

MATERIALS PRODUCED BY CONVICT LABOR

Pub. L. 101-162, title II, § 202, Nov. 21, 1989, 103 Stat. 1002, provided that: "During fiscal year 1990 and hereafter, materials produced by convict labor may be used in the construction of any highways or portion of highways located on Federal-aid systems, as described in section 103 of title 23, United States Code."

Similar fiscal year provisions were contained in the following appropriation acts:

Pub. L. 100-459, title II, § 202, Oct. 1, 1988, 102 Stat. 2199.

Pub. L. 100-202, § 101(a) [title II, § 202], Dec. 22, 1987, 101 Stat. 1329, 1329-15.

Pub. L. 99-500, § 101(b) [title II, § 202], Oct. 18, 1986, 100 Stat. 1783-39, 1783-51, and Pub. L. 99-591, § 101(b) [title II, § 202], Oct. 30, 1986, 100 Stat. 3341-39, 3341-51.

Pub. L. 99-180, title II, § 202, Dec. 13, 1985, 99 Stat. 1146.

Pub. L. 98-411, title II, § 202, Aug. 30, 1984, 98 Stat. 1558, repealed by Pub. L. 100-17, title I, § 112(b)(2), Apr. 2, 1987, 101 Stat. 149.

Pub. L. 98-166, title II, § 202, Nov. 28, 1983, 97 Stat. 1085.

ACCELERATION OF PROJECTS

Pub. L. 97-424, title I, § 129, Jan. 6, 1983, 96 Stat. 2118, provided that: "The Secretary of Transportation shall by rule or regulation establish, as soon as practicable, alternative methods for processing projects under title 23, United States Code, so as to reduce the time required from the request for project approval through the completion of construction. In carrying out this section the Secretary shall utilize the knowledge and experience resulting from the demonstration project authorized by and carried out under section 141 of the Federal-Aid Highway Act of 1976 [Pub. L. 94-280, title I, § 141, May 5, 1976, 90 Stat. 444, formerly set out as a note under former section 124 of this title]."

§ 115. Advance construction

(a) IN GENERAL.—The Secretary may authorize a State to proceed with a project authorized under this title—

(1) without the use of Federal funds; and

(2) in accordance with all procedures and requirements applicable to the project other than those procedures and requirements that limit the State to implementation of a project—

(A) with the aid of Federal funds previously apportioned or allocated to the State; or

(B) with obligation authority previously allocated to the State.

(b) OBLIGATION OF FEDERAL SHARE.—The Secretary, on the request of a State and execution of a project agreement, may obligate all or a portion of the Federal share of a project authorized to proceed under this section from any category of funds for which the project is eligible.

(c) INCLUSION IN TRANSPORTATION IMPROVEMENT PROGRAM.—The Secretary may approve an application for a project under this section only if the project is included in the transportation improvement program of the State developed under section 135(f).

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 90-495, § 25(a), (b), Aug. 23, 1968, 82 Stat. 828, 829; Pub. L. 93-643, § 111, Jan. 4, 1975, 88 Stat. 2285; Pub. L. 96-106, § 4, Nov. 9, 1979, 93 Stat. 797; Pub. L. 97-424, title I, § 113, Jan. 6, 1983, 96 Stat. 2106; Pub. L. 100-17, title I, § 113(a)-(d)(1), Apr. 2, 1987, 101 Stat. 149, 150; Pub. L. 102-302, § 103, June 22, 1992, 106 Stat. 252; Pub. L. 104-59, title III, § 308, Nov. 28, 1995, 109 Stat. 582; Pub. L. 105-178, title

I, §§ 1103(l)(3)(A), 1106(c)(1)(A), 1226(a), title V, § 5119(d), June 9, 1998, 112 Stat. 126, 136, 452; Pub. L. 105-206, title IX, § 9003(a), July 22, 1998, 112 Stat. 837; Pub. L. 109-59, title I, § 1501(a), Aug. 10, 2005, 119 Stat. 1235; Pub. L. 110-244, title I, § 101(j), June 6, 2008, 122 Stat. 1574.)

Editorial Notes

AMENDMENTS

2008—Subsecs. (c), (d). Pub. L. 110-244 redesignated subsec. (d) as (c).

2005—Subsecs. (a), (b). Pub. L. 109-59, § 1501(a)(2), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b), which related to payment of the Federal share of the cost of congestion mitigation and air quality improvement, surface transportation, bridge, planning, and research projects and Interstate and National Highway System projects which have been subject to advance construction by a State.

Subsecs. (c), (d). Pub. L. 109-59, § 1501(a)(1), redesignated subsec. (c) as (d).

1998—Subsec. (a). Pub. L. 105-178, § 1106(c)(1)(A)(i), struck out "Substitute," before "Congestion" in heading.

Subsec. (a)(1)(A)(i). Pub. L. 105-178, §§ 1106(c)(1)(A)(ii), 5119(d), struck out "103(e)(4)(H)," after "under section" and substituted "or 505" for "or 307".

Subsec. (b). Pub. L. 105-178, § 1226(a)(1), as added by Pub. L. 105-206, § 9003(a), struck out designation and heading of par. (1), redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, realigned margins, and struck out former pars. (2) and (3), which related to bond interest for projects under construction on Jan. 1, 1983, and directed that Federal share of cost of construction would include amount of bond interest but not in excess of estimated costs over actual costs.

