

construction of a project on any Federal-aid highway, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project. Federal funds shall not be used to reimburse the State under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. Such reimbursement shall be made only after evidence satisfactory to the Secretary shall have been presented to him substantiating the fact that the State has paid such cost from its own funds with respect to Federal-aid highway projects for which Federal funds are obligated subsequent to April 16, 1958, for work, including relocation of utility facilities.

(b) The term “utility”, for the purposes of this section, shall include publicly, privately, and cooperatively owned utilities.

(c) The term “cost of relocation”, for the purposes of this section, shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 900; Pub. L. 100-17, title I, §133(b)(8), Apr. 2, 1987, 101 Stat. 171; Pub. L. 112-141, div. A, title I, §1104(c)(3), July 6, 2012, 126 Stat. 427.)

#### AMENDMENTS

2012—Subsec. (a). Pub. L. 112-141 substituted “on any Federal-aid highway” for “on any Federal-aid system”.

1987—Subsec. (a). Pub. L. 100-17 substituted “any Federal-aid system,” for “the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas.”.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

#### STUDY OF PROCUREMENT PRACTICES AND PROJECT DELIVERY

Pub. L. 105-178, title I, §1213(e), June 9, 1998, 112 Stat. 201, provided that:

“(1) **STUDY.**—The Comptroller General shall conduct a study to assess the impact that a utility company’s failure to relocate its facilities in a timely manner has on the delivery and cost of Federal-aid highway and bridge projects. The study shall also assess the following:

“(A) Methods States use to mitigate such delays, including the use of the courts to compel cooperation.

“(B) The prevalence and use of incentives to utility companies for early completion of utility relocations on Federal-aid transportation project sites and, conversely, penalties assessed on utility companies for utility relocation delays on such projects.

“(C) The extent to which States have used available technologies, such as subsurface utility engineering, early in the design of Federal-aid highway and bridge projects so as to eliminate or reduce the need for or delays due to utility relocations.

“(D) Whether individual States compensate transportation contractors for business costs incurred by the contractors when Federal-aid highway and bridge projects under contract to them are delayed by utility-company-caused delays in utility relocations and any methods used by States in making any such compensation.

“(2) **REPORT.**—Not later than 1 year after the date of enactment of this Act [June 9, 1998], the Comptroller General shall transmit to Congress a report on the results of the study with any recommendations the Comptroller General determines appropriate as a result of the study.”

#### § 124. Repealed. Pub. L. 112-141, div. A, title I, § 1519(b)(1)(A), July 6, 2012, 126 Stat. 575]

Section, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 901; Pub. L. 95-599, title I, §118, Nov. 6, 1978, 92 Stat. 2699; Pub. L. 105-178, title I, §§1212(a)(2)(A)(i), 1226(c), June 9, 1998, 112 Stat. 193; Pub. L. 105-206, title IX, §9003(a), July 22, 1998, 112 Stat. 837, related to advances to States.

#### EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

#### § 125. Emergency relief

(a) **IN GENERAL.**—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 area of the United States, including Indian reservations, that the Secretary finds have suffered serious damage as a result of—

(1) a 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.**—

(1) **DEFINITION OF CONSTRUCTION PHASE.**—In this subsection, the term “construction phase” means the phase of physical construction of a highway or bridge facility that is separate from any other identified phases, such as planning, design, or right-of-way phases, in the State transportation improvement program.

(2) **RESTRICTION.**—In no case shall funds be used under this section for the repair or reconstruction of a bridge—

(A) that has 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; or

(B) if a construction phase of a replacement structure is included in the approved Statewide transportation improvement program at the time of an event described in subsection (a).

(c) **FUNDING.**—

(1) **IN GENERAL.**—Subject to the limitations described in paragraph (2), there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to establish the fund authorized by this section and to replenish that fund on an annual basis.

(2) **LIMITATIONS.**—The limitations referred to in paragraph (1) are that—

(A) not more than \$100,000,000 is authorized to be obligated in any 1 fiscal year commencing after September 30, 1980, to carry out this section, except that, if for any fiscal year the total of all obligations under this

section is less than the amount authorized to be obligated for the fiscal year, the unobligated balance of that amount shall—

- (i) remain available until expended; and
- (ii) be in addition to amounts otherwise available to carry out this section for each year; and

(B)(i) pending such appropriation or replenishment, the Secretary may obligate from any funds appropriated at any time for obligation in accordance with this title, including existing Federal-aid appropriations, such sums as are necessary for the immediate prosecution of the work herein authorized; and

(ii) funds obligated under this subparagraph shall be reimbursed from the appropriation or replenishment.

