) *ECOSYSTEM INTEGRITY STUDY.*—

(A) *IN GENERAL.*—The Secretary shall give priority to conducting a study of, and preparing a report on, the relationship between highway density and ecosystem integrity, including an analysis of the habitat-level impacts of highway density on the overall health of ecosystems.

(B) *PROPOSAL OF RAPID ASSESSMENT METHODOLOGY.*—

To aid transportation and regulatory agencies, the report shall propose a rapid assessment methodology for determining the relationship between highway density and ecosystem integrity.

(d) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 1998 through 2003.

**§ 521. Purposes**

The purposes of this subchapter are—

(1) to expedite deployment and integration of basic intelligent transportation system services for consumers of passenger and freight transportation across the United States;

(2) to encourage the use of intelligent transportation systems to enhance international trade and domestic economic productivity;

(3) to encourage the use of intelligent transportation systems to promote the achievement of national environmental goals;

(4) to continue research, development, testing, and evaluation activities to continually expand the state-of-the-art in intelligent transportation systems;

(5) to provide financial and technical assistance to State and local governments and metropolitan planning organizations to ensure the integration of interoperable, intermodal, and cost-effective intelligent transportation systems;

(6) to foster regional cooperation, standards implementation, and operations planning to maximize the benefits of integrated and coordinated intelligent transportation systems;

(7) to promote the consideration of intelligent transportation systems in mainstream transportation planning and investment decisionmaking by ensuring that Federal and State transportation officials have adequate, working knowledge of intelligent transportation system technologies and applications and by ensuring comprehensive funding eligibility for the technologies and applications;

(8) to encourage intelligent transportation system training for, and technology transfer to, State and local agencies;

(9) to promote the deployment of intelligent transportation system services in rural America so as to achieve safety benefits, promote tourism, and improve quality of life;

(10) to promote the innovative use of private resources, such as through public-private partnerships or other uses of private sector investment, to support the development and integration of intelligent transportation systems throughout the United States;

(11) to complete the Federal investment in the Commercial Vehicle Information Systems and Networks by September 30, 2003;

(12) to facilitate intermodalism through deployment of intelligent transportation systems, including intelligent transportation system technologies for transit systems to improve safety, efficiency, capacity, and utility for the public;

(13) to enhance the safe operation of motor vehicles, including motorcycles, and nonmotorized vehicles on the surface transportation systems of the United States, with a particular emphasis on decreasing the number and severity of collisions; and

(14) to accommodate the needs of all users of the surface transportation systems of the United States, including the operators of commercial vehicles, passenger vehicles, and motorcycles.

## **§ 522. Definitions**

*In this subchapter:*

(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) **COMPLETED STANDARD.**—The term “completed standard” means a standard adopted and published by the appropriate standards-setting organization through a voluntary consensus standardmaking process.

(4) **CORRIDOR.**—The term “corridor” means any major transportation route that includes parallel limited access highways, major arterials, or transit lines.

(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) *PROVISIONAL STANDARD*.—The term “provisional standard” means a provisional standard established by the Secretary under section 529(c).

(8) *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.

#### **§ 523. Cooperation, consultation, and analysis**

(a) *COOPERATION*.—In carrying out this subchapter, the Secretary shall—

(1) foster enhanced operation and management of the surface transportation systems of the United States;

(2) promote the widespread deployment of intelligent transportation systems; and

(3) advance emerging technologies, in cooperation with State and local governments and the private sector.

(b) *CONSULTATION*.—As appropriate, in carrying out this subchapter, the Secretary shall—

(1) consult with the heads of other interested Federal departments and agencies; and

(2) maximize the involvement of the United States private sector, colleges and universities, and State and local governments in all aspects of carrying out this subchapter.

(c) *PROCUREMENT METHODS*.—To meet the need for effective implementation of intelligent transportation system projects, 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, including innovative and nontraditional methods of procurement.

#### **§ 524. Research, development, and training**

(a) *IN GENERAL*.—The Secretary shall carry out a comprehensive program of intelligent transportation system research, development, operational testing, technical assistance and training, national architecture activities, standards development and implementation, and other similar activities that are necessary to carry out the purposes of this subchapter.

(b) *INTELLIGENT VEHICLE AND INTELLIGENT INFRASTRUCTURE PROGRAMS.*—

(1) *IN GENERAL.*—

(A) *PROGRAM.*—*The Secretary shall carry out a program to conduct research, development, and engineering designed to stimulate and advance deployment of an integrated intelligent vehicle program and an integrated intelligent infrastructure program, consisting of—*

(i) *projects such as crash avoidance, automated highway systems, advanced vehicle controls, and roadway safety and efficiency systems linked to intelligent vehicles; and*

(ii) *projects that improve mobility and the quality of the environment, including projects for traffic management, incident management, transit management, toll collection, traveler information, and traffic control systems.*

(B) *CONSIDERATION OF VEHICLE AND INFRASTRUCTURE ELEMENTS.*—*In carrying out subparagraph (A), the Secretary may consider systems that include both vehicle and infrastructure elements and determine the most appropriate mix of those elements.*

(2) *NATIONAL ARCHITECTURE.*—*The program carried out under paragraph (1) shall be consistent with the national architecture.*

(3) *PRIORITIES.*—*In carrying out paragraph (1), the Secretary shall give higher priority to activities that—*

(A) *assist motor vehicle drivers in avoiding motor vehicle crashes;*

(B) *assist in the development of an automated highway system; or*

(C) *improve the integration of air bag technology with other on-board safety systems and maximize the safety benefits of the simultaneous use of an automatic restraint system and seat belts.*

(4) *COST SHARING.*—

(A) *IN GENERAL.*—*Except as provided in subparagraph (B), the Federal share of the cost of a research project carried out in cooperation with a non-Federal entity under a program carried out under paragraph (1) shall not exceed 80 percent.*

(B) *INNOVATIVE OR HIGH-RISK RESEARCH PROJECTS.*—*The Federal share of the cost of an innovative or high-risk research project described in subparagraph (A) may, at the discretion of the Secretary, be 100 percent.*

(5) *PLAN.*—*The Secretary shall—*

(A) *not later than 1 year after the date of enactment of this subchapter, submit to Congress a 6-year plan specifying the goals, objectives, and milestones to be achieved by each program carried out under paragraph (1); and*

(B) *report biennially to Congress on the progress in meeting the goals, objectives, and milestones.*

(c) *EVALUATION.*—

(1) *GUIDELINES AND REQUIREMENTS.*—

(A) *IN GENERAL.*—The Secretary shall establish guidelines and requirements for the independent evaluation of field and related operational tests, and, if necessary, deployment projects, carried out under this subchapter.

(B) *REQUIRED PROVISIONS.*—The guidelines and requirements established 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 subchapter.

(2) *FUNDING.*—

(A) *SMALL PROJECTS.*—In the case of a test or project with a cost of less than \$5,000,000, the Secretary may allocate not more than 15 percent of the funds made available to carry out the test or project for an evaluation of the test or project.

(B) *MODERATE PROJECTS.*—In the case of a test or project with a cost of \$5,000,000 or more, but less than \$10,000,000, the Secretary may allocate not more than 10 percent of the funds made available to carry out the test or project for an evaluation of the test or project.

(C) *LARGE PROJECTS.*—In the case of a test or project with a cost of \$10,000,000 or more, the Secretary may allocate not more than 5 percent of the funds made available to carry out the test or project for an evaluation of the test or project.

(3) *INAPPLICABILITY OF PAPERWORK REDUCTION ACT.*—Any survey, questionnaire, or interview that the Secretary considers necessary to carry out the evaluation of any test or program assessment activity under this subchapter shall not be subject to chapter 35 of title 44.

(d) *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 subchapter; 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.

(e) *TRAFFIC INCIDENT MANAGEMENT AND RESPONSE.*—The Secretary shall carry out a program to advance traffic incident management and response technologies, strategies, and partnerships that are fully integrated with intelligent transportation systems.

(f) *AUTHORIZATION OF CONTRACT AUTHORITY.*—



(1) *IN GENERAL.*—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$120,000,000 for fiscal year 1998, \$125,000,000 for fiscal year 1999, \$130,000,000 for fiscal year 2000, \$135,000,000 for fiscal year 2001, \$140,000,000 for fiscal year 2002, and \$150,000,000 for fiscal year 2003, of which, for each fiscal year—

(A) not less than \$25,000,000 shall be available for activities that assist motor vehicle drivers in avoiding motor vehicle crashes, including activities that improve the integration of air bag technology with other on-board safety systems;

(B) not less than \$25,000,000 shall be available for activities that assist in the development of an automated highway system; and

(C) not less than \$3,000,000 shall be available for traffic incident management and response.

(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.

**§525. Intelligent transportation system integration program**

(a) *IN GENERAL.*—The Secretary shall conduct a comprehensive program (referred to in this section as the “program”) to accelerate the integration and interoperability of intelligent transportation systems.

(b) *SELECTION OF PROJECTS.*—

(1) *IN GENERAL.*—Under the program, the Secretary shall select for funding, through competitive solicitation, projects that will serve as models to improve transportation efficiency, promote safety, increase traffic flow, reduce emissions of air pollutants, improve traveler information, or enhance alternative transportation modes.

(2) *PRIORITIES.*—Under the program, the Secretary shall give higher priority to funding projects that—

(A) promote and foster integration strategies and written agreements among local governments, States, and other regional entities;

(B) build on existing (as of the date of project selection) intelligent transportation system projects;

(C) deploy integrated intelligent transportation system projects throughout metropolitan areas;

(D) deploy integrated intelligent transportation system projects that enhance safe freight movement or coordinate intermodal travel, including intermodal travel at ports of entry into the United States; and

(E) advance intelligent transportation system deployment projects that are consistent with the national architecture and, as appropriate, comply with required standards as described in section 529.

(c) *PRIVATE SECTOR INVOLVEMENT.*—In carrying out the program, the Secretary shall encourage private sector involvement and financial commitment, to the maximum extent practicable, through

innovative financial arrangements, especially public-private partnerships.

(d) **FINANCING AND OPERATIONS PLANS.**—As a condition of receipt of funds under the program, a recipient participating in a project shall submit to the Secretary a multiyear financing and operations plan that describes how the project can be cost-effectively operated and maintained.

(e) **AUTHORIZATION OF CONTRACT AUTHORITY.**—

(1) **IN GENERAL.**—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$100,000,000 for fiscal year 1998, \$110,000,000 for fiscal year 1999, \$115,000,000 for fiscal year 2000, \$130,000,000 for fiscal year 2001, \$135,000,000 for fiscal year 2002, and \$145,000,000 for fiscal year 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, except that, in the case of a project funded under paragraph (1)—

(A) the Federal share of the cost of the project payable from funds made available under paragraph (1) shall not exceed 50 percent; and

(B) the total Federal share of the cost of the project payable from all eligible sources (including paragraph (1)) shall not exceed 80 percent.

## **§ 526. Integration program for rural areas**

(a) **IN GENERAL.**—The Secretary shall conduct a comprehensive program (referred to in this section as the “program”) to accelerate the integration or deployment of intelligent transportation systems in rural areas.

(b) **SELECTION OF PROJECTS.**—Under the program, the Secretary shall—

(1) select projects through competitive solicitation; and

(2) give higher priority to funding projects that—

(A) promote and foster integration strategies and agreements among local governments, States, and other regional entities;

(B) deploy integrated intelligent transportation system projects that improve mobility, enhance the safety of the movement of passenger vehicles and freight, or promote tourism; or

(C) advance intelligent transportation system deployment projects that are consistent with the national architecture and comply with required standards as described in section 529.

(c) **PRIVATE SECTOR INVOLVEMENT.**—In carrying out the program, the Secretary shall encourage private sector involvement and financial commitment, to the maximum extent practicable, through innovative financial arrangements, especially public-private partnerships.

(d) **FINANCING AND OPERATIONS PLANS.**—As a condition of receipt of funds under the program, a recipient participating in a project shall submit to the Secretary a multiyear financing and op-

erations plan that describes how the project can be cost-effectively operated and maintained

(e) *AUTHORIZATION OF CONTRACT AUTHORITY.*—

(1) *IN GENERAL.*—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$10,000,000 for fiscal year 1998, \$10,000,000 for fiscal year 1999, \$15,000,000 for fiscal year 2000, \$15,000,000 for fiscal year 2001, \$20,000,000 for fiscal year 2002, and \$20,000,000 for fiscal year 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, except that, in the case of a project funded under paragraph (1)—

(A) the Federal share of the cost of the project payable from funds made available under paragraph (1) shall not exceed 50 percent; and

(B) the total Federal share of the cost of the project payable from all eligible sources (including paragraph (1)) shall not exceed 80 percent.

**§527. Commercial vehicle intelligent transportation system infrastructure**

(a) *IN GENERAL.*—The Secretary shall carry out a comprehensive program—

(1) to deploy intelligent transportation systems that will promote the safety and productivity of commercial vehicles and drivers; and

(2) to reduce costs associated with commercial vehicle operations and State and Federal commercial vehicle regulatory requirements.

(b) *ELEMENTS OF PROGRAM.*—

(1) *SAFETY INFORMATION SYSTEMS AND NETWORKS.*—

(A) *IN GENERAL.*—The program shall advance the technological capability and promote the deployment of commercial vehicle, commercial driver, and carrier-specific safety information systems and networks and other intelligent transportation system technologies used to assist States in identifying high-risk commercial operations and in conducting other innovative safety strategies, including the Commercial Vehicle Information Systems and Networks.

(B) *FOCUS OF PROJECTS.*—Projects assisted under the program shall focus on—

(i) identifying and eliminating unsafe and illegal carriers, vehicles, and drivers in a manner that does not unduly hinder the productivity and efficiency of safe and legal commercial operations;

(ii) enhancing the safe passage of commercial vehicles across the United States and across international borders;

(iii) reducing the numbers of violations of out-of-service orders; and

(iv) complying with directives to address other safety violations.

(2) *MONITORING SYSTEMS.*—The program shall advance on-board driver and vehicle safety monitoring systems, including fitness-for-duty, brake, and other operational monitoring technologies, that will facilitate commercial vehicle safety, including inspection by motor carrier safety assistance program officers and employees under chapter 311 of title 49.

(c) *USE OF FEDERAL FUNDS.*—

(1) *IN GENERAL.*—Federal funds used to carry out the program shall be primarily used to improve—

(A) commercial vehicle safety and the effectiveness and efficiency of enforcement efforts conducted under the motor carrier safety assistance program under chapter 311 of title 49;

(B) electronic processing of registration, driver licensing, fuel tax, and other safety information; and

(C) communication of the information described in subparagraph (B) among the States.

