

subsection may not exceed the State's matching share for the project.

(c) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES.—Nothing in this title or any other law shall prevent a person from offering to donate funds, materials, or services, or a local government from offering to donate funds, materials, or services performed by local government employees, in connection with a project eligible for assistance under this title. In the case of such a project with respect to which the Federal Government and the State share in paying the cost, any donated funds, or the fair market value of any donated materials or services, that are accepted and incorporated into the project by the State transportation department shall be credited against the State share.

(d) PROCEDURES.—A gift or donation in accordance with subsection (a) may be made at any time during the development of a project. Any document executed as part of such donation prior to the approval of an environmental document prepared pursuant to the National Environmental Policy Act of 1969 shall clearly indicate that—

(1) all alternatives to a proposed alignment will be studied and considered pursuant to such Act;

(2) acquisition of property under this section shall not influence the environmental 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 revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings, if required, and completion of the environmental document.

(Added Pub. L. 93-87, title I, §145(a), Aug. 13, 1973, 87 Stat. 273; amended Pub. L. 93-643, §112, Jan. 4, 1975, 88 Stat. 2285; Pub. L. 100-17, title I, §146(a), Apr. 2, 1987, 101 Stat. 179; Pub. L. 104-59, title III, §322, Nov. 28, 1995, 109 Stat. 591; Pub. L. 105-178, title I, §§1212(a)(2)(A)(i), 1301(b)-(d)(1), June 9, 1998, 112 Stat. 193, 225, 226; Pub. L. 109-59, title I, §1902, Aug. 10, 2005, 119 Stat. 1464.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (d), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2005—Subsec. (c). Pub. L. 109-59, §1902(1), inserted “, or a local government from offering to donate funds, materials, or services performed by local government employees,” before “in connection with a project”.

Subsec. (e). Pub. L. 109-59, §1902(2), struck out heading and text of subsec. (e). Text read as follows: “A contribution by a unit of local government of real property, funds, or material in connection with a project eligible for assistance under this title shall be credited against the State share of the project at the fair market value of the real property, funds, or material.”

1998—Pub. L. 105-178, §1301(d)(1), substituted “Donations and credits” for “Donations” in section catchline.

Subsec. (b). Pub. L. 105-178, §1301(b)(1), substituted “Acquired” for “Donated” in heading.

Subsec. (b)(1), (2). Pub. L. 105-178, §1301(b)(2), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1) GENERAL RULE.—Notwithstanding any provision of this title, the State matching share for a project with respect to which Federal assistance is provided out of the Highway Trust Fund (other than the Mass Transit Account) may be credited by the fair market value of land incorporated into the project and lawfully donated to the State after the date of the enactment of this subsection.

“(2) ESTABLISHMENT OF FAIR MARKET VALUE.—The fair market value of the donated land shall be established as determined by the Secretary. Fair market value shall not include increases and decreases in the value of donated property caused by the project. For purposes of this subsection, the fair market value of donated land shall be established as of the date the donation becomes effective or when equitable title to the land vests in the State, whichever is earlier.”

Subsec. (b)(3). Pub. L. 105-178, §1301(b)(3), substituted “agency of the Federal Government” for “agency of a Federal, State, or local government”.

Subsec. (b)(4). Pub. L. 105-178, §1301(b)(4), struck out “to which the donation is applied” before period at end.

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

Subsec. (e). Pub. L. 105-178, §1301(c), added subsec. (e). 1995—Subsecs. (c), (d). Pub. L. 104-59 added subsec. (c) and redesignated former subsec. (c) as (d).

1987—Pub. L. 100-17 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

1975—Pub. L. 93-643 substituted “after he has been fully informed of his right to receive just compensation for the acquisition of his property” for “after he has been tendered the full amount of the estimated just compensation as established by an approved appraisal of the fair market value of the subject real property”.

§324. Prohibition of discrimination on the basis of sex

No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.

(Added Pub. L. 93-87, title I, §162(a), Aug. 13, 1973, 87 Stat. 280.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000d of Title 42 and Tables.