(d) ELIGIBILITY.—

(1) IN GENERAL.—The Secretary may expend funds from the emergency fund authorized by this section only for the repair or reconstruction of highways on Federal-aid highways in accordance with this chapter, except that—

(A) no funds shall be so expended unless an emergency has been declared by the Governor of the State with concurrence by the Secretary, unless the President has declared the emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) for which concurrence of the Secretary is not required; and

(B) the Secretary has received an application from the State transportation department that includes a comprehensive list of all eligible project sites and repair costs by not later than 2 years after the natural disaster or catastrophic failure.

(2) COST LIMITATION.—

(A) DEFINITION OF COMPARABLE FACILITY.—In this paragraph, the term “comparable facility” means a facility that meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life.

(B) LIMITATION.—The total cost of a project funded under this section may not exceed the cost of repair or reconstruction of a comparable facility.

(3) DEBRIS REMOVAL.—The costs of debris removal shall be an eligible expense under this section only for—

(A) an event not declared a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); or

(B) an event declared a major disaster or emergency by the President under that Act if the debris removal is not eligible for assistance under section 403, 407, or 502 of that Act (42 U.S.C. 5170b, 5173, 5192).

(4) TERRITORIES.—The total obligations for projects under this section for any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not exceed \$20,000,000.

(5) SUBSTITUTE TRAFFIC.—Notwithstanding any other provision of this section, actual and necessary costs of maintenance and operation of ferryboats or additional transit service providing temporary substitute highway traffic service, less the amount of fares charged for comparable service, may be expended from the emergency fund authorized by this section for Federal-aid highways.

(e) TRIBAL TRANSPORTATION FACILITIES, FEDERAL LANDS TRANSPORTATION FACILITIES, AND PUBLIC ROADS ON FEDERAL LANDS.—

(1) DEFINITION OF OPEN TO PUBLIC TRAVEL.—In this subsection, the term “open to public travel” means, with respect to a road, that, except during scheduled periods, extreme weather conditions, or emergencies, the road is open to the general public for use with a standard passenger vehicle, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.

(2) EXPENDITURE OF FUNDS.—Notwithstanding subsection (d)(1), the Secretary may expend funds from the emergency fund authorized by this section, independently or in cooperation with any other branch of the Federal Government, a State agency, a tribal government, an organization, or a person, for the repair or reconstruction of tribal transportation facilities, Federal lands transportation facilities, and other federally owned roads that are open to public travel, whether or not those facilities are Federal-aid highways.

(3) REIMBURSEMENT.—

(A) IN GENERAL.—The Secretary may reimburse Federal and State agencies (including political subdivisions) for expenditures made for projects determined eligible under this section, including expenditures for emergency repairs made before a determination of eligibility.

(B) TRANSFERS.—With respect to reimbursements described in subparagraph (A)—

(i) those reimbursements to Federal agencies and Indian tribal governments shall be transferred to the account from which the expenditure was made, or to a similar account that remains available for obligation; and

(ii) the budget authority associated with the expenditure shall be restored to the agency from which the authority was derived and shall be available for obligation until the end of the fiscal year following the year in which the transfer occurs.

(f) TREATMENT OF TERRITORIES.—For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be considered to be States and parts of the United States, and the chief executive officer of each such territory shall be considered to be a Governor of a State.