(2) *LEVERAGING.*—Federal funds used to carry out the program shall, to the maximum extent practicable—

(A) be leveraged with non-Federal funds; and

(B) be used for activities not carried out through the use of private funds.

(d) *FEDERAL SHARE.*—The Federal share of the cost of a project assisted under the program shall be not more than 80 percent.

(e) *AUTHORIZATION OF CONTRACT AUTHORITY.*—

(1) *IN GENERAL.*—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$25,000,000 for fiscal year 1998, \$25,000,000 for fiscal year 1999, \$25,000,000 for fiscal year 2000, \$35,000,000 for fiscal year 2001, \$35,000,000 for fiscal year 2002, and \$40,000,000 for fiscal year 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, except that, in the case of a project funded under paragraph (1)—

(A) the Federal share of the cost of the project payable from funds made available under paragraph (1) shall not exceed 50 percent; and

(B) the total Federal share of the cost of the project payable from all eligible sources (including paragraph (1)) shall not exceed 80 percent.

## **§ 528. Corridor development and coordination**

(a) *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.

(b) *FUNDING.*—There shall be available to carry out this section for each fiscal year not more than—

(1) \$3,000,000 of the amounts made available under section 524(f); and

(2) \$7,000,000 of the amounts made available under section 525(e).

## § 529. Standards

### (a) IN GENERAL.—

(1) *DEVELOPMENT, IMPLEMENTATION, AND MAINTENANCE.*—The Secretary shall develop, implement, and maintain a national architecture and supporting standards 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 standards shall promote interoperability among, and efficiency of, intelligent transportation system technologies implemented throughout the States.

(3) *USE OF STANDARDS-SETTING ORGANIZATIONS.*—In carrying out this section, the Secretary may use the services of such standards-setting organizations as the Secretary determines appropriate.

### (b) REPORT.—

(1) *IN GENERAL.*—Not later than January 1, 1999, the Secretary shall submit a report describing the status of all standards.

(2) *CONTENTS.*—The report shall—

(A) identify each standard that is needed for operation of intelligent transportation systems in the United States;

(B) specify the status of the development of each standard;

(C) provide a timetable for achieving agreement on each standard as described in this section; and

(D) determine which standards are critical to ensuring national interoperability or critical to the development of other standards.

### (c) ESTABLISHMENT OF PROVISIONAL STANDARDS.—

(1) *ESTABLISHMENT.*—Subject to subsection (d), if a standard determined to be critical under subsection (b)(2)(D) is not adopted and published by the appropriate standards-setting organization by January 1, 2001, the Secretary shall establish a provisional standard after consultation with affected parties.

(2) *PERIOD OF EFFECTIVENESS.*—The provisional standard shall—

(A) be published in the Federal Register;

(B) take effect not later than May 1, 2001; and

(C) remain in effect until the appropriate standards-setting organization adopts and publishes a standard.

### (d) WAIVER OF REQUIREMENT TO ESTABLISH PROVISIONAL STANDARDS.—

(1) *NOTICE.*—The Secretary may waive the requirement to establish a provisional standard by submitting, not later than January 1, 2001, to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, a notice that—

(A) specifies the provisional standard subject to the waiver;

(B) describes the history of the development of the standard subject to the waiver;

(C) specifies the reasons why the requirement for the establishment of the provisional standard is being waived;

(D) describes the impacts of delaying the establishment of the standard subject to the waiver, especially the impacts on the purposes of this subchapter; and

(E) provides specific estimates as to when the standard subject to the waiver is expected to be adopted and published by the appropriate standards-setting organization.

(2) *PROGRESS REPORTS.*—

(A) *IN GENERAL.*—In the case of each standard subject to a waiver by the Secretary under paragraph (1), the Secretary shall submit, in accordance with the schedule specified in subparagraph (B), 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 on the progress of the adoption of a completed standard.

(B) *SCHEDULE OF REPORTS.*—The Secretary shall submit a report under subparagraph (A) with respect to a standard—

(i) not later than 180 days after the date of submission of the notice under paragraph (1) with respect to the standard; and

(ii) at the end of each 180-day period thereafter until such time as a standard has been adopted and published by the appropriate standards-setting organization or the waiver is withdrawn under paragraph (3).

(C) *CONSULTATION.*—In developing each progress report under subparagraph (A), the Secretary shall consult with the standards-setting organizations involved in the standardmaking process for the standard.

(3) *WITHDRAWAL OF WAIVER.*—

(A) *IN GENERAL.*—At any time, the Secretary may, through notification to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, withdraw a notice of a waiver of the requirement to establish a provisional standard.

(B) *IMPLEMENTATION.*—If the Secretary submits notification under subparagraph (A) with respect to a provisional standard, not less than 30 days, but not more than 90 days, after the date of the notification, the Secretary shall implement the provisional standard, unless, by the end of the 90-day period beginning on the date of the notification, a standard has been adopted and published by the appropriate standards-setting organization.

(e) *REQUIREMENT FOR COMPLIANCE WITH STANDARD.*—

(1) *IN GENERAL.*—

(A) *STANDARD IN EXISTENCE.*—Funds made available from the Highway Trust Fund shall not be used to deploy an intelligent transportation system technology if the technology does not comply with each applicable provisional standard or completed standard.

(B) *NO STANDARD IN EXISTENCE.*—In the absence of a provisional standard or completed standard, Federal funds shall not be used to deploy an intelligent transportation system technology if the deployment is not consistent with the interfaces to ensure interoperability that are contained in the national architecture.

(2) *APPLICABILITY.*—Paragraph (1) shall not apply to—

(A) the operation or maintenance of an intelligent transportation system in existence on the date of enactment of this subchapter; or

(B) the upgrade or expansion of an intelligent transportation system in existence on the date of enactment of this subchapter if the Secretary determines that the upgrade or expansion—

(i) does not adversely affect the purposes of this subchapter, especially the goal of national or regional interoperability;

(ii) is carried out before the end of the useful life of the system; and

(iii) is cost effective as compared to alternatives that meet the compliance requirement of paragraph (1)(A) or the consistency requirement of paragraph (1)(B).

(f) *SPECTRUM.*—

(1) *CONSULTATION.*—The Secretary shall consult with the Secretary of Commerce, the Secretary of Defense, and the Chairman of the Federal Communications Commission to determine the best means for securing the necessary spectrum for the near-term establishment of a dedicated short-range vehicle-to-way-side wireless standard and any other spectrum that the Secretary determines to be critical to the implementation of this title.

(2) *PROGRESS REPORT.*—After consultation under paragraph (1) and with other affected agencies, but not later than 1 year after the date of enactment of this subchapter, the Secretary shall submit a report to Congress on the progress made in securing the spectrum described in paragraph (1).

(3) *DEADLINE FOR SECURING SPECTRUM.*—Notwithstanding any other provision of law, not later than 2 years after the date of enactment of this subchapter, the Secretary of Commerce shall release to the Federal Communications Commission, and the Federal Communications Commission shall allocate, the spectrum described in paragraph (1).

(g) *FUNDING.*—The Secretary shall use funds made available under section 524 to carry out this section.

### **§530. Funding limitations**

(a) *CONSISTENCY WITH NATIONAL ARCHITECTURE.*—The Secretary shall use funds made available under this subchapter to deploy intelligent transportation system technologies that are consistent with the national architecture.

(b) *COMPETITION WITH PRIVATELY FUNDED PROJECTS.*—To the maximum extent practicable, the Secretary shall not fund any intel-

*ligent transportation system operational test or deployment project that competes with a similar privately funded project.*

(c) *INFRASTRUCTURE DEVELOPMENT.*—Funds made available under this subchapter 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.*

(d) *PUBLIC RELATIONS AND TRAINING.*—For each fiscal year, not more than \$15,000,000 of the funds made available under this subchapter shall be used for intelligent transportation system outreach, public relations, training, mainstreaming, shareholder relations, or related activities.

#### **§531. Use of innovative financing**

(a) *IN GENERAL.*—The Secretary may use up to 25 percent of the funds made available under this subchapter and section 541 to make available loans, lines of credit, and loan guarantees for projects that are eligible for assistance under this title and that have significant intelligent transportation system elements.

(b) *CONSISTENCY WITH OTHER LAW.*—Credit assistance described in subsection (a) shall be made available in a manner consistent with the Transportation Infrastructure Finance and Innovation Act of 1997.

#### **§532. Advisory committees**

(a) *IN GENERAL.*—In carrying out this subchapter, the Secretary shall use 1 or more advisory committees.

(b) *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.).

### **SUBCHAPTER III—FUNDING**

#### **§541. Funding**

(a) *RESEARCH, TECHNOLOGY, AND TRAINING.*—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out sections 502, 507, 509, and 511 \$98,000,000 for fiscal year 1998, \$101,000,000 for fiscal year 1999, \$104,000,000 for fiscal year 2000, \$107,000,000 for fiscal year 2001, \$110,000,000 for fiscal year 2002, and \$114,000,000 for fiscal year 2003.

(b) *CONTRACT AUTHORITY.*—Funds authorized under this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1, except that—

(1) *any Federal share of the cost of an activity under this chapter shall be determined in accordance with this chapter; and*



(2) *the funds shall remain available for obligation for a period of 4 years after the last day of the fiscal year for which the funds are authorized.*

(c) *LIMITATIONS ON OBLIGATIONS.—Notwithstanding any other provision of law, the total amount of all obligations under subsection (a) shall not exceed—*

- (1) *\$98,000,000 for fiscal year 1998;*
- (2) *\$101,000,000 for fiscal year 1999;*
- (3) *\$104,000,000 for fiscal year 2000;*
- (4) *\$107,000,000 for fiscal year 2001;*
- (5) *\$110,000,000 for fiscal year 2002; and*
- (6) *\$114,000,000 for fiscal year 2003.*

## TITLE 49—TRANSPORTATION

\* \* \* \* \*

### SUBTITLE I—DEPARTMENT OF TRANSPORTATION

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#### § 111. Bureau of Transportation Statistics

(a) ESTABLISHMENT.—There is established in the Department of Transportation a Bureau of Transportation Statistics.

(b) DIRECTOR.—

(1) APPOINTMENT.—The Bureau shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—The Director shall be appointed from among individuals who are qualified to serve as the Director by virtue of their training and experience in the compilation and analysis of transportation statistics.

(3) REPORTING.—The Director shall report directly to the Secretary.

(4) TERM.—The term of the Director shall be 4 years. [The term of the first Director to be appointed shall begin on the 180th day after December 18, 1991.] The Director may continue to serve after the expiration of the term until a successor is appointed and confirmed.

(c) RESPONSIBILITIES.—The Director of the Bureau shall be responsible for carrying out the following duties:

(1) COMPILING TRANSPORTATION STATISTICS.—Compiling, analyzing, and publishing a comprehensive set of transportation statistics to provide timely summaries and totals (including industrywide aggregates and multiyear averages) of transportation-related information. Such statistics shall be suitable for conducting cost-benefit studies (including compari-

sons among individual transportation modes and intermodal transport systems) and shall include information on—

- (A) productivity in various parts of the transportation sector;
- (B) traffic flows;
- (C) travel times;
- (D) vehicle weights;
- (E) variables influencing traveling behavior, including choice of transportation mode;
- (F) travel costs of intracity commuting and intercity trips;
- (G) availability of mass transit and the number of passengers served by each mass transit authority;
- (H) frequency of vehicle and transportation facility repairs and other interruptions of transportation service;
- (I) accidents;
- (J) collateral damage to the human and natural environment; **[and]**
- (K) the condition of the transportation system**[.]; and**
- (L) *transportation-related variables that influence global competitiveness.*

(2) IMPLEMENTING LONG-TERM DATA COLLECTION PROGRAM.—Establishing and implementing, in cooperation with the modal administrators, the States, and other Federal officials a comprehensive, long-term program for the collection and analysis of data relating to the performance of the **[national transportation system]** *transportation systems of the United States*. Such program shall—

**[(A) be coordinated with efforts to develop performance indicators for the national transportation system undertaken pursuant to section 307(b)(3) of title 23, United States Code;]**

*(A) be coordinated with efforts to measure outputs and outcomes of the Department of Transportation and the transportation systems of the United States under the Government Performance and Results Act of 1993 (Public Law 103–62) and the amendments made by that Act;*

(B) ensure that data is collected under this subsection in a manner which will maximize the ability to compare data from different regions and for different time periods; and

(C) ensure that data collected under this subsection is controlled for accuracy, *made relevant to the States and metropolitan planning organizations* and disseminated to the States and other interested parties.

(3) ISSUING GUIDELINES.—Issuing guidelines for the collection of information by the Department of Transportation required for statistics to be compiled under paragraph (1) in order to ensure that such information is accurate, reliable, relevant, and in a form that permits systematic analysis. *The Bureau shall review and report to the Secretary of Transportation on the sources and reliability of the statistics proposed by the heads of the operating administrations of the Department to measure outputs and outcomes as required by the Government*

*Performance and Results Act of 1993 (Public Law 103-62), and the amendments made by that Act, and shall carry out such other reviews of the sources and reliability of other data collected by the heads of the operating administrations of the Department as shall be requested by the Secretary.*

(4) **COORDINATING COLLECTION OF INFORMATION.**—Coordinating the collection of information by the Department of Transportation required for statistics to be compiled under paragraph (1) with related information-gathering activities conducted by other Federal departments and agencies and collecting appropriate data not elsewhere gathered.

(5) **MAKING STATISTICS ACCESSIBLE.**—Making the statistics published under this subsection readily accessible.

(6) **IDENTIFYING INFORMATION NEEDS.**—Identifying information that is needed under paragraph (1) but which is not being collected, reviewing such needs at least annually with the Advisory Council on Transportation Statistics, and making recommendations to appropriate Department of Transportation research officials concerning extramural and intramural research programs to provide such information.