§325. State assumption of responsibilities for certain programs and projects

(a) ASSUMPTION OF SECRETARY'S RESPONSIBILITIES UNDER APPLICABLE FEDERAL LAWS.—

(1) PILOT PROGRAM.—

(A) ESTABLISHMENT.—The Secretary may establish a pilot program under which States

may assume the responsibilities of the Secretary under any Federal laws subject to the requirements of this section.

(B) **FIRST 3 FISCAL YEARS.**—In the first 3 fiscal years following the date of enactment of the SAFETEA-LU, the Secretary may allow up to 5 States to participate in the pilot program.

(2) **SCOPE OF PROGRAM.**—Under the pilot program, the Secretary may assign, and a State may assume, any of the Secretary's responsibilities (other than responsibilities relating to federally recognized Indian tribes) for environmental reviews, consultation, or decision-making or other actions required under any Federal law as such requirements apply to the following projects:

(A) Projects funded under section 104(h).¹

(B) Transportation enhancement activities under section 133, as such term is defined in section 101(a)(35).¹

(b) **AGREEMENTS.**—

(1) **IN GENERAL.**—The Secretary shall enter into a memorandum of understanding with a State participating in the pilot program setting forth the responsibilities to be assigned under subsection (a)(2) and the terms and conditions under which the assignment is being made.

(2) **CERTIFICATION.**—Before the Secretary enters into a memorandum of understanding with a State under paragraph (1), the State shall certify that the State has in effect laws (including regulations) applicable to projects carried out and funded under this title and chapter 53 of title 49 that authorize the State to carry out the responsibilities being assumed.

(3) **MAXIMUM DURATION.**—A memorandum of understanding with a State under this section shall be established for an initial period of no more than 3 years and may be renewed by mutual agreement on a periodic basis for periods of not more than 3 years.

(4) **COMPLIANCE.**—

(A) **IN GENERAL.**—After entering into a memorandum of understanding under paragraph (1), the Secretary shall review and determine compliance by the State with the memorandum of understanding.

(B) **RENEWALS.**—The Secretary shall take into account the performance of a State under the pilot program when considering renewal of a memorandum of understanding with the State under the program.

(5) **SOLE RESPONSIBILITY.**—A State that assumes responsibility under subsection (a)(2) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

(6) **ACCEPTANCE OF JURISDICTION.**—In a memorandum of understanding, the State shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

(c) **SELECTION OF STATES FOR PILOT PROGRAM.**—

(1) **APPLICATION.**—To be eligible to participate in the pilot program, a State shall submit to the Secretary an application that contains such information as the Secretary may require. At a minimum, an application shall include—

(A) a description of the projects or classes of projects for which the State seeks to assume responsibilities under subsection (a)(2); and

(B) a certification that the State has the capability to assume such responsibilities.

(2) **PUBLIC NOTICE.**—Before entering into a memorandum of understanding allowing a State to participate in the pilot program, the Secretary shall—

(A) publish notice in the Federal Register of the Secretary's intent to allow the State to participate in the program, including a copy of the State's application to the Secretary and the terms of the proposed agreement with the State; and

(B) provide an opportunity for public comment.

(3) **SELECTION CRITERIA.**—The Secretary may approve the application of a State to assume responsibilities under the program only if—

(A) the requirements under paragraph (2) have been met; and

(B) the Secretary determines that the State has the capability to assume the responsibilities.

(4) **OTHER FEDERAL AGENCY VIEWS.**—Before assigning to a State a responsibility of the Secretary that requires the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency.

(d) **STATE DEFINED.**—With respect to the recreational trails program, the term "State" means the State agency designated by the Governor of the State in accordance with section 206(c)(1).

(e) **PRESERVATION OF PUBLIC INTEREST CONSIDERATION.**—Nothing in this section shall be construed to limit the requirements under any applicable law providing for the consideration and preservation of the public interest, including public participation and community values in transportation decisionmaking.

(Added Pub. L. 109-59, title VI, § 6003(a), Aug. 10, 2005, 119 Stat. 1865.)

REFERENCES IN TEXT

The date of enactment of the SAFETEA-LU, referred to in subsec. (a)(1)(B), is the date of enactment of Pub. L. 109-59, which was approved Aug. 10, 2005.

Section 104, referred to in subsec. (a)(2)(A), was amended generally by Pub. L. 112-141 and no longer contains a subsec. (h).