(g) PROTECTING PUBLIC SAFETY AND MAINTAINING ROADWAYS.—The Secretary may use not more than 5 percent of amounts from the emergency fund authorized by this section to carry out projects that the Secretary determines are necessary to protect the public safety or to maintain or protect roadways that are included

within the scope of an emergency declaration by the Governor of the State or by the President, in accordance with this section, and the Governor deems to be an ongoing concern in order to maintain vehicular traffic on the roadway.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 901; Pub. L. 86-342, title I, § 107(a), Sept. 21, 1959, 73 Stat. 612; Pub. L. 89-574, § 9(b), (c), Sept. 13, 1966, 80 Stat. 769; Pub. L. 90-495, § 27(a), Aug. 23, 1968, 82 Stat. 829; Pub. L. 91-605, title I, § 109(a), Dec. 31, 1970, 84 Stat. 1718; Pub. L. 92-361, Aug. 3, 1972, 86 Stat. 503; Pub. L. 94-280, title I, § 119, May 5, 1976, 90 Stat. 437; Pub. L. 95-599, title I, § 119, Nov. 6, 1978, 92 Stat. 2700; Pub. L. 96-106, § 19, Nov. 9, 1979, 93 Stat. 799; Pub. L. 97-424, title I, § 153(a), (c), (d), (h), Jan. 6, 1983, 96 Stat. 2132, 2133; Pub. L. 99-190, § 101(e) [title III, § 334], Dec. 19, 1985, 99 Stat. 1267, 1290; Pub. L. 99-272, title IV, § 4103, Apr. 7, 1986, 100 Stat. 114; Pub. L. 100-17, title I, §§ 118(a)(1), (b)(1), (2), 133(b)(9), Apr. 2, 1987, 101 Stat. 156, 171; Pub. L. 100-707, § 109(k), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 102-240, title I, § 1022(b), Dec. 18, 1991, 105 Stat. 1951; Pub. L. 102-302, § 101, June 22, 1992, 106 Stat. 252; Pub. L. 105-178, title I, §§ 1113(b), 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 151, 193; Pub. L. 112-141, div. A, title I, § 1107, July 6, 2012, 126 Stat. 437.)

#### REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (d)(1)(A), (3), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

#### AMENDMENTS

2012—Pub. L. 112-141 amended section generally. Prior to amendment, section related to emergency relief and consisted of subssecs. (a) to (f).

1998—Subsec. (a). Pub. L. 105-178, § 1113(b)(2), added subsec. (a) and struck out former subsec. (a) which authorized expenditures by Secretary from emergency fund for repair or reconstruction of highways, roads, or trails which have suffered serious damage from natural disasters or catastrophic failures from external sources, including provisions relating to restrictions on eligibility and funding.

Subsecs. (b), (c). Pub. L. 105-178, § 1113(b)(1), (2), added subssecs. (b) and (c) and redesignated former subssecs. (b) and (c) as (d) and (e), respectively.

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

Pub. L. 105-178, § 1113(b)(3), substituted "reconstruction of highways on Federal-aid highways in accordance" for "reconstruction of highways on the Federal-aid highway systems, including the Interstate System, in accordance" in first sentence, "subsection (e) of this section" for "subsection (c) of this section" in two places, "authorized on Federal-aid highways" for "authorized on the Federal-aid highway systems, including the Interstate System" before period at end of second sentence, and "Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)" for "Disaster Relief and Emergency Assistance Act (Public Law 93-288)" in third sentence.

Pub. L. 105-178, § 1113(b)(1), redesignated subsec. (b) as (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 105-178, § 1113(b)(4), substituted "Federal-aid highways" for "on any of the Federal-aid highway systems" before period at end.

Pub. L. 105-178, § 1113(b)(1), redesignated subsec. (c) as (e).

Subsec. (f). Pub. L. 105-178, § 1113(b)(1), redesignated subsec. (d) as (f).

1992—Subsec. (b). Pub. L. 102-302, which directed the substitution of "on Federal-aid highways" for "on the Federal-aid highway systems including the Interstate System" in two places, could not be executed because phrase "on the Federal-aid highway systems including the Interstate System" did not appear in text.

1991—Subsec. (b)(2). Pub. L. 102-240 substituted "\$20,000,000" for "\$5,000,000".

1988—Subsec. (b). Pub. L. 100-707 substituted "and Emergency Assistance Act" for "Act of 1974".

1987—Subsec. (b). Pub. L. 100-17, § 133(b)(9)(A), substituted "the Federal-aid highway systems, including the Interstate System" for "the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors" in two places.

Pub. L. 100-17, § 118(a)(1), substituted "in a State shall not exceed \$100,000,000." for "shall not exceed \$30,000,000 (\$55,000,000 for projects in connection with disasters or failures occurring in calendar year 1985) in any State."