(7) **SUPPORTING TRANSPORTATION DECISIONMAKING.**—*Ensuring that the statistics compiled under paragraph (1) are relevant for transportation decisionmaking by the Federal Government, State and local governments, transportation-related associations, private businesses, and consumers.*

(d) **TRANSPORTATION DATA BASE.**—

(1) **IN GENERAL.**—*In consultation with the Associate Deputy Secretary, the Assistant Secretaries, and the heads of the operating administrations of the Department of Transportation, the Director shall establish and maintain a transportation data base for all modes of transportation.*

(2) **USE.**—*The data base shall be suitable for analyses carried out by the Federal Government, the States, and metropolitan planning organizations.*

(3) **CONTENTS.**—*The data base shall include—*

(A) *information on the volumes and patterns of movement of goods, including local, interregional, and international movement, by all modes of transportation and intermodal combinations, and by relevant classification;*

(B) *information on the volumes and patterns of movement of people, including local, interregional, and international movements, by all modes of transportation (including bicycle and pedestrian modes) and intermodal combinations, and by relevant classification;*

(C) *information on the location and connectivity of transportation facilities and services; and*

(D) *a national accounting of expenditures and capital stocks on each mode of transportation and intermodal combination.*

(e) **NATIONAL TRANSPORTATION LIBRARY.**—

(1) **IN GENERAL.**—*The Director shall establish and maintain a National Transportation Library, which shall contain a collection of statistical and other information needed for transportation decisionmaking at the Federal, State, and local levels.*

(2) *ACCESS.*—*The Bureau shall facilitate and promote access to the Library, with the goal of improving the ability of the transportation community to share information and the ability of the Bureau to make statistics readily accessible under subsection (c)(5).*

(3) *COORDINATION.*—*The Bureau shall work with other transportation libraries and other transportation information providers, both public and private, to achieve the goal specified in paragraph (2).*

(f) *NATIONAL TRANSPORTATION ATLAS DATA BASE.*—

(1) *IN GENERAL.*—*The Director shall develop and maintain geospatial data bases that depict—*

(A) *transportation networks;*

(B) *flows of people, goods, vehicles, and craft over the networks; and*

(C) *social, economic, and environmental conditions that affect or are affected by the networks.*

(2) *INTERMODAL NETWORK ANALYSIS.*—*The data bases shall be able to support intermodal network analysis.*

(g) *RESEARCH AND DEVELOPMENT GRANTS.*—*The Secretary may make grants to, or enter into cooperative agreements or contracts with, public and nonprofit private entities (including State departments of transportation, metropolitan planning organizations, and institutions of higher education) for—*

(1) *investigation of the subjects specified in subsection (c)(1) and research and development of new methods of data collection, management, integration, dissemination, interpretation, and analysis;*

(2) *development of electronic clearinghouses of transportation data and related information, as part of the National Transportation Library under subsection (e); and*

(3) *development and improvement of methods for sharing geographic data, in support of the national transportation atlas data base under subsection (f) and the National Spatial Data Infrastructure developed under Executive Order No. 12906.*

[(d)] (h) *LIMITATIONS ON STATUTORY CONSTRUCTION.*—*Nothing in this section shall be construed—*

(1) *to authorize the Bureau to require any other department or agency to collect data; or*

(2) *to reduce the authority of any other officer of the Department of Transportation to collect and disseminate data independently.*

[(e)] (i) *PROHIBITION ON CERTAIN DISCLOSURES.*—*Information compiled by the Bureau shall not be disclosed publicly in a manner that would reveal the personal identity of any individual, consistent with the Privacy Act of 1974 (5 U.S.C. 552a), or to reveal trade secrets or allow commercial or financial information provided by any person to be identified with such person.*

[(f)] (j) *TRANSPORTATION STATISTICS ANNUAL REPORT.*—*On or before January 1, 1994, and annually thereafter, the* *The* *Director shall transmit to the President and Congress a Transportation Statistics Annual Report which shall include information on items referred to in subsection (c)(1), documentation of methods used to obtain and ensure the quality of the statistics presented in the report,*

and recommendations for improving transportation statistical information.

(k) *STUDY.*—

(1) *IN GENERAL.*—*The Director shall carry out a study—*

*(A) to measure the ton-miles and value-miles of international trade traffic carried by highway for each State;*

*(B) to evaluate the accuracy and reliability of such measures for use in the formula for highway apportionments;*

*(C) to evaluate the accuracy and reliability of the use of diesel fuel data as a measure of international trade traffic by State; and*

*(D) to identify needed improvements in long-term data collection programs to provide accurate and reliable measures of international traffic for use in the formula for highway apportionments.*

(2) *BASIS FOR EVALUATIONS.*—*The study shall evaluate the accuracy and reliability of measures for use as formula factors based on statistical quality standards developed by the Bureau in consultation with the Committee on National Statistics of the National Academy of Sciences.*

(3) *REPORT.*—*Not later than 3 years after the date of enactment of this subsection, the Director 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 results of the study carried out under paragraph (1), including recommendations for changes in law necessary to implement the identified needs for improvements in long-term data collection programs.*

(l) *PROCEEDS OF DATA PRODUCT SALES.*—*Notwithstanding section 3302 of title 31, United States Code, funds received by the Bureau of Transportation Statistics from the sale of data products, for necessary expenses incurred, may be credited to the Highway Trust Fund (other than the Mass Transit Account) for the purpose of reimbursing the Bureau for the expenses.*

(m) *AUTHORIZATION OF CONTRACT AUTHORITY.*—

(1) *IN GENERAL.*—*There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$26,000,000 for fiscal year 1998, \$27,000,000 for fiscal year 1999, \$28,000,000 for fiscal year 2000, \$29,000,000 for fiscal year 2001, \$30,000,000 for fiscal year 2002, and \$31,000,000 for fiscal year 2003, except that not more than \$500,000 for each fiscal year may be made available to carry out subsection (g).*

(2) *AVAILABILITY.*—*Funds authorized under this subsection shall remain available for a period of 3 years after the last day of the fiscal year for which the funds are authorized.*

(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.*

[(g) *PERFORMANCE OF FUNCTIONS OF DIRECTOR PENDING CONFIRMATION.*—*An individual who, on December 18, 1991, is performing any function required by this section to be performed by the Di-*

rector may continue to perform such function until such function is undertaken by the Director.】

\* \* \* \* \*

### **§ 113. Office of Infrastructure Finance**

(a) ESTABLISHMENT.—The Secretary of Transportation shall establish within the Office of the Secretary an Office of Infrastructure Finance.

(b) DIRECTOR.—The Office shall be headed by a Director who shall be appointed by the Secretary not later than 180 days after the date of enactment of this section.

(c) FUNCTIONS.—The Director shall be responsible for—

(1) *carrying out the responsibilities of the Secretary described in section 301(9);*

(2) *carrying out research on financing transportation infrastructure, including educational programs and other initiatives to support Federal, State, and local government efforts; and*

(3) *providing technical assistance to Federal, State, and local government agencies and officials to facilitate the development and use of alternative techniques for financing transportation infrastructure.”.*

\* \* \* \* \*

## **CHAPTER 3—GENERAL DUTIES AND POWERS**

### **SUBCHAPTER I—DUTIES OF THE SECRETARY OF TRANSPORTATION**

Sec.

301. Leadership, consultation, and cooperation.

302. Policy standards for transportation.

303. Policy on lands, wildlife and waterfowl refuges, and historic sites.

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304. Joint activities with the Secretary of Housing and Urban Development.

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307. Safety information and intervention in Interstate Commerce Commission proceedings.

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310. *Joint partnerships for advanced vehicles, components, and infrastructure program.*

### **SUBCHAPTER II—ADMINISTRATIVE**

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## SUBCHAPTER III—MISCELLANEOUS

- 351. Judicial review of actions in carrying out certain transferred duties and powers.
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- 354. *Integrated decisionmaking process.*

SUBCHAPTER I—DUTIES OF THE SECRETARY OF  
TRANSPORTATION**§ 301. Leadership, consultation, and cooperation**

The Secretary of Transportation shall—

(1) under the direction of the President, exercise leadership in transportation matters, including those matters affecting national defense and those matters involving national or regional emergencies;

(2) provide leadership in the development of transportation policies and programs, and make recommendations to the President and Congress for their consideration and implementation;

(3) coordinate Federal policy on intermodal transportation and initiate policies to promote efficient intermodal transportation in the United States;

(4) promote and undertake the development, collection, and dissemination of technological, statistical, economic, and other information relevant to domestic and international transportation;

(5) consult and cooperate with the Secretary of Labor in compiling information regarding the status of labor-management contracts and other labor-management problems and in promoting industrial harmony and stable employment conditions in all modes of transportation;

(6) promote and undertake research and development related to transportation, including noise abatement, with particular attention to aircraft noise, and including basic highway vehicle science;

(7) consult with the heads of other departments, agencies, and instrumentalities of the United States Government on the transportation requirements of the Government, including encouraging them to establish and observe policies consistent with maintaining a coordinated transportation system in procuring transportation or in operating their own transport services; **[and]**

(8) consult and cooperate with State and local governments, carriers, labor, and other interested persons, including, when appropriate, holding informal public hearings**[.]**; and

(9) *develop and coordinate Federal policy on financing transportation infrastructure, including the provision of direct Federal credit assistance and other techniques used to leverage Federal transportation funds.*

\* \* \* \* \*



**§310. Joint partnerships for advanced vehicles, components, and infrastructure program**

(a) *PURPOSES.*—The Secretary of Transportation, in coordination with other government agencies and private consortia, shall encourage and promote the research, development, and deployment of transportation technologies that will use technological advances in multimodal vehicles, vehicle components, environmental technologies, and related infrastructure to remove impediments to an efficient and cost-effective national transportation system.

(b) *DEFINITION OF ELIGIBLE CONSORTIUM.*—In this section, the term “eligible consortium” means a consortium that receives funding under the Department of Defense Appropriations Act, 1993 (Public Law 102–396; 106 Stat. 1876), and that comprises 2 or more of the following entities:

- (1) Businesses incorporated in the United States.
- (2) Public or private educational or research organizations located in the United States.
- (3) Entities of State or local governments in the United States.
- (4) Federal laboratories.

(c) *PROGRAM.*—The Secretary shall enter into contracts, cooperative agreements, and other transactions as authorized by section 2371 of title 10 with, and make grants to, eligible consortia to promote the development and deployment of innovation in transportation technology services, management, and operational practices.

(d) *ELIGIBILITY CRITERIA.*—To be eligible to receive assistance under this section, an eligible consortium shall—

- (1) for a period of not less than the 3 years preceding the date of a contract, cooperative agreement, or other transaction, be organized on a statewide or multistate basis for the purpose of designing, developing, and deploying transportation technologies that address identified technological impediments in the transportation field;
- (2) facilitate the participation in the consortium of small- and medium-sized businesses, utilities, public laboratories and universities, and other relevant entities;
- (3) be actively engaged in transportation technology projects that address compliance in nonattainment areas under the Clean Air Act (42 U.S.C. 7401 et seq.);
- (4) be designed to use Federal and State funding to attract private capital in the form of grants or investments to carry out this section; and
- (5) ensure that at least 50 percent of the funding for the consortium project will be provided by non-Federal sources.

(e) *PROPOSALS.*—The Secretary shall prescribe such terms and conditions as the Secretary determines to be appropriate for the content and structure of proposals submitted for assistance under this section.

(f) *REPORTING REQUIREMENTS.*—At least once each year, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the projects undertaken by the eligible consortia and the progress made in advancing the purposes of this section.

(g) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated to carry out this section \$50,000,000 for each of fiscal years 1998 through 2003, to remain available until expended.

\* \* \* \* \*

### **§354. Integrated decisionmaking process**

(a) *DEFINITIONS.*—In this section:

(1) *INTEGRATED DECISIONMAKING PROCESS.*—The term “integrated decisionmaking process” means the integrated decisionmaking process established with respect to a surface transportation project under subsection (b).

(2) *NEPA PROCESS.*—The term “NEPA process” means the process of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to a surface transportation project.

(3) *SECRETARY.*—The term “Secretary” means the Secretary of Transportation.

(4) *SURFACE TRANSPORTATION PROJECT.*—The term “surface transportation project” means—

(A) a highway construction project that is subject to the approval of the Secretary under title 23; and

(B) a capital project (as defined in section 5302(a)(1)).

(b) *ESTABLISHMENT OF INTEGRATED DECISIONMAKING PROCESSES FOR SURFACE TRANSPORTATION PROJECTS.*—The Secretary shall—

(1) establish an integrated decisionmaking process for surface transportation projects that designates major decision points likely to have significant environmental effects and conflicts; and

(2) integrate the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with the requirements established by the Secretary for transportation planning and decisionmaking.

(c) *INTEGRATED DECISIONMAKING GOALS.*—The integrated decisionmaking process for surface transportation projects should, to the maximum extent practicable, accomplish the following major goals:

(1) Integrate the NEPA process with the planning, predesign stage, and decisionmaking for surface transportation projects at the earliest possible time.

(2) Integrate all applicable Federal, State, tribal, and local permitting requirements.

(3) Integrate national transportation, social, safety, economic, and environmental goals with State, tribal, and local land use and growth management initiatives.

(4) Consolidate Federal, State, tribal, and local decisionmaking to achieve the best overall public interest according to an agreed schedule.

(d) *STREAMLINING.*—

(1) *AVOIDANCE OF DELAYS, PREVENTION OF CONFLICTS, AND ELIMINATION OF UNNECESSARY DUPLICATION.*—The Secretary shall design the integrated decisionmaking process to avoid delays in decisionmaking, prevent conflicts between cooperating agencies and members of the public, and eliminate unnecessary

*duplication of review and decisionmaking relating to surface transportation projects.*

(2) *INTEGRATION; COMPREHENSIVE PROCESS.—The NEPA process—*

*(A) shall be integrated with the transportation planning and decisionmaking of the Federal, State, tribal, and local transportation agencies; and*

*(B) serve as a comprehensive decisionmaking process.*

(3) *OTHER REQUIREMENTS.—*

*(A) IN GENERAL.—The Secretary shall—*

*(i) establish a concurrent transportation and environmental coordination process to reduce paperwork, combine review documents, and eliminate duplicative reviews;*

*(ii) develop interagency agreements to streamline and improve interagency coordination and processing time;*

*(iii) apply strategic and programmatic approaches to better integrate and expedite the NEPA process and transportation decisionmaking; and*

*(iv) ensure, in appropriate cases, by conducting concurrent reviews whenever possible, that any analyses and reviews conducted by the Secretary consider the needs of other reviewing agencies.*

*(B) TIME SCHEDULES.—To comply with subparagraph (A)(ii), time schedules shall be consistent with sections 1501.8 and 1506.10 of title 40, Code of Federal Regulations (or any successor regulations).*

(4) *CONCURRENT PROCESSING.—*

*(A) IN GENERAL.—The integrated decisionmaking process shall, to the extent practicable, include a procedure to provide for concurrent (rather than sequential) processing of all Federal, State, tribal, and local reviews and decisions emanating from those reviews.*

*(B) INCONSISTENCY WITH OTHER REQUIREMENTS.—Subparagraph (A) does not require concurrent review if concurrent review would be inconsistent with other statutory or regulatory requirements.*

(e) *INTERAGENCY COOPERATION.—*

*(1) LEAD AND COOPERATING AGENCY CONCEPTS.—The lead and cooperating agency concepts of section 1501 of title 40, Code of Federal Regulations (or any successor regulation), shall be considered essential elements to ensure integration of transportation decisionmaking.*

*(2) RESPONSIBILITIES.—The Secretary shall—*

*(A) not later than 60 days after the date on which a surface transportation project is selected for study by a State, identify each Federal agency that may be required to participate in the integrated decisionmaking process relating to the surface transportation project and notify the agency of the surface transportation project;*

*(B) afford State, regional, tribal, and local governments with decisionmaking authority on surface transpor-*

tation projects the opportunity to serve as cooperating agencies;

(C) provide cooperating agencies the results of any analysis or other information related to a surface transportation project;

(D) host an early scoping meeting for Federal agencies and, when appropriate, conduct field reviews, as soon as practicable in the environmental review process;

(E) solicit from each cooperating agency as early as practicable the data and analyses necessary to facilitate execution of the duties of each cooperating agency;

(F) use, to the maximum extent possible, scientific, technical, and environmental data and analyses previously prepared by or for other Federal, State, tribal, or local agencies, after an independent evaluation by the Secretary of the data and analyses;

(G) jointly, with the cooperating agencies, host public meetings and other community participation processes; and

(H) ensure that the NEPA process and documentation provide all necessary information for the cooperating agency to—

(i) discharge the responsibilities of the cooperating agency under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other law; and

(ii) grant approvals, permits, licenses, and clearances.