Section 101(a)(35), referred to in subsec. (a)(2)(B), was redesignated section 101(a)(29) and subsequently amended by Pub. L. 112-141 and no longer defines transportation enhancement activities.

PRIOR PROVISIONS

A prior section 325, added Pub. L. 102-240, title VI, § 6003(a), Dec. 18, 1991, 105 Stat. 2168, related to inter-

¹ See References in Text note below.

national highway transportation outreach program, prior to repeal by Pub. L. 105-178, title V, §5119(b), June 9, 1998, 112 Stat. 452.

§ 326. State assumption of responsibility for categorical exclusions

(a) CATEGORICAL EXCLUSION DETERMINATIONS.—

(1) IN GENERAL.—The Secretary may assign, and a State may assume, responsibility for determining whether certain designated activities are included within classes of action identified in regulation by the Secretary that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (as in effect on October 1, 2003).

(2) SCOPE OF AUTHORITY.—A determination described in paragraph (1) shall be made by a State in accordance with criteria established by the Secretary and only for types of activities specifically designated by the Secretary.

(3) CRITERIA.—The criteria under paragraph (2) shall include provisions for public availability of information consistent with section 552 of title 5 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) PRESERVATION OF FLEXIBILITY.—The Secretary shall not require a State, as a condition of assuming responsibility under this section, to forego project delivery methods that are otherwise permissible for highway projects.

(b) OTHER APPLICABLE FEDERAL LAWS.—

(1) IN GENERAL.—If a State assumes responsibility under subsection (a), the Secretary may also assign and the State may assume all or part of the responsibilities of the Secretary for environmental review, consultation, or other related actions required under any Federal law applicable to activities that are classified by the Secretary as categorical exclusions, with the exception of government-to-government consultation with Indian tribes, subject to the same procedural and substantive requirements as would be required if that responsibility were carried out by the Secretary.

(2) SOLE RESPONSIBILITY.—A State that assumes responsibility under paragraph (1) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

(c) MEMORANDA OF UNDERSTANDING.—

(1) IN GENERAL.—The Secretary and the State, after providing public notice and opportunity for comment, shall enter into a memorandum of understanding setting forth the responsibilities to be assigned under this section and the terms and conditions under which the assignments are made, including establishment of the circumstances under which the Secretary would reassume responsibility for categorical exclusion determinations.

(2) TERM.—A memorandum of understanding—

(A) shall have a term of not more than 3 years; and

(B) shall be renewable.

(3) ACCEPTANCE OF JURISDICTION.—In a memorandum of understanding, the State shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

(4) MONITORING.—The Secretary shall—

(A) monitor compliance by the State with the memorandum of understanding and the provision by the State of financial resources to carry out the memorandum of understanding; and

(B) take into account the performance by the State when considering renewal of the memorandum of understanding.

(d) TERMINATION.—

(1) TERMINATION BY THE SECRETARY.—The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State.

(2) TERMINATION BY THE STATE.—The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.

(e) STATE AGENCY DEEMED TO BE FEDERAL AGENCY.—A State agency that is assigned a responsibility under a memorandum of understanding shall be deemed to be a Federal agency for the purposes of the Federal law under which the responsibility is exercised.

(f) LEGAL FEES.—A State assuming the responsibilities of the Secretary under this section for a specific project may use funds apportioned to the State under section 104(b)(2) for attorney's fees directly attributable to eligible activities associated with the project.

(Added Pub. L. 109-59, title VI, §6004(a), Aug. 10, 2005, 119 Stat. 1867; amended Pub. L. 112-141, div. A, title I, §1312, July 6, 2012, 126 Stat. 545.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(3), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 326, added Pub. L. 102-240, title VI, §6004(a), Dec. 18, 1991, 105 Stat. 2169; amended Pub. L. 105-130, §5(e)(4), Dec. 1, 1997, 111 Stat. 2558, related to education and training program, prior to repeal by Pub. L. 105-178, title V, §5119(b), June 9, 1998, 112 Stat. 452.

AMENDMENTS

2012—Subsec. (a)(4). Pub. L. 112-141, §1312(1), added par. (4).

Subsec. (d). Pub. L. 112-141, §1312(2), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: "The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State."