Pub. L. 100-17, § 118(b)(2), designated existing provisions related to limitations placed upon obligations for projects under this section as cl. (1) and added cl. (2).

Subsec. (c). Pub. L. 100-17, § 133(b)(9)(B), substituted "on any of the Federal-aid highway systems" for "routes functionally classified as arterials or major collectors".

Subsec. (d). Pub. L. 100-17, § 118(b)(1), added subsec. (d).

1986—Subsec. (b). Pub. L. 99-272 inserted parenthetical provision allowing obligations not exceeding \$55,000,000 for projects in connection with disasters or failures occurring in calendar year 1985.

1985—Pub. L. 99-190 amended section in manner substantially identical to amendment by Pub. L. 99-272.

1983—Subsec. (a). Pub. L. 97-424, § 153(a)(1), inserted "(1)" before "the repair or reconstruction of highways", and substituted "Secretary" for "he" before "shall find have suffered"; (A) and (B) for (1) and (2), respectively; "In no event shall funds be used pursuant to this section for the" for "and (2)"; and "or responsible local official" for "after December 31, 1967, and prior to December 31, 1970,".

Pub. L. 97-424, § 153(a)(2), inserted "from the Highway Trust Fund" after "appropriated".

Pub. L. 97-424, § 153(c), inserted "and not more than \$100,000,000 is authorized to be expended in any one fiscal year commencing after September 30, 1980," after "after September 30, 1976,".

Subsec. (b). Pub. L. 97-424, § 153(d), inserted proviso establishing a \$30,000,000 limit for obligations relating to a single natural disaster in any one State.

Pub. L. 97-424, § 153(h)(1), substituted "the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors," for "the Federal-aid highway systems, including the Interstate System", wherever appearing.

Subsec. (c). Pub. L. 97-424, § 153(h)(2), substituted "routes functionally classified as arterials or major collectors" for "on any of the Federal-aid highway systems".

1979—Subsec. (b). Pub. L. 96-106 inserted provision that notwithstanding any provision of this chapter actual and necessary costs of maintenance and operation of ferryboats providing temporary substitute highway traffic service, less the amount of fares charged, may be expended from the emergency fund herein authorized on the Federal-aid highway systems, including the Interstate System.

1978—Subsec. (a). Pub. L. 95-599 inserted "prior to the fiscal year ending September 30, 1978" after "such years, and (2)", and inserted provision authorizing appropriations of 100 percent of expenditures out of the Highway Trust Fund.

1976—Subsec. (a). Pub. L. 94-280, § 119(a)(1)-(3), inserted "and ending before June 1, 1976," after "June 30, 1972," authorized expenditure of not more than \$25,000,000 for the three-month period beginning July 1, 1976, and ending September 30, 1976, and not more than

\$100,000,000 in any one fiscal year commencing after September 30, 1976, and inserted provision that for the purposes of this section the period beginning July 1, 1976, and ending September 30, 1976, shall be deemed to be a part of the fiscal year ending September 30, 1977.

Subsec. (b). Pub. L. 94-280, §119(b), excepted from the requirement of a concurrence by the Secretary an emergency declared by the President to be a major disaster for purposes of the Disaster Relief Act of 1974.

1972—Subsec. (a). Pub. L. 92-361 substituted provisions setting forth maximum expendable amounts for fiscal years ending July 1, 1972 and for fiscal years commencing after June 30, 1972 and an additional amount for fiscal year ending June 30, 1973 for provisions setting forth maximum expendable amount for any fiscal year.

1970—Subsec. (a). Pub. L. 91-605 provided emergency relief for the repair or reconstruction of bridges which have been permanently closed to all vehicular traffic by the State after December 31, 1967, and prior to December 31, 1970, because of imminent danger of collapse due to structural deficiencies or physical deterioration.

1968—Subsec. (a). Pub. L. 90-495 permitted the use of the emergency fund for repair or construction caused by other than natural catastrophes.

1966—Subsec. (a). Pub. L. 89-574, §9(c), raised from \$30,000,000 to \$50,000,000 the upper limit on allowable annual appropriations to establish and replenish the fund, provided that, if, in any fiscal year the total of all expenditures under this section is less than \$50,000,000, the unexpended balance of such amount shall remain available for expenditure during the next two succeeding fiscal years in addition to amount otherwise available, and provided that 60 per centum of the expenditures under this section are authorized to be appropriated from the Highway Trust Fund and the remaining 40 per centum of such expenditures are authorized to be appropriated only from any monies in the Treasury not otherwise appropriated.