(f) *ENHANCED SCOPING PROCESS.*—During the scoping process for a surface transportation project, in addition to other statutory and regulatory requirements, the Secretary shall, to the extent practicable—

(1) provide the public with clearly understandable milestones that occur during an integrated decisionmaking process;

(2) ensure that all agencies with jurisdiction by law or with special expertise have sufficient information and data to discharge their responsibilities;

(3) ensure that all agencies with jurisdiction by law or with special expertise, and the public, are invited to participate in the initial scoping process;

(4) coordinate with other agencies to ensure that the agencies provide to the Secretary, not later than 30 days after the first interagency scoping meeting, any preliminary concerns about how the proposed project may affect matters within their jurisdiction or special expertise based on information available at the time of the scoping meeting; and

(5) in cooperation with all cooperating agencies, develop a schedule for conducting all necessary environmental and other review processes.

(g) *USE OF TITLE 23 FUNDS.*—

(1) *USE BY STATES.*—A State may use funds made available under section 104(b) or 105 of title 23 or section 1102(c) of the Intermodal Surface Transportation Efficiency Act of 1997 to provide resources to Federal or State agencies involved in the review or permitting process for a surface transportation project in order to meet a time schedule established under this section.

(2) *USE AT SECRETARY'S DISCRETION.*—At the request of another Federal agency involved in the review or permitting process for a surface transportation project, the Secretary may provide funds under chapter 1 of title 23 to the agency to provide resources necessary to meet the time schedules established under this section.

(2) *AMOUNT.*—Funds may be provided under paragraph (1) in the amount by which the cost to complete a environmental review in accordance with a time schedule established under this section exceeds the cost that would be incurred if there were no such time schedule.

(3) *NOT FINAL AGENCY ACTION.*—The provision of funds under paragraph (1) does not constitute a final agency action.

(h) *STATE ROLE.*—

(1) *IN GENERAL.*—For any project eligible for assistance under chapter 1 of title 23, a State may require, by law or agreement coordinating with all related State agencies, that all State agencies that—

(A) have jurisdiction by Federal or State law over environmental, growth management, or land-use related issues that may be affected by a surface transportation project; or

(B) have responsibility for issuing any environment related reviews, analyses, opinions, or determinations; be subject to the coordinated environmental review process provided under this section in issuing any analyses or approvals or taking any other action relating to the project.

(2) *ALL AGENCIES.*—If a State requires that any State agency participate in a coordinated environmental review process, the State shall require all affected State agencies to participate.

(i) *EARLY ACTION REGARDING POTENTIALLY INSURMOUNTABLE OBSTACLES.*—If, at any time during the integrated decisionmaking process for a proposed surface transportation project, a cooperating agency determines that there is any potentially insurmountable obstacle associated with any of the alternative transportation projects that might be undertaken to address the obstacle, the Secretary shall—

(1) convene a meeting among the cooperating agencies to address the obstacle;

(2) initiate conflict resolution efforts under subsection (j); or

(3) eliminate from consideration the alternative transportation project with which the obstacle is associated.

(j) *CONFLICT RESOLUTION.*—

(1) *FORUM.*—The NEPA process shall be used as a forum to coordinate the actions of Federal, State, regional, tribal, and local agencies, the private sector, and the public to develop and shape surface transportation projects.

(2) *APPROACHES.*—Collaborative, problem solving, and consensus building approaches shall be used (and, when appropriate, mediation may be used) to implement the integrated decisionmaking process with a goal of appropriately considering factors relating to transportation development, economic prosperity, protection of public health and the environment, community and neighborhood preservation, and quality of life for present and future generations.

(3) *UNRESOLVED ISSUES.*—(A) *NOTIFICATION.*—*If, before the final transportation NEPA document is approved—*(i) *an issue remains unresolved between the lead Federal agency and the cooperating agency; and*(ii) *efforts have been exhausted to resolve the issue at the field levels of each agency—*(I) *within the applicable timeframe of the interagency schedule established under subsection (f)(5); or*(II) *if no timeframe is established, within 90 days;*

the field level officer of the lead agency shall notify the field level officer of the cooperating agency that the field level officer of the lead agency intends to bring the issue to the personal attention of the heads of the agencies.

(B) *EFFORTS BY THE AGENCY HEADS.*—*The head of the lead agency shall contact the head of the cooperating agency and attempt to resolve the issue within 30 days after notification by the field level officer of the unresolved issue.*(C) *CONSULTATION WITH CEQ.*—*The heads of the agencies are encouraged to consult with the Chair of the Council on Environmental Quality during the 30-day period under subparagraph (B).*(D) *FAILURE TO RESOLVE.*—*If the heads of the agencies do not resolve the issue within the time specified in subparagraph (B), the referral process under part 1504 of title 40, Code of Federal Regulations (or any successor regulation), shall be initiated with respect to the issue.*(k) *JUDICIAL REVIEW.*—*Nothing in this section affects the reviewability of any final agency action in a district court of the United States or any State court.*(l) *STATUTORY CONSTRUCTION.*—*Nothing in this section affects—*(1) *the applicability of the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or any other statute; or*(2) *the responsibility of any Federal, State, tribal, or local officer to comply with or enforce any statute or regulation.*

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CHAPTER	Sec.
51. TRANSPORTATION OF HAZARDOUS MATERIAL .....	5101
52. RESEARCH AND DEVELOPMENT .....	5201
53. MASS TRANSPORTATION .....	5301
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## CHAPTER 52—RESEARCH AND DEVELOPMENT

Sec.  
5201. Definitions.

## SUBCHAPTER I—GENERAL AND ADMINISTRATIVE PROVISIONS

5211. Transactional authority.

## SUBCHAPTER II—STRATEGIC PLANNING

5221. Strategic planning.  
 5222. Authorization of contract authority.

## SUBCHAPTER III—MULTIMODAL TRANSPORTATION RESEARCH AND DEVELOPMENT PROGRAM

5231. Multimodal Transportation Research and Development Program.  
 5232. Authorization of contract authority.

## SUBCHAPTER IV—NATIONAL UNIVERSITY TRANSPORTATION CENTERS

5241. National university transportation centers.

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**§ 5201. Definitions**

*In this chapter:*

- (1) *DEPARTMENT.*—The term “Department” means the Department of Transportation.  
 (2) *SECRETARY.*—The term “Secretary” means the Secretary of Transportation.

## SUBCHAPTER I—GENERAL AND ADMINISTRATIVE PROVISIONS

**§ 5211. Transactional authority**

*To further the objectives of this chapter, the Secretary may make grants to, and enter into contracts, cooperative agreements, and other transactions with—*

- (1) *any person or any agency or instrumentality of the United States;*  
 (2) *any unit of State or local government;*  
 (3) *any educational institution; and*  
 (4) *any other entity.*

## SUBCHAPTER II—STRATEGIC PLANNING

**§ 5221. Strategic planning**

(a) *AUTHORITY.*—The Secretary shall establish a strategic planning process to—

- (1) *determine national transportation research, development, and technology deployment priorities, strategies, and milestones over the next 5 years;*  
 (2) *coordinate Federal transportation research, development, and technology deployment activities; and*  
 (3) *measure the impact of the research, development, and technology investments described in paragraph (2) on the performance of the transportation system of the United States.*

(b) *CRITERIA.*—In developing strategic plans for intermodal, multimodal, and mode-specific research, development, and technology deployment, the Secretary shall consider the need to—

- (1) *coordinate and integrate Federal, regional, State, and metropolitan planning research, development, and technology activities in urban and rural areas;*  
 (2) *promote standards that facilitate a seamless and interoperable transportation system;*  
 (3) *encourage innovation;*

(4) identify and facilitate initiatives and partnerships to deploy technology with the potential for improving transportation systems during the next 5-year and 10-year periods;

(5) identify core research to support the long-term transportation technology and system needs of urban and rural areas of the United States, including safety;

(6) ensure the ability of the United States to compete on a global basis; and

(7) provide a means of assessing the impact of Federal research and technology investments on the performance of the transportation system of the United States.

(c) *IMPLEMENTATION.*—

(1) *IN GENERAL.*—In carrying out subsection (a), the Secretary shall adopt such policies and procedures as are appropriate—

(A) to provide for integrated planning, coordination, and consultation among the Administrators of the operating administrations of the Department and other Federal officials with responsibility for research, development, and technology transfer important to national transportation needs;

(B) to promote the exchange of information on transportation-related research and development activities among the operating elements of the Department, other Federal departments and agencies, State and local governments, colleges and universities, industry, and other private and public sector organizations engaged in the activities;

(C) to ensure that the research and development programs of the Department do not duplicate other Federal and, to the maximum extent practicable, private sector research and development programs; and

(D) to ensure that the research and development activities of the Department—

(i) make appropriate use of the talents, skills, and abilities at the Federal laboratories; and

(ii) leverage, to the maximum extent practicable, the research, development, and technology transfer capabilities of institutions of higher education and private industry.

(2) *CONSULTATION.*—The procedures and policies adopted under paragraph (1) shall include consultation with State officials and members of the private sector.

(d) *REPORTS.*—

(1) *IN GENERAL.*—Concurrent with the submission to Congress of the budget of the President for each fiscal year, 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 strategic plans, goals, and milestones developed under subsections (a) and (b) to help guide research, development, and technology transfer activities during the 5-year period beginning on the date of the report.

(2) *COMPARISON TO PREVIOUS REPORT.*—The report shall include a delineation of the progress made with respect to each



of the plans, goals, and milestones specified in the previous report.

(3) *PROHIBITION ON OBLIGATION FOR FAILURE TO SUBMIT REPORT.*—Beginning on the date of the submission to Congress of the budget of the President for fiscal year 2000, and on the date of the submission for each fiscal year thereafter, none of the funds made available under this chapter or chapter 5 of title 23 may be obligated until the report required under paragraph (1) for that fiscal year is submitted.

**§ 5222. Authorization of contract authority**

(a) *IN GENERAL.*—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subchapter \$1,500,000 for each of fiscal years 1998 through 2003.

(b) *CONTRACT AUTHORITY.*—Funds authorized under this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, except that—

(1) any Federal share of the cost of an activity under this subchapter shall be determined in accordance with this subchapter; and

(2) the funds shall remain available for obligation for a period of 2 years after the last day of the fiscal year for which the funds are authorized.

(c) *USE OF UNALLOCATED FUNDS.*—To the extent that the amounts made available for any fiscal year under subsection (a) exceed the amounts used to carry out section 5221 for the fiscal year, the excess amounts—

(1) shall be apportioned in accordance with section 104(b)(3) of title 23;

(2) 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) of that title; and

(3) shall be available for any purpose eligible for funding under section 133 of that title.

\* \* \* \* \*

**SUBCHAPTER III—MULTIMODAL TRANSPORTATION  
RESEARCH AND DEVELOPMENT PROGRAM**

**§ 5231. Multimodal Transportation Research and Development Program**

(a) *ESTABLISHMENT.*—The Secretary shall establish a program to be known as the “Multimodal Transportation Research and Development Program”.

(b) *PURPOSES.*—The purposes of the Multimodal Transportation Research and Development Program are to—

(1) enhance the capabilities of Federal agencies to meet national transportation needs, as defined by the missions of the agencies, through support for long-term and applied research and development that would benefit the various modes of transportation, including research and development in safety, security, mobility, energy and the environment, information and physical infrastructure, and industrial design;

(2) identify and apply innovative research performed by the Federal Government, academia, and the private sector to the intermodal and multimodal transportation research, development, and deployment needs of the Department and the transportation enterprise of the United States;

(3) identify and leverage research, technologies, and other information developed by the Federal Government for national defense and nondefense purposes for the benefit of the public, commercial, and defense transportation sectors; and

(4) share information and analytical and research capabilities among the Federal Government, State and local governments, colleges and universities, and private organizations to advance their ability to meet their transportation research, development, and deployment needs.

(c) *PROCESS FOR CONSULTATION.*—To advise the Secretary in establishing priorities within the Program, the Secretary shall establish a process for consultation among the Administrators of the operating administrations of the Department and other Federal officials with responsibility for research.

#### **§5232. Authorization of contract authority**

(a) *IN GENERAL.*—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subchapter \$2,500,000 for each of fiscal years 1998 through 2003.

(b) *CONTRACT AUTHORITY.*—Funds authorized under this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, except that—

(1) any Federal share of the cost of an activity under this subchapter shall be determined in accordance with this subchapter; and

(2) the funds shall remain available for obligation for a period of 2 years after the last day of the fiscal year for which the funds are authorized.

\* \* \* \* \*

### **SUBCHAPTER IV—NATIONAL UNIVERSITY TRANSPORTATION CENTERS**

#### **§5241. National university transportation centers**

(a) *IN GENERAL.*—The Secretary shall make grants to, or enter into contracts with, the nonprofit institutions of higher learning selected under section 5317 (as in effect on the day before the date of enactment of this section)—

(1) to operate 1 university transportation center in each of the 10 Federal administrative regions that comprise the Standard Federal Regional Boundary System; and

(2) to continue operation of university transportation centers at the Mack-Blackwell National Rural Transportation Study Center, the National Center for Transportation and Industrial Productivity, the Institute for Surface Transportation Policy Studies, the Urban Transit Institute at the University of South Florida, the National Center for Advanced Transportation Technology, and the University of Alabama Transportation Research Center.

(b) *ADDITIONAL CENTERS.*—

(1) *IN GENERAL.*—*The Secretary may make grants to non-profit institutions of higher learning to establish and operate not more than 4 additional university transportation centers to address—*

*(A) transportation management, research, and development, with special attention to increasing the number of highly skilled minority individuals and women entering the transportation workforce;*

*(B) transportation and industrial productivity;*

*(C) rural transportation;*

*(D) advanced transportation technology;*

*(E) international transportation policy studies;*

*(F) transportation infrastructure technology;*

*(G) urban transportation research;*

*(H) transportation and the environment;*

*(I) surface transportation safety; or*

*(J) infrastructure finance studies.*

(2) *SELECTION CRITERIA.*—

*(A) APPLICATION.*—*A nonprofit institution of higher learning that desires to receive a grant under paragraph (1) shall submit an application to the Secretary in such manner and containing such information as the Secretary may require.*

*(B) SELECTION OF RECIPIENTS.*—*The Secretary shall select each grant recipient under paragraph (1) on the basis of—*

*(i) the demonstrated research and extension resources available to the recipient to carry out this section;*

*(ii) the capability of the recipient to provide leadership in making national and regional contributions to the solution of immediate and long-term transportation problems;*

*(iii) the establishment by the recipient of a surface transportation program that encompasses several modes of transportation;*

*(iv) the demonstrated ability of the recipient to disseminate results of transportation research and education programs through a statewide or regionwide continuing education program; and*

*(v) the strategic plan that the recipient proposes to carry out using the grant funds; and*

*(vi) the extent to which private funds have been committed to a university and public-private partnerships established to fulfill the objectives specified in paragraph (1).*

*(c) OBJECTIVES.*—*Each university transportation center shall use grant funds under subsection (a) or (b) to carry out—*

*(1) multimodal basic and applied research, the products of which are judged by peers or other experts in the field to advance the body of knowledge in transportation;*

*(2) an education program that includes multidisciplinary course work and participation in research; and*

(3) *an ongoing program of technology transfer that makes research results available to potential users in a form that can be readily implemented, used, or otherwise applied.*

(d) *MAINTENANCE OF EFFORT.*—*Before making a grant under subsection (a) or (b), the Secretary shall require the grant recipient to enter into an agreement with the Secretary to ensure that the recipient will maintain, during the period of the grant, a level of total expenditures from all other sources for establishing and operating a university transportation center and carrying out related research activities that is at least equal to the average level of those expenditures in the 2 fiscal years of the recipient prior to the award of a grant under subsection (a) or (b).*

(e) *ADDITIONAL GRANTS AND CONTRACTS.*—

(1) *GRANTS OR CONTRACTS.*—*In addition to grants under subsection (a) or (b), the Secretary may make grants to, or enter into contracts with, university transportation centers without the need for a competitive process.*

(2) *USE OF GRANTS OR CONTRACTS.*—*A noncompetitive grant or contract under paragraph (1) shall be used for transportation research, development, education, or training consistent with the strategic plan approved as part of the selection process for the center.*

(f) *FEDERAL SHARE.*—*The Federal share of the cost of establishing and operating a university transportation center and carrying out related research activities under this section shall be not more than 50 percent.*

(g) *PROGRAM COORDINATION.*—

(1) *IN GENERAL.*—*The Secretary shall—*

(A) *coordinate research, education, training, and technology transfer activities carried out by grant recipients under this section;*

(B) *disseminate the results of the research; and*

(C) *establish and operate a clearinghouse for disseminating the results of the research.*

(2) *REVIEW AND EVALUATION.*—

(A) *IN GENERAL.*—*Not less often than annually, the Secretary shall review and evaluate programs carried out by grant recipients under this section.*

(B) *NOTIFICATION OF DEFICIENCIES.*—*In carrying out subparagraph (A), if the Secretary determines that a university transportation center is deficient in meeting the objectives of this section, the Secretary shall notify the grant recipient operating the center of each deficiency and provide specific recommendations of measures that should be taken to address the deficiency.*

(C) *DISQUALIFICATION.*—*If, after the end of the 180-day period that begins on the date of notification to a grant recipient under subparagraph (B) with respect to a center, the Secretary determines that the recipient has not corrected each deficiency identified under subparagraph (B), 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—*

(i) *disqualify the university transportation center from further participation under this section; and*

(ii) *make a grant for the establishment of a new university transportation center, in lieu of the disqualified center, under subsection (a) or (b), as applicable.*

(3) *FUNDING.—The Secretary may use not more than 1 percent of Federal funds made available under this section to carry out this subsection.*

(h) *AUTHORIZATION OF CONTRACT AUTHORITY.—*

(1) *IN GENERAL.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$12,000,000 for each of fiscal years 1998 through 2003.*

(2) *CONTRACT AUTHORITY.—Funds authorized under this subsection shall be made available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, except that the Federal share of the cost of a project under this section shall be determined in accordance with this section.*

(3) *TECHNOLOGY TRANSFER ACTIVITIES.—For each fiscal year, not less than 5 percent of the amounts made available to carry out this section shall be available to carry out technology transfer activities.*

(i) *LIMITATION ON AVAILABILITY OF FUNDS.—Funds authorized under this section shall remain available for obligation for a period of 2 years after the last day of the fiscal year for which the funds are authorized.*

\* \* \* \* \*

## CHAPTER 53—MASS TRANSPORTATION

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### **§ 5503. Office of Intermodalism**

(a) ESTABLISHMENT.—The Secretary of Transportation shall establish in the Office of the Secretary an Office of Intermodalism.

(b) DIRECTOR.—The head of the Office is a Director who shall be appointed by the Secretary.

(c) DUTIES AND POWERS.—The Director shall carry out the duties of the Secretary described in section 301(3) of this title.

[(d) INTERMODAL TRANSPORTATION DATA BASE.—(1) The Director shall develop, maintain, and disseminate intermodal transportation data through the Bureau of Transportation Statistics. The Director shall coordinate the collection of data for the data base with the States and metropolitan planning organizations. The data base shall include information on—

[(A) the volume of property and number of individuals carried in intermodal transportation by relevant classification;

[(B) patterns of movement of property and individuals in intermodal transportation by relevant classification by origin and destination; and

[(C) public and private investment in intermodal transportation facilities and services.

[(2) The Director shall make information from the data base available to the public.]

[(e)] (d) RESEARCH.—The Director shall—

(1) coordinate United States Government research on intermodal transportation as provided in the plan developed under section 6009(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 2177); and

(2) carry out additional research needs identified by the Director.

[(f)] (e) TECHNICAL ASSISTANCE.—The Director shall provide technical assistance to States and to metropolitan planning organizations for urban areas having a population of at least 1,000,000 in collecting data related to intermodal transportation to facilitate the collection of the data by States and metropolitan planning organizations.

[(g)] (f) ADMINISTRATIVE AND CLERICAL SUPPORT.—The Director shall provide administrative and clerical support to the Intermodal Transportation Advisory Board.

\* \* \* \* \*

**§ 47107. Project grant application approval conditioned on assurances about airport operations**

(a) GENERAL WRITTEN ASSURANCES. \* \* \*

\* \* \* \* \*

(j) USE OF REVENUE IN HAWAII.—(1) In this subsection—

(A) “duty-free merchandise” and “duty-free sales enterprise” have the same meanings given those terms in section 555(b)(8) of the Tariff Act of 1930 (19 U.S.C. 1555(b)(8)).

(B) “highway” and “Federal-aid system” have the same meanings given those terms in **[section 101(a)]** *section 101* of title 23.

\* \* \* \* \*

# INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

[Public Law 102-240; December 18, 1991]

[As Amended Through P.L. 104-333, Nov. 12, 1996]

\* \* \* \* \*

## SECTION 1. SHORT TITLE.

This Act may be cited as the “Intermodal Surface Transportation Efficiency Act of 1991”.

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[Sec. 1040. Highway use tax evasion projects.] *[Repealed]*

\* \* \* \* \*

[PART B—NATIONAL RECREATIONAL TRAILS FUND ACT] *[Repealed]*

[Sec. 1301. Short title.] *[Repealed]*

[Sec. 1302. National Recreational Trails funding program.] *[Repealed]*

[Sec. 1303. National Recreational Trails Advisory Committee.] *[Repealed]*

\* \* \* \* \*

## SEC. 1012. TOLL ROADS, BRIDGES, AND TUNNELS.

\* \* \* \* \*

(b) **[CONGESTION] Value PRICING PILOT PROGRAM.**—(1) The Secretary shall solicit the participation of State and local governments and public authorities for one or more **[congestion] value pricing pilot [projects] programs**. The Secretary may enter into cooperative agreements with as many as **[5] 15** such State or local governments or public authorities to establish, maintain, and monitor **[congestion] value pricing [projects] 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] programs*, 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 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]** *programs* 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 **[a pilot program under this section, but not on more than 3 of such programs]** *any value pricing program under this subsection.*

(5) The Secretary shall monitor the effect of such **[projects]** *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,]** *traffic volume*, transit ridership, air quality, and availability of funds for transportation programs.

**[(6) Of the sums made available to the Secretary pursuant to section 104(a) of title 23, United States Code, not to exceed \$25,000,000 shall be made available each fiscal year to carry out the requirements of this subsection. Not more than \$15,000,000 of such amounts shall be made available to carry out each pilot project under this section.]**

**(6) HOV PASSENGER REQUIREMENTS.**—*Notwithstanding section 146(c) 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) AUTHORIZATION OF CONTRACT AUTHORITY.**—

**(A) IN GENERAL.**—*There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection \$8,000,000 for each of fiscal years 1998 through 2003.*

**(B) AVAILABILITY.**—

**(i) IN GENERAL.**—*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.*

**(ii) USE OF UNALLOCATED FUNDS.**—*If the total amount of funds made available from the Highway Trust Fund under this subsection 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 that title; and*

*(III) shall be available for any purpose eligible for funding under section 133 of that title.*

*(C) CONTRACT AUTHORITY.—Funds authorized under this paragraph 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 by this paragraph shall be determined in accordance with this subsection.*

\* \* \* \* \*

**SEC. 1105. HIGH PRIORITY CORRIDORS ON NATIONAL HIGHWAY SYSTEM.**

(a) FINDINGS.—The Congress finds that—

\* \* \* \* \*

(e) PROVISIONS APPLICABLE TO CORRIDORS.—

(1) LONG-RANGE PLAN.—The Secretary, in cooperation with the affected State or States, may prepare a long-range plan for the upgrading of each corridor to the appropriate standard for highways on the National Highway System. Each such plan may include a plan for developing the corridor and a plan for financing the development.

(2) FEASIBILITY STUDIES.—The Secretary, in cooperation with the affected State or States, may prepare feasibility and design studies, as necessary, for those corridors for which such studies have not been prepared. A feasibility study may be conducted under this subsection with respect to the corridor described in subsection (c)(2), relating to Avenue of the Saints, to determine the feasibility of an adjunct to the Avenue of the Saints serving the southern St. Louis metropolitan area and connecting with I-55 in the vicinity of Route A in Jefferson County, Missouri. A study may be conducted under this subsection to determine the feasibility of constructing a more direct limited access highway between Peoria and Chicago, Illinois. A feasibility study may be conducted under this paragraph to identify routes that will expedite future emergency evacuations of coastal areas of Louisiana.

(3) CERTIFICATION ACCEPTANCE.—The Secretary may discharge any of his responsibilities under title 23, United States Code, relative to projects on a corridor identified under subsection (c), upon the request of a State, by accepting a certification by the State in accordance with section 117 of such title.

(4) ACCELERATION OF PROJECTS.—To the maximum extent feasible, the Secretary may use procedures for acceleration of projects in carrying out projects on corridors identified in subsection (c).

(5) INCLUSION OF CERTAIN ROUTE SEGMENTS ON INTERSTATE SYSTEM.—

(A) IN GENERAL.—The portions of the routes referred to in clauses (i), (ii), and (iii) of subsection (c)(5)(B), in subsection (c)(9), and in subsections (c)(18) and (c)(20) that are not a part of the Interstate System are designated as future parts of the Interstate System. Any segment of such routes shall become a part of the Interstate System at such time as the Secretary determines that the segment—

(i) meets the Interstate System design standards approved by the Secretary under section 109(b) of title 23, United States Code; and

(ii) connects to an existing Interstate System segment.

The portion of the route referred to in subsection (c)(9) is designated as Interstate Route I-99.

**[(B) TREATMENT OF SEGMENTS.—**Subject to subparagraph (C), segments designated as part of the Interstate System by this paragraph and the mileage of such segments shall be treated in the manner described in the last 2 sentences of section 139(a) of title 23, United States Code.]

*(B) TREATMENT OF SEGMENTS.—*Subject to subparagraph (C), segments designated as parts of the Interstate System under this paragraph shall be treated in the same manner as segments designated under section 103(c)(4)(A) of title 23, United States Code.

**(C) USE OF FUNDS.—**

(i) **GENERAL RULE.—**Funds apportioned under section 104(b)(5)(A) of title 23, United States Code, may be used on a project to construct a portion of a route referred to in this paragraph to standards set forth in section 109(b) of such title if the State determines that the project for which the funds were originally apportioned is unreasonably delayed or no longer viable.

(ii) **LIMITATION.—**If funds apportioned under section 104(b)(5)(A) of title 23, United States Code, for completing a segment of the Interstate System are used on a project pursuant to this subparagraph, no interstate construction funds may be made available, after the date of the enactment of this paragraph, for construction of such segment.

\* \* \* \* \*

## **[PART B—NATIONAL RECREATIONAL TRAILS FUND ACT**

### **[SEC. 1301. SHORT TITLE.**

**[(**This part may be cited as the “Symms National Recreational Trails Act of 1991”.**)**

### **[SEC. 1302. NATIONAL RECREATIONAL TRAILS FUNDING PROGRAM.**

**[(a) IN GENERAL.—**The Secretary, in consultation with the Secretary of the Interior, using amounts available in the Fund, shall administer a program allocating moneys to the States for the purposes of providing and maintaining recreational trails.

**[(b) STATEMENT OF INTENT.—**Moneys made available under this part are to be used on trails and trail-related projects which have been planned and developed under the otherwise existing laws, policies and administrative procedures within each State, and which are identified in, or which further a specific goal of, a trail plan included or referenced in a Statewide Comprehensive Outdoor

Recreation Plan required by the Land and Water Conservation Fund Act.

[(c) STATE ELIGIBILITY.—

[(1) TRANSITIONAL PROVISION.—Until the date that is 3 years after the date of enactment of this part, a State shall be eligible to receive moneys under this part only if such State's application proposes to use the moneys as provided in subsection (e).

[(2) PERMANENT PROVISION.—On and after the date that is three years after the date of the enactment of this part, a State shall be eligible to receive moneys under this part only if—

[(A) a recreational trail advisory board on which both motorized and nonmotorized recreational trail users are represented exists within the State;

[(B) the Governor of the State has designated the State official or officials who will be responsible for administering moneys received under this part; and

[(C) the State's application proposes to use moneys received under this part as provided in subsection (e).