Subsec. (c). Pub. L. 89-574, §9(b), added parkways, public lands highways, public lands development roads, and trails to the list of types of roads the repair or reconstruction of which may be paid for out of the emergency fund.

1959—Pub. L. 86-342, among other changes, made expenditures from the emergency fund subject to the provisions of section 120 of this title, and permitted the Secretary to expend funds from the emergency fund, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are on any of the Federal-aid highway systems.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 applicable only to natural disasters and catastrophic failures occurring after Dec. 18, 1991, see section 1022(c) of Pub. L. 102-240, set out as a note under section 120 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-17, title I, §118(a)(2), Apr. 2, 1987, 101 Stat. 156, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to natural disasters and catastrophic failures occurring after December 31, 1985."

Pub. L. 100-17, title I, §118(b)(3), Apr. 2, 1987, 101 Stat. 156, provided that: "The amendments made by paragraphs (1) and (2) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 2, 1987]."

#### EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-424, title I, §153(e), Jan. 6, 1983, 96 Stat. 2133, provided that: "The amendments made by subsection (d) of this section [amending this section] shall apply to natural disasters or catastrophic failures which the Secretary finds eligible for emergency relief subsequent to the date of enactment of this section [Jan. 6, 1983]."

#### EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-495, §27(c), Aug. 23, 1968, 82 Stat. 829, provided that: "The amendments made by this section [amending this section and section 120 of this title] shall be applicable to repair or reconstruction with respect to which project agreements have been entered into on or after January 1, 1968."

#### EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-574, §9(d), Sept. 13, 1966, 80 Stat. 769, provided that: "The amendments made by this section [amending this section] shall take effect July 1, 1966."

#### EXPENDITURES MADE PRIOR TO FISCAL YEAR ENDING SEPTEMBER 30, 1978; APPROPRIATION FROM HIGHWAY TRUST FUND

Pub. L. 97-424, title I, §153(b), Jan. 6, 1983, 96 Stat. 2133, provided that all expenditures made under this section prior to the fiscal year ending Sept. 30, 1978, were authorized to have been appropriated from the Highway Trust Fund.

### § 126. Transferability of Federal-aid highway funds

(a) IN GENERAL.—Notwithstanding any other provision of law, subject to subsection (b), a State may transfer from an apportionment under section 104(b) not to exceed 50 percent of the amount apportioned for the fiscal year to any other apportionment of the State under that section.

(b) APPLICATION TO CERTAIN SET-ASIDES.—

(1) IN GENERAL.—Funds that are subject to sections 104(d) and 133(d) shall not be transferred under this section.

(2) FUNDS TRANSFERRED BY STATES.—Funds transferred by a State under this section of the funding reserved for the State under section 213 for a fiscal year may only come from the portion of those funds that are available for obligation in any area of the State under section 213(c)(1)(B).

(Added Pub. L. 105-178, title I, §1310(a), June 9, 1998, 112 Stat. 234, §110; renumbered §126, Pub. L. 106-159, title I, §102(a)(1), Dec. 9, 1999, 113 Stat. 1752; amended Pub. L. 109-59, title I, §1401(a)(3)(B), Aug. 10, 2005, 119 Stat. 1225; Pub. L. 112-141, div. A, title I, §1509(a), July 6, 2012, 126 Stat. 567.)

#### PRIOR PROVISIONS

A prior section 126, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 901; Pub. L. 93-87, title I, §152(3), Aug. 13, 1973, 87 Stat. 276, related to providing Federal aid for highway construction only to States that used at least amounts provided by law on June 18, 1934, for such purposes, prior to repeal by Pub. L. 105-178, title I, §1226(d), as added by Pub. L. 105-206, title IX, §9003(a), July 22, 1998, 112 Stat. 837.

#### AMENDMENTS

2012—Pub. L. 112-141 amended section generally. Prior to amendment, section related to uniform transferability of Federal-aid highway funds.

2005—Subsec. (a). Pub. L. 109-59, which directed insertion of "under" after "State's apportionment", was ex-