[(3) FEDERAL SHARE.—

[(A) PRIOR TO FISCAL YEAR 2001.—Prior to October 1, 2000, the Federal share of the cost of a project under this section shall be 50 percent.

[(B) FISCAL YEAR 2001 AND THEREAFTER.—For fiscal year 2001 and each fiscal year thereafter, a State shall be eligible to receive moneys under this part for a fiscal year only if the State agrees to expend from non-Federal sources for carrying out projects under this part an amount equal to 20 percent of the amount received by the State under this part in that fiscal year.

[(d) ALLOCATION OF MONEYS IN THE FUND.—

[(1) ADMINISTRATIVE COSTS.—No more than 3 percent of the expenditures made annually from the Fund may be used to pay the cost to the Secretary for—

[(A) approving applications of States for moneys under this part;

[(B) paying expenses of the National Recreational Trails Advisory Committee;

[(C) conducting national surveys of nonhighway recreational fuel consumption by State, for use in making determinations and estimations pursuant to this part;

[(D) contracting for services with other land management agencies; and

[(E) if any such funds remain unexpended, research on methods to accommodate multiple trail uses and increase the compatibility of those uses, information dissemination, technical assistance, and preparation of a national trail plan as required by the National Trails System Act (16 U.S.C. 1241 et al).

[(2) ALLOCATION TO STATES.—

[(A) AMOUNT.—Amounts in the Fund remaining after payment of the administrative costs described in paragraph (1), shall be allocated and paid to the States annually in the following proportions:

[(i) EQUAL AMOUNTS.—50 percent of such amounts shall be allocated equally among eligible States.

[(ii) AMOUNTS PROPORTIONATE TO NONHIGHWAY RECREATIONAL FUEL USE.—50 percent of such amounts shall be allocated among eligible States in proportion to the amount of nonhighway recreational fuel use during the preceding year in each such State, respectively.

[(B) USE OF DATA.—In determining amounts of non-highway recreational fuel use for the purpose of subparagraph (A)(ii), the Secretary may consider data on off-highway vehicle registrations in each State.

[(3) LIMITATION ON OBLIGATIONS.—The provisions of paragraphs (1) and (2) notwithstanding, the total of all obligations for recreational trails under this section shall not exceed—

[(A) \$30,000,000 for fiscal year 1992;

[(B) \$30,000,000 for fiscal year 1993;

[(C) \$30,000,000 for fiscal year 1994;

[(D) \$30,000,000 for fiscal year 1995;

[(E) \$30,000,000 for fiscal year 1996; and

[(F) \$30,000,000 for fiscal year 1997.

[(e) USE OF ALLOCATED MONEYS.—

[(1) PERMISSIBLE USES.—A State may use moneys received under this part for—

[(A) in an amount not exceeding 7 percent of the amount of moneys received by the State, administrative costs of the State;

[(B) in an amount not exceeding 5 percent of the amount of moneys received by the State, operation of environmental protection and safety education programs relating to the use of recreational trails;

[(C) development of urban trail linkages near homes and workplaces;

[(D) maintenance of existing recreational trails, including the grooming and maintenance of trails across snow;

[(E) restoration of areas damaged by usage of recreational trails and back country terrain;

[(F) development of trail-side and trail-head facilities that meet goals identified by the National Recreational Trails Advisory Committee;

[(G) provision of features which facilitate the access and use of trails by persons with disabilities;

[(H) acquisition of easements for trails, or for trail corridors identified in a State trail plan;

[(I) acquisition of fee simple title to property from a willing seller, when the objective of the acquisition cannot be accomplished by acquisition of an easement or by other means;

[(J) construction of new trails on State, county, municipal, or private lands, where a recreational need for such construction is shown; and

[(K) only as otherwise permissible, and where necessary and required by a State Comprehensive Outdoor

Recreation plan, construction of new trails crossing Federal lands, where such construction is approved by the administering agency of the State, and the Federal agency or agencies charged with management of all impacted lands, such approval to be contingent upon compliance by the Federal agency with all applicable laws, including the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1600 et seq.), and the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.).

[(2) USE NOT PERMITTED.—A State may not use moneys received under this part for—

[(A) condemnation of any kind of interest in property;

[(B)(i) construction of any recreational trail on National Forest System lands for motorized uses unless such lands—

[(I) have been allocated for uses other than wilderness by an approved Forest land and resource management plan or have been released to uses other than wilderness by an Act of Congress, and

[(II) such construction is otherwise consistent with the management direction in such approved land and resource management plan; or

[(ii) construction of any recreational trail on Bureau of Land Management lands for motorized uses unless such lands—

[(I) have been allocated for uses other than wilderness by an approved Bureau of Land Management resource management plan or have been released to uses other than wilderness by an Act of Congress, and

[(II) such construction is otherwise consistent with the management direction in such approved management plans; or

[(C) upgrading, expanding, or otherwise facilitating motorized use or access to trails predominantly used by non-motorized trail users and on which, as of May 1, 1991, motorized use is either prohibited or has not occurred.

[(3) GRANTS.—

[(A) IN GENERAL.—A State may provide moneys received under this part to make grants to private individuals, organizations, city and county governments, and other government entities as approved by the State after considering guidance from the recreational trail advisory board satisfying the requirements of subsection (c)(2)(A), for uses consistent with this section.

[(B) COMPLIANCE.—A State that issues such grants under subparagraph (A) shall establish measures to verify that recipients comply with the specified conditions for the use of grant moneys.

[(4) ASSURED ACCESS TO FUNDS.—Except as provided under paragraphs (7) and (9)(B), not less than 30 percent of the moneys received annually by a State under this part shall be reserved for uses relating to motorized recreation, and not

less than 30 percent of those moneys shall be reserved for uses relating to non-motorized recreation.

**[(5) ENVIRONMENTAL MITIGATION.—**

**[(A) REQUIREMENT.—**To the extent practicable and consistent with other requirements of this section, in complying with paragraph (4), a State should give consideration to project proposals that provide for the redesign, reconstruction, nonroutine maintenance, or relocation of trails in order to mitigate and minimize the impact to the natural environment.

**[(B) GUIDANCE.—**A recreational trail advisory board satisfying the requirements of subsection (c)(2)(A) shall issue guidance to a State for the purposes of implementing subparagraph (A).

**[(6) DIVERSIFIED TRAIL USE.—**

**[(A) REQUIREMENT.—**To the extent practicable and consistent with other requirements of this section, a State shall expend moneys received under this part in a manner that gives preference to project proposals which—

**[(i)** provide for the greatest number of compatible recreational purposes including, but not limited to, those described under the definition of “recreational trail” in subsection (g)(5); or

**[(ii)** provide for innovative recreational trail corridor sharing to accommodate motorized and non-motorized recreational trail use.

This paragraph shall remain effective until such time as a State has allocated not less than 40 percent of moneys received under this part in the aforementioned manner.

**[(B) COMPLIANCE.—**The State shall receive guidance for determining compliance with subparagraph (A) from the recreational trail advisory board satisfying the requirements of subsection (c)(2)(A).

**[(7) SMALL STATE EXCLUSION.—**Any State with a total land area of less than 3,500,000 acres, and in which nonhighway recreational fuel use accounts for less than 1 percent of all such fuel use in the United States, shall be exempted from the requirements of paragraph (4) of this subsection upon application to the Secretary by the State demonstrating that it meets the conditions of this paragraph.

**[(8) CONTINUING RECREATIONAL USE.—**At the option of each State, moneys made available pursuant to this part may be treated as Land and Water Conservation Fund moneys for the purposes of section 6(f)(3) of the Land and Water Conservation Fund Act.

**[(9) RETURN OF MONEYS NOT EXPENDED.—**

**[(A)** Except as provided in subparagraph (B), moneys paid to a State that are not expended or dedicated to a specific project within 4 years after receipt for the purposes stated in this subsection shall be returned to the Fund and shall thereafter be reallocated under the formula stated in subsection (d).

**[(B)** If approved by the State recreational trail advisory board satisfying the requirements of subsection

(c)(2)(A), the State may be exempted from the requirements of paragraph (4).

**[(f) COORDINATION OF ACTIVITIES.—**

**[(1) COOPERATION BY FEDERAL AGENCIES.—**Each agency of the United States Government that manages land on which a State proposes to construct or maintain a recreation trail pursuant to this part is encouraged to cooperate with the State and the Secretary in planning and carrying out the activities described in subsection (e). Nothing in this part diminishes or in any way alters the land management responsibilities, plans and policies established by such agencies pursuant to other applicable laws.

**[(2) COOPERATION BY PRIVATE PERSONS.—**

**[(A) WRITTEN ASSURANCES.—**As a condition to making available moneys for work on recreational trails that would affect privately owned land, a State shall obtain written assurances that the owner of the property will cooperate with the State and participate as necessary in the activities to be conducted.

**[(B) PUBLIC ACCESS.—**Any use of a State's allocated moneys on private lands must be accompanied by an easement or other legally binding agreement that ensures public access to the recreational trail improvements funded by those moneys.

**[(g) DEFINITIONS.—**For the purposes of this section—

**[(1) ELIGIBLE STATE.—**The term “eligible State” means a State that meets the requirements stated in subsection (c).

**[(2) FUND.—**The term “Fund” means the National Recreational Trails Trust Fund established by section 9511 of the Internal Revenue Code of 1986.

**[(3) NONHIGHWAY RECREATIONAL FUEL.—**The term “non-highway recreational fuel” has the meaning stated in section 9503(c)(6) of the Internal Revenue Code of 1986.

**[(4) SECRETARY.—**The term “Secretary” means the Secretary of Transportation.

**[(5) RECREATIONAL TRAIL.—**The term “recreational trail” means a thoroughfare or track across land or snow, used for recreational purposes such as bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, aquatic or water activity and vehicular travel by motorcycle, four-wheel drive or all-terrain off-road vehicles, without regard to whether it is a “National Recreation Trail” designated under section 4 of the National Trails System Act (16 U.S.C. 1243).

**[(6) MOTORIZED RECREATION.—**The term “motorized recreation” may not include motorized conveyances used by persons with disabilities, such as self-propelled wheelchairs, at the discretion of each State.

**[SEC. 1303. NATIONAL RECREATIONAL TRAILS ADVISORY COMMITTEE.**

**[(a) ESTABLISHMENT.—**There is established the National Recreational Trails Advisory Committee.

**[(b) MEMBERS.—**There shall be 12 members of the advisory committee, consisting of—



[(1) 8 members appointed by the Secretary from nominations submitted by recreational trail user organizations, one each representing the following recreational trail uses:

- [(A) hiking,
- [(B) cross-country skiing,
- [(C) off-highway motorcycling,
- [(D) snowmobiling,
- [(E) horseback riding,
- [(F) all-terrain vehicle riding,
- [(G) bicycling, and
- [(H) four-wheel driving;

[(2) 1 member appointed by the Secretary representing individuals with disabilities;

[(3) an appropriate official of government with a background in science or natural resources management, including any official of State or local government, designated by the Secretary;

[(4) 1 member appointed by the Secretary from nominations submitted by water trail user organizations; and

[(5) 1 member appointed by the Secretary from nominations submitted by hunting and fishing enthusiast organizations.

[(c) CHAIRMAN.—The Chair of the advisory committee shall be the government official referenced in subsection (b)(3), who shall serve as a non-voting member.

[(d) SUPPORT FOR COMMITTEE ACTION.—Any action, recommendation, or policy of the advisory committee must be supported by at least five of the members appointed under subsection (b)(1).

[(e) TERMS.—Members of the advisory committee appointed by the Secretary shall be appointed for terms of three years, except that the members filling five of the eleven positions shall be initially appointed for terms of two years, with subsequent appointments to those positions extending for terms of three years.

[(f) DUTIES.—The advisory committee shall meet at least twice annually to—

- [(1) review utilization of allocated moneys by States;
- [(2) establish and review criteria for trail-side and trail-head facilities that qualify for funding under this part; and
- [(3) make recommendations to the Secretary for changes in Federal policy to advance the purposes of this part.

[(g) ANNUAL REPORT.—The advisory committee shall present to the Secretary an annual report on its activities.

[(h) REIMBURSEMENT FOR EXPENSES.—Nongovernmental members of the advisory committee shall serve without pay, but, to the extent funds are available pursuant to section 1302(d)(1)(B), shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties.

[(i) REPORT TO CONGRESS.—Not later than 4 years after the date of the enactment of this Act, the Secretary shall prepare and 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 study which summarizes the annual reports of the National Recreational Trails Advisory Commit-

tee, describes the allocation and utilization of moneys under this part, and contains recommendations for changes in Federal policy to advance the purposes of this part.】

\* \* \* \* \*

#### SEC. 1009. INTERSTATE MAINTENANCE PROGRAM.

\* \* \* \* \*

(c) GUIDANCE TO THE STATES.—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)】 119(c)(1) of title 23, United States Code.

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52. RESEARCH AND DEVELOPMENT ..... 5201

\* \* \* \* \*

#### CHAPTER 52—RESEARCH AND DEVELOPMENT

Sec.

5201. Definitions.

##### SUBCHAPTER I—GENERAL AND ADMINISTRATIVE PROVISIONS

5211. Transactional authority.

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5232. Authorization of *απορροπιατικος* contract authority.

##### SUBCHAPTER IV—NATIONAL UNIVERSITY TRANSPORTATION CENTERS

5241. National university transportation centers.

### § 5201. Definitions

*In this chapter:*

(1) *DEPARTMENT.*—The term “Department” means the Department of Transportation.

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

##### SUBCHAPTER I—GENERAL AND ADMINISTRATIVE PROVISIONS

### § 5211. Transactional authority

*To further the objectives of this chapter, the Secretary may make grants to, and enter into contracts, cooperative agreements, and other transactions with—*

(1) *any person or any agency or instrumentality of the United States;*

(2) *any unit of State or local government;*

(3) *any educational institution; and*

(4) any other entity.

## SUBCHAPTER II—STRATEGIC PLANNING

### § 5221. Strategic planning

(a) *AUTHORITY.*—The Secretary shall establish a strategic planning process to—

(1) determine national transportation research, development, and technology deployment priorities, strategies, and milestones over the next 5 years;

(2) coordinate Federal transportation research, development, and technology deployment activities; and

(3) measure the impact of the research, development, and technology investments described in paragraph (2) on the performance of the transportation system of the United States.

(b) *CRITERIA.*—In developing strategic plans for intermodal, multimodal, and mode-specific research, development, and technology deployment, the Secretary shall consider the need to—

(1) coordinate and integrate Federal, regional, State, and metropolitan planning research, development, and technology activities in urban and rural areas;

(2) promote standards that facilitate a seamless and interoperable transportation system;

(3) encourage innovation;

(4) identify and facilitate initiatives and partnerships to deploy technology with the potential for improving transportation systems during the next 5-year and 10-year periods;

(5) identify core research to support the long-term transportation technology and system needs of urban and rural areas of the United States, including safety;

(6) ensure the ability of the United States to compete on a global basis; and

(7) provide a means of assessing the impact of Federal research and technology investments on the performance of the transportation system of the United States.

(c) *IMPLEMENTATION.*—

(1) *IN GENERAL.*—In carrying out subsection (a), the Secretary shall adopt such policies and procedures as are appropriate—

(A) to provide for integrated planning, coordination, and consultation among the Administrators of the operating administrations of the Department and other Federal officials with responsibility for research, development, and technology transfer important to national transportation needs;

(B) to promote the exchange of information on transportation-related research and development activities among the operating elements of the Department, other Federal departments and agencies, State and local governments, colleges and universities, industry, and other private and public sector organizations engaged in the activities;

(C) to ensure that the research and development programs of the Department do not duplicate other Federal

and, to the maximum extent practicable, private sector research and development programs; and

(D) to ensure that the research and development activities of the Department—

(i) make appropriate use of the talents, skills, and abilities at the Federal laboratories; and

(ii) leverage, to the maximum extent practicable, the research, development, and technology transfer capabilities of institutions of higher education and private industry.

(2) CONSULTATION.—The procedures and policies adopted under paragraph (1) shall include consultation with State officials and members of the private sector.

(d) REPORTS.—

(1) IN GENERAL.—Concurrent with the submission to Congress of the budget of the President for each fiscal year, 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 strategic plans, goals, and milestones developed under subsections (a) and (b) to help guide research, development, and technology transfer activities during the 5-year period beginning on the date of the report.

(2) COMPARISON TO PREVIOUS REPORT.—The report shall include a delineation of the progress made with respect to each of the plans, goals, and milestones specified in the previous report.

(3) PROHIBITION ON OBLIGATION FOR FAILURE TO SUBMIT REPORT.—Beginning on the date of the submission to Congress of the budget of the President for fiscal year 2000, and on the date of the submission for each fiscal year thereafter, none of the funds made available under this chapter or chapter 5 of title 23 may be obligated until the report required under paragraph (1) for that fiscal year is submitted.

#### **§ 5222. Authorization of contract authority**

(a) IN GENERAL.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subchapter \$1,500,000 for each of fiscal years 1998 through 2003.

(b) CONTRACT AUTHORITY.—Funds authorized under this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, except that—

(1) any Federal share of the cost of an activity under this subchapter shall be determined in accordance with this subchapter; and

(2) the funds shall remain available for obligation for a period of 2 years after the last day of the fiscal year for which the funds are authorized.

(c) USE OF UNALLOCATED FUNDS.—To the extent that the amounts made available for any fiscal year under subsection (a) exceed the amounts used to carry out section 5221 for the fiscal year, the excess amounts—

(1) shall be apportioned in accordance with section 104(b)(3) of title 23;

(2) 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) of that title; and

(3) shall be available for any purpose eligible for funding under section 133 of that title.

### SUBCHAPTER III—MULTIMODAL TRANSPORTATION RESEARCH AND DEVELOPMENT PROGRAM

#### **§5231. Multimodal Transportation Research and Development Program**

(a) *ESTABLISHMENT.*—The Secretary shall establish a program to be known as the “Multimodal Transportation Research and Development Program”.

(b) *PURPOSES.*—The purposes of the Multimodal Transportation Research and Development Program are to—

(1) enhance the capabilities of Federal agencies to meet national transportation needs, as defined by the missions of the agencies, through support for long-term and applied research and development that would benefit the various modes of transportation, including research and development in safety, security, mobility, energy and the environment, information and physical infrastructure, and industrial design;

(2) identify and apply innovative research performed by the Federal Government, academia, and the private sector to the intermodal and multimodal transportation research, development, and deployment needs of the Department and the transportation enterprise of the United States;

(3) identify and leverage research, technologies, and other information developed by the Federal Government for national defense and nondefense purposes for the benefit of the public, commercial, and defense transportation sectors; and

(4) share information and analytical and research capabilities among the Federal Government, State and local governments, colleges and universities, and private organizations to advance their ability to meet their transportation research, development, and deployment needs.

(c) *PROCESS FOR CONSULTATION.*—To advise the Secretary in establishing priorities within the Program, the Secretary shall establish a process for consultation among the Administrators of the operating administrations of the Department and other Federal officials with responsibility for research.

#### **§5232. Authorization of contract authority**

(a) *IN GENERAL.*—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subchapter \$2,500,000 for each of fiscal years 1998 through 2003.

(b) *CONTRACT AUTHORITY.*—Funds authorized under this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, except that—

(1) any Federal share of the cost of an activity under this subchapter shall be determined in accordance with this subchapter; and

*(2) the funds shall remain available for obligation for a period of 2 years after the last day of the fiscal year for which the funds are authorized.*

## TITLE 40, UNITED STATES CODE, APPENDIX

\* \* \* \* \*

## TITLE II—SPECIAL APPALACHIAN PROGRAMS

\* \* \* \* \*

## § 201. Appalachian development highway system

(a) In order to provide a highway system which, in conjunction with the Interstate System and other Federal-aid highways in the Appalachian region, will open up an area or areas with a developmental potential where commerce and communication have been inhibited by lack of adequate access, the Secretary of Transportation (hereafter in this section referred to as the “Secretary”) is authorized to assist in the construction of an Appalachian development highway system and local access roads serving the Appalachian region. The provisions of sections 106(a) and 118 of title 23, United States Code, relating to obligation, period of availability, and expenditure of Federal-aid highway funds, shall apply to the development highway system and the local access roads, and other provisions of such title 23 that are applicable to the construction and maintenance of Federal-aid primary and secondary highways and which the Secretary determines are not inconsistent with this Act shall apply, respectively, to such system and roads, *except that each allocation to a State shall remain available for expenditure in the State for the fiscal year in which the allocation is allocated and for the 3 following fiscal years. Funds authorized under this section for fiscal year 1998 or a fiscal year thereafter, and not expended by a State during the 4 fiscal years referred to in the preceding sentence, shall be released to the Commission for reallocation and shall remain available until expended.* Construction on the development highway system shall not exceed three thousand and twenty-five miles. Construction of local access roads shall not exceed one thousand four hundred miles that will serve specific recreational, residential, educational, commercial, industrial, or other like facilities or will facilitate a school consolidation program.

## [(b) The Commission]

## (b) DESIGNATIONS

(1) *IN GENERAL.*—The Commission shall transmit to the Secretary its designations of [(1)](A) the general corridor location and termini of the development highways, [(2)](B) local access roads to be constructed, [(3)](C) priorities for the construction of segments of the development highways, and [(4)](D) other criteria for the program authorized by this section. Before any State member participates in or votes on such designations, he shall have obtained the recommendations of the [State highway department] *State transportation department* of the State which he represents.

(2) *SUBSTITUTE CORRIDOR.*—*In lieu of Corridor H in Virginia, the Appalachian development highway system shall include the Virginia portion of the segment identified in section 1105(c)(29) of the Intermodal Surface Transportation Efficiency Act of 1991 (109 Stat. 597).*

\* \* \* \* \*

(h)(1) When a participating State proceeds to construct a segment of a development highway without the aid of Federal funds, in accordance with all the procedures and requirements applicable to the construction of segments of Appalachian development highways with such funds, except insofar such procedures and requirements limit a State to the construction of projects for which Federal funds have previously been appropriated, the Secretary, upon application by the State and with the approval of the Commission, is authorized to pay the State the Federal share not to exceed [70 per centum] 80 percent of the costs of construction of such segment, from any sums appropriated and allocated to such State to carry out this section.

(g) *AUTHORIZATION OF CONTRACT AUTHORITY.*—

(1) *IN GENERAL.*—

(A) *FISCAL YEARS 1998 THROUGH 2003.*—*For the continued construction of the Appalachian development highway system approved as of September 30, 1996, in accordance with this section, there shall be available from the Highway Trust Fund (other than the Mass Transit Account) \$40,000,000 for each of fiscal years 1998 through 2000, \$50,000,000 for fiscal year 2001, \$60,000,000 for fiscal year 2002, and \$70,000,000 for fiscal year 2003.*

(B) *OBLIGATION AUTHORITY.*—*The Secretary shall provide equivalent amounts of obligation authority for the funds authorized under subparagraph (A).*

(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, except that the Federal share shall be determined in accordance with this section and the funds shall remain available in accordance with subsection (a).*

\* \* \* \* \*

**[Public Law 104–59; November 28, 1995]**

**[109 Stat. 568]**

An Act to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**TABLE OF CONTENTS**

Sec. 1. Short title.

\* \* \* \* \*

Sec. 355. Safety belt use law requirements for New Hampshire[ and Maine].

\* \* \* \* \*



**SECTION 1. SHORT TITLE.**

This Act may be cited as the “National Highway System Designation Act of 1995”.

\* \* \* \* \*

**SEC. 205. RELIEF FROM MANDATES.****(a) SUSPENSION OF MANAGEMENT SYSTEMS.—\* \* \***

\* \* \* \* \*

**(a) METRIC REQUIREMENTS.—****(1) \* \* \***

**(2) OTHER ACTIONS.—**[Before September 30, 2000, the] *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.

\* \* \* \* \*

**SEC. 355. SAFETY BELT USE LAW REQUIREMENTS FOR[ NEW HAMPSHIRE AND MAINE].****(a) IN GENERAL.—\* \* \***

\* \* \* \* \*

**(1)** A safety belt use rate in each of fiscal years 1995 [and 1996] *through* 2000, of not less than 50 percent; and

\* \* \* \* \*

**(b) RETROACTIVE APPLICABILITY.—****(1) \* \* \***

**(2) TREATMENT OF CONTINUANCE OF SAFETY BELT USE LAW.—**If the State of New Hampshire [or Maine] continues in effect a law described in subsection (a)(2) of section 153 of title 23, United States Code, within 60 days after the date of the enactment of the section, the State shall be treated, for purposes of this section and such section, as having in effect a State law described in such subsection on September 30, 1995.

**(c) RESERVATION OF APPORTIONMENT PENDING CERTIFICATION.—**If, at any time in a fiscal year beginning after September 30, 1994, the State of New Hampshire [or Maine] does not have in effect a law described in subsection (a)(2) of section 153 of title 23, United States Code, the Secretary shall reserve 3 percent of the funds to be apportioned to the State for the succeeding fiscal year, under each of the subsections (b)(1), (b)(2), and (b)(3) of section 104 of such title, if the Secretary has not certified, in accordance with subsection (a) of this section, that the State has achieved the applicable safety belt use rate.

**(d) EFFECT ON NONCERTIFICATION.—**If, at the end of the fiscal year in which the funds are reserved under subsection (c), the Secretary has not certified, in accordance with subsection (a), that the State of New Hampshire [or Maine] achieved the applicable safety belt use rate, the Secretary shall transfer the funds reserved from the State under subsection (c) to apportionment of the State under section 402 of title 23, United States Code.

\* \* \* \* \*

## TITLE IV—WOODROW WILSON MEMORIAL BRIDGE

**SEC. 401. SHORT TITLE.**

This title may be cited as the “Woodrow Wilson Memorial Bridge Authority Act of 1995”.

**SEC. 402. FINDINGS.**

Congress finds that—

(1) traffic congestion imposes serious economic burdens on the metropolitan Washington, D.C., area, costing each commuter an estimated \$1,000 per year;

(2) the volume of traffic in the metropolitan Washington, D.C., area is expected to increase by more than 70 percent between 1990 and 2020;

(3) the deterioration of the Woodrow Wilson Memorial Bridge and the growing population of the metropolitan Washington, D.C., area contribute significantly to traffic congestion;

(4) the Bridge serves as a vital link in the Interstate System and in the Northeast corridor;

(5) identifying alternative methods for maintaining this vital link of the Interstate System is critical to addressing the traffic congestion of the area;

(6) the Bridge is—

(A) the only drawbridge in the metropolitan Washington, D.C., area on the Interstate System;

(B) the only segment of the Capital Beltway with only 6 lanes; and

(C) the only segment of the Capital Beltway with a remaining expected life of less than 10 years;

(7) the Bridge is the only part of the Interstate System owned by the Federal Government;

(8)(A) the Bridge was constructed by the Federal Government;

(B) prior to the date of the enactment of this Act, the Federal Government has contributed 100 percent of the cost of building and rehabilitating the Bridge; and

(C) the Federal Government has a continuing responsibility to fund future costs associated with the upgrading of the Interstate Route 95 crossing, including the rehabilitation and reconstruction of the Bridge;

(9) the Woodrow Wilson Memorial Bridge Coordination Committee is undertaking planning studies pertaining to the Bridge, consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other applicable Federal laws;

(10) the transfer of ownership of the Bridge to a regional entity under the terms and conditions described in this title would foster regional transportation planning efforts to identify solutions to the growing problem of traffic congestion on and around the Bridge;

(11) any material change to the Bridge must take into account the interests of nearby communities, the commuting public, Federal, State, and local government organizations, and other affected groups; and

(12) a commission of congressional, State, and local officials and transportation representatives has recommended to the Secretary that the Bridge be transferred to an independent authority to be established by the Capital Region jurisdictions.

**SEC. 403. PURPOSES.**

The purposes of this title are—

(1) to grant consent to the Commonwealth of Virginia, the State of Maryland, and the District of Columbia to establish by interstate agreement or compact the Woodrow Wilson Memorial Bridge Authority;

(2) to authorize the transfer of ownership of the Woodrow Wilson Memorial Bridge to the Authority for the purposes of owning, constructing, maintaining, and operating a bridge or tunnel or a bridge and tunnel project across the Potomac River; and

(3) to direct the Secretary to continue working with the parties that comprise the Woodrow Wilson Memorial Bridge Coordination Committee to complete all planning, preliminary engineering and design, environmental studies and documentation, and final engineering, and to submit a proposed agreement to Congress by October 1, 1996, that specifies the selected implementation schedule, and costs of the Project and the Federal share of the costs of the activities to be carried out as part of the Project.

**SEC. 404. DEFINITIONS.**

In this title, the following definitions apply:

(1) **AUTHORITY.**—The term “Authority” means the Woodrow Wilson Memorial Bridge Authority established under section 405.

(2) **BOARD.**—The term “Board” means the board of directors of the Authority established under section 406.

(3) **BRIDGE.**—The term “Bridge” means the Woodrow Wilson Memorial Bridge across the Potomac River[, including approaches thereto.]

(4) **CAPITAL REGION JURISDICTION.**—The term “Capital Region jurisdiction” means—

(A) the Commonwealth of Virginia;

(B) the State of Maryland; and

(C) the District of Columbia.

(5) **PROJECT.**—The term “Project” means the upgrading of the Interstate Route 95 Potomac River crossing, consistent with the selected alternative [to be determined under section 407. Such term shall include ongoing short-term rehabilitation and repairs to the Bridge and may include 1 or more of the following] *as described in the record of decision executed by the Secretary in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The term includes ongoing short-term rehabilitation and repairs to the Bridge:*

(A) Construction of a new bridge or bridges in the vicinity of the Bridge.

(B) Construction of a tunnel in the vicinity of the Bridge.

(C) Long-term rehabilitation or reconstruction of the Bridge.

(D) Work necessary to provide rights-of-way for a rail or bus transit facility or bus or high occupancy vehicle lanes in connection with an activity described in subparagraph (A), (B), or (C).

(E) Work on Interstate Route 95 approaching the Bridge and other approach roadways if necessitated by an activity described in subparagraph (A), (B), or (C).

(F) Construction or acquisition of any building, improvement, addition, extension, replacement, appurtenance, land, interest in land, water right, air right, machinery, equipment, furnishing, landscaping, easement, utility, approach, roadway, or other facility that is necessary or desirable in connection with or incidental to a facility described subparagraph (A), (B), or (C).

(6) SIGNATORY.—The term “Signatory” means any political jurisdiction that enters into the interstate agreement or compact that establishes the Authority.

(7) WOODROW WILSON MEMORIAL BRIDGE COORDINATION COMMITTEE.—The term “Woodrow Wilson Memorial Bridge Coordination Committee” means the Woodrow Wilson Memorial Bridge Coordination Committee established and chaired by the Federal Highway Administration and comprised of representatives of Federal, State, and local governments.

#### **SEC. 405. ESTABLISHMENT OF AUTHORITY.**

(a) CONSENT TO INTERSTATE AGREEMENT.—Congress grants consent to the Capital Region jurisdictions to enter into an interstate agreement or compact to establish the Authority and to designate the governance, powers, and duties of the Authority. The Authority shall be a non-Federal entity designated by the interstate agreement or compact.

(b) ESTABLISHMENT OF AUTHORITY>.—

(1) IN GENERAL.—Upon execution of the interstate agreement or compact described in subsection (a) and an agreement between the Secretary and the Signatories as to the Federal share of the cost of the Project and the terms and conditions related to the timing of the transfer of the Bridge to the Authority as provided in section 407(c), the Authority shall be considered to be established for purposes of subsection (c).

(2) GENERAL POWERS.—The Authority shall be a body corporate and politic, and an instrumentality of each of the Capital Region jurisdictions, having the powers and jurisdiction described in this title and such additional powers as are conferred on the Authority by the Capital Region jurisdictions, to the extent that the additional powers are consistent with this title.

(c) PURPOSES OF AUTHORITY.—The Authority shall be established—

- (1) to assume ownership of the Bridge; and
- (2) to undertake the Project.

**SEC. 406. GOVERNMENT OF AUTHORITY.**

(a) **IN GENERAL.**—The Authority shall be governed in accordance with this section and with the terms of any interstate agreement or compact relating to the Authority that is consistent with this title.

(b) **BOARD.**—The Authority shall be governed by a board of directors consisting of not more than 12 members appointed by the Capital Region jurisdictions and 1 member appointed by the Secretary.

(c) **QUALIFICATIONS.**—At least 2 members of the Board shall be elected officials each of whom represents a political subdivision that has jurisdiction over the area at an end of the Project crossing.

(d) **FAILURE TO APPOINT.**—The failure of a Capital Region jurisdiction to appoint 1 or more members of the Board shall not impair the establishment of the Authority if the condition of the establishment described in section 405(b)(1) has been met.

(e) **PERSONAL LIABILITY OF MEMBERS.**—A member of the Board, including any nonvoting member, shall not be personally liable for—

(1) any action taken in his or her capacity as a member of the Board; or

(2) any note, bond, or other financial obligation of the Authority.

(f) **RESIDENCY REQUIREMENT.**—Each member of the Board shall reside within a Capital Region jurisdiction.

**SEC. 407. OWNERSHIP OF BRIDGE.**

(a) **CONVEYANCE BY SECRETARY.**—

(1) **IN GENERAL.**—After execution of the agreement under subsection (c), the Secretary shall convey to the Authority *or any Capital Region jurisdiction* all right, title, and interest of the United States in and to the Bridge, including such related riparian rights and interests in land underneath the Potomac River as are necessary to carry out the Project. Except as provided in paragraph (2), upon conveyance by the Secretary, the Authority *or any Capital Region jurisdiction* shall accept the right, title, and interest in and to the Bridge and all duties and responsibilities associated with the Bridge.

(2) **INTERIM RESPONSIBILITIES.**—Until such time as the Project is constructed and operational, the conveyance under paragraph (1) shall not—

(A) relieve the Capital Region jurisdictions of the sole and exclusive responsibility to maintain and operate the Bridge; or

(B) relieve the Secretary of the responsibility to rehabilitate the Bridge or to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other requirements applicable with respect to the Bridge.

(b) **TRANSFERS OF JURISDICTION.**—For the purpose of making the conveyance under subsection (a), the Secretary of the Interior and the head of any other Federal department or agency that has jurisdiction over land under or adjacent to the Bridge shall transfer such jurisdiction to the Secretary.

[(c) **AGREEMENT.**—

[(1) IN GENERAL.—The agreement referred to in subsection (a) is an agreement concerning the Project that is executed in accordance with this subsection.]

[(2) SUBMISSION TO CONGRESS.—Not later than October 1, 1996, the Secretary shall submit to Congress a proposed agreement between the Secretary and the Signatories that specifies—

[(A) the selected alternative, implementation schedule, and costs of the Project;

[(B) the Federal share of the costs of the activities to be carried out as part of the Project, including, at a minimum, a 100 percent Federal share of—

[(i) the cost of the continuing rehabilitation of the Bridge until such time as the Project is constructed and operational;

[(ii) an amount, as determined by the Woodrow Wilson Memorial Bridge Coordination Committee, equivalent to the cost of replacing the Bridge with a comparable modern bridge designed according to current engineering standards; and

[(iii) the cost of planning, preliminary engineering and design, environmental studies and documentation, and final engineering for the Project; and

[(C) the Federal share of the cost of activities to be carried out as part of the project after September 30, 1997, will be reduced by amounts expended by the United States for activities (other than environmental studies and documentation) described in subparagraph (B)(iii) in fiscal years 1996 and 1997.]

[(3) APPROVAL AND EXECUTION OF AGREEMENT.—After the enactment of a Federal law approving an agreement described in paragraph (2), the Secretary may execute the agreement.]

(c) AGREEMENT.—

(1) *IN GENERAL.*—*The agreement referred to in subsection (a) is an agreement concerning the Project that is executed by the Secretary and the Authority or any Capital Region jurisdiction that accepts ownership of the Bridge.*

(2) *TERMS OF THE AGREEMENT.*—*The agreement shall—*

(A) *identify whether the Authority or a Capital Region jurisdiction will accept ownership of the Bridge;*

(B) *contain a financial plan satisfactory to the Secretary, which shall be prepared before the execution of the agreement, that specifies—*

(i) *the total cost of the Project, including any cost-saving measures;*

(ii) *a schedule for implementation of the Project, including whether any expedited design and construction techniques will be used; and*

(iii) *the sources of funding that will be used to cover any costs of the Project not funded from funds made available under section 412; and*

(C) *contain such other terms and conditions as the Secretary determines to be appropriate.*

**SEC. 408. PROJECT PLANNING.**

The Secretary shall work with the Woodrow Wilson Memorial Bridge Coordination Committee, or with the Authority consistent with the purpose of the Authority, to complete, at the earliest possible date, planning, preliminary engineering and design, environmental studies and documentation, and final engineering for the Project, consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other applicable Federal laws.

**SEC. 409. ADDITIONAL POWERS AND RESPONSIBILITIES OF AUTHORITY.**

In addition to the powers and responsibilities of the Authority under the other provisions of this title and under any interstate agreement or compact relating to the Authority that is consistent with this title, the Authority shall have all powers necessary and appropriate to carry out the duties of the Authority, including the power—

(1) to adopt and amend any bylaw that is necessary for the regulation of the affairs of the Authority and the conduct of the business of the Authority;

(2) to adopt and amend any regulation that is necessary to carry out the powers of the Authority;

(3) subject to section 407(a)(2), to plan, establish, finance, operate, develop, construct, enlarge, maintain, equip, or protect the facilities of the Project;

(4) to employ, in the discretion of the Authority, such personnel and agents as may be necessary to carry out the purposes of the Authority (including consulting engineers, attorneys, accountants, construction and financial experts, superintendents, and managers) and to fix the compensation and benefits of the employees and agents, except that—

(A) an employee of the Authority shall not engage in an activity described in section 7116(b)(7) of title 5, United States Code, with respect to the Authority; and

(B) an employment agreement entered into by the Authority shall contain an explicit prohibition against an activity described in subparagraph (A) with respect to the Authority by an employee covered by the agreement;

(5) to acquire personal and real property (including land lying under water and riparian rights), or any easement or other interest in real property, by purchase, lease, gift, transfer, or exchange;

(6) to exercise such powers of eminent domain in the Capital Region jurisdictions as are conferred on the Authority by the Signatories, in the exercise of the powers and the performance of the duties of the Authority;

(7) to apply for and accept any property, material, service, payment, appropriation, grant, gift, loan, advance, or other fund that is transferred or made available to the Authority by the Federal Government or by any other public or private entity or individual;

(8) to borrow money on a short-term basis and issue notes of the Authority for the borrowing payable on such terms and conditions as the Board considers advisable, and to issue long-

term or short-term bonds in the discretion of the Authority for any purpose consistent with this title, which notes and bonds—

(A) shall not constitute a debt of the United States (or any political subdivision of the United States), or a general obligation of a Capital Region jurisdiction (or any political subdivision of a Capital Region jurisdiction), unless consented to by the jurisdiction or political subdivision; and

(B) may be secured solely by the general revenues of the Authority, or solely by the income and revenues of the Bridge or a new crossing of the Potomac River constructed as part of the Project, or by other revenues in the discretion of the Authority;

(9) to fix, revise, charge, and collect any reasonable toll or other charge;

(10) to enter into any contract or agreement necessary or appropriate to the performance of the duties of the Authority or the proper operation of the Bridge or a new crossing of the Potomac River constructed as part of the Project;

(11) to make any payment necessary to reimburse a local political subdivision having jurisdiction over an area where the Bridge or a new crossing of the Potomac River is situated for any extraordinary law enforcement cost incurred by the subdivision in connection with the Authority facility;

(12) to enter into partnerships or grant concessions between the public and private sectors for the purpose of—

(A) financing, constructing, maintaining, improving, or operating the Bridge or a new crossing of the Potomac River constructed as part of the Project; or

(B) fostering development of a new transportation technology;

(13) to obtain any necessary Federal authorization, permit, or approval for the construction, repair, maintenance, or operation of the Bridge or a new crossing of the Potomac River constructed as part of the Project;

(14) to adopt an official seal and alter the seal, as the Board considers appropriate;

(15) to appoint 1 or more advisory committees;

(16) to sue and be sued in the name of the Authority;

(17) to carry out or contract with other entities to carry out such maintenance of traffic activities during construction of the Project as is considered necessary by the Authority to properly manage traffic and minimize congestion, such as public information campaigns, improvements designed to encourage appropriate use of alternative routes, use of high occupancy vehicles and transit services, and deployment and operation of intelligent transportation technologies; and

(18) to carry out any activity necessary or appropriate to the exercise of the powers or performance of the duties of the Authority under this title and under any interstate agreement or compact relating to the Authority that is consistent with this title, if the activity is coordinated and consistent with the transportation planning process implemented by the metropolitan planning organization for the Washington, District of Co-



lumbia, metropolitan area under section 134 of title 23, United States Code, and section 5303 of title 49, United States Code.

**SEC. 410. FUNDING.**

Section 104 of title 23, United States Code, as amended by section 337(f) of this Act, is amended by inserting before subsection (j), as redesignated by such section 337(f), the following:

(i) **WOODROW WILSON MEMORIAL BRIDGE.**—

(1) **EXPENDITURE.**—From any available administrative funds deducted under subsection (a), the Secretary shall obligate such sums as are necessary for each of fiscal years 1996 and 1997 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.’

**SEC. 411. AVAILABILITY OF PRIOR AUTHORIZATIONS.**

In addition to the funds made available under section 104(i) of title 23, United States Code, any funds made available for the rehabilitation of the Bridge under sections 1069(i) and 1103(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2009 and 2028) shall continue to be available after the conveyance under section 407(a) of the Bridge, in accordance with the terms under which the funds were made available under such sections 1069(i) and 1103(b).

**SEC. 412. FEDERAL CONTRIBUTION.**

(a) **AUTHORIZATION OF CONTRACT AUTHORITY.**—

(1) **IN GENERAL.**—*There shall be available from the Highway Trust Fund (other than the Mass Transit Account) \$100,000,000 for fiscal year 1998, \$100,000,000 for fiscal year 1999, \$125,000,000 for fiscal year 2000, \$175,000,000 for fiscal year 2001, \$200,000,000 for fiscal year 2002, and \$200,000,000 for fiscal year 2003, to pay the costs of planning, preliminary engineering and design, final engineering, acquisition of rights-of-way, and construction of the Project, except that the costs associated with the Bridge shall be given priority over other eligible costs, other than design costs, of the Project.*

(2) **CONTRACT AUTHORITY.**—*Funds authorized under this section 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—*

*(A) the funds shall remain available until expended and shall not be subject to any obligation limitation;*

*(B) the Federal share of the cost of the Bridge component of the Project shall not exceed 100 percent; and*

*(C) the Federal share of the cost of any other component of the Project shall not exceed 80 percent.*

(b) **USE OF APPORTIONED FUNDS.**—*Nothing in this title limits the authority of any Capital Region jurisdiction to use funds apportioned to the jurisdiction under paragraph (1) or (3) of section*

*104(b) of title 23, United States Code, in accordance with the requirements for such funds, to pay any costs of the Project.*

*(c) AVAILABILITY OF APPORTIONED FUNDS.—None of the funds made available under this section shall be available before the execution of the agreement described in section 407(c), except that the Secretary may fund the maintenance and rehabilitation of the Bridge and the design of the Project.*