Subsec. (b)(1). Pub. L. 105-178, § 1103(l)(3)(A), substituted "104(b)(4)" for "104(b)(5)".

Subsecs. (c), (d). Pub. L. 105-178, § 1226(a)(2), (3), as added by Pub. L. 105-206, § 9003(a), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: "In determining the apportionment for any fiscal year under the provisions of section 103(e)(4), 104, 134, 144., or 307 of this title, any such project constructed by a State without the aid of Federal funds shall not be considered completed until an application under the provisions of this section with respect to such project has been approved by the Secretary."

1995—Subsec. (d). Pub. L. 104-59 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

"(d) LIMITATION ON ADVANCED FUNDING.—The Secretary may not approve an application under this section unless an authorization for section 103(e)(4), 104, 144, or 307 of this title, as the case may be, is in effect for the fiscal year for which the application is sought beyond the currently authorized funds for each State. No applications may be approved which will exceed the State's expected apportionment of such authorizations."

1992—Subsec. (a). Pub. L. 102-302, § 103(1), in heading substituted "SUBSTITUTE, CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT, SURFACE TRANSPORTATION, BRIDGE, PLANNING, AND RESEARCH PROJECTS" for "SUBSTITUTE, URBAN, SECONDARY, BRIDGE, PLANNING, RESEARCH, AND SAFETY CONSTRUCTION PROJECTS".

Subsec. (a)(1)(A)(i). Pub. L. 102-302, § 103(2)(A), added cl. (i) and struck out former cl. (i) which read as follows: "has obligated all funds apportioned or allocated to it under section 103(e)(4)(H), section 104(b)(2), section 104(b)(6), section 104(f), section 130, section 144, section 152, or section 307 of this title, or".

Subsec. (a)(2)(A). Pub. L. 102-302, § 103(2)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: "prior to commencement of the project the Secretary approves the plans and specifications therefor in the same manner as other projects, and".

Subsec. (a)(3). Pub. L. 102-302, §103(2)(C), struck out par. (3) which read as follows: "LIMITATION WITH RESPECT TO CURRENTLY AUTHORIZED FUNDS.—The Secretary may not approve an application under this section unless an authorization for section 103(e)(4), 104, 130, 144, 152, or 307 of this title, as the case may be, is in effect for the fiscal year for which the application is sought beyond the currently authorized funds for such State. No application may be approved which will exceed the State's expected apportionment of such authorizations. This paragraph shall have no effect during the period beginning January 1, 1987, and ending September 30, 1990."

Subsec. (b). Pub. L. 102-302, §103(3), (4), in heading substituted "NATIONAL HIGHWAY SYSTEM" for "PRIMARY" and in par. (1) substituted "National Highway System" for "Federal-aid primary system".

Subsec. (c). Pub. L. 102-302, §103(5), struck out "152" after "144,".

Subsec. (d). Pub. L. 102-302, §103(6), added subsec. (d) and struck out former subsec. (d) which read as follows: "LIMITATION ON ADVANCED FUNDING FOR FISCAL YEARS 1987-1990.—The Secretary may not approve an application of a State under this section with respect to a project with funds apportioned, or currently authorized to be apportioned, under section 103(e)(4)(H), 104, 130, 144, 152, or 307 if the amount of approved applications with respect to such projects exceeds the total of unobligated funds apportioned or allocated to the State under such section, plus such State's expected apportionment under such section from existing authorizations plus an amount equal to such State's expected apportionment under such section (other than section 104(b)(5)(A)) for one additional fiscal year. This subsection shall only be effective during the period beginning January 1, 1987, and ending September 30, 1990."

1987—Pub. L. 100-17, §113(d)(1)(A), substituted "Advance construction" for "Construction by States in advance of apportionment" in section catchline.

Subsec. (a). Pub. L. 100-17, §113(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

"(1) When a State has obligated all funds apportioned or allocated to it under section 103(e)(4), 104, or 144 of this title, other than Interstate funds, and proceeds to construct any highway substitute, Federal-aid system, or bridge project, respectively, other than an Interstate project funded under section 104(b)(5) of this title, without the aid of Federal funds in accordance with all procedures and all requirements applicable to such a project, except insofar as such procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to such State the Federal share of the costs of construction of such project when additional funds are apportioned to such State under section 103(e)(4), 104, or 144, respectively, of this title if—

"(A) prior to the construction of the project the Secretary approves the plans and specifications therefor in the same manner as other projects, and

"(B) the project conforms to the applicable standards adopted under section 109 of this title.

"(2) The Secretary may not approve an application under this section unless an authorization for section 103(e)(4), 104, or 144 of this title, as the case may be, is in effect for the fiscal year for which the application is sought beyond the currently authorized funds for such State. No application may be approved which will exceed the State's expected apportionment of such authorizations."

Subsec. (b). Pub. L. 100-17, §113(b), inserted heading.

Subsec. (b)(1). Pub. L. 100-17, §113(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "When a State proceeds to construct any project on the Interstate System without the aid of Federal funds, as that System may be designated at that time, in accordance with all procedures and all requirements applicable to projects on such System, except insofar as such

procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to such State the Federal share of the cost of construction of such project when additional funds are apportioned to such State under section 104 of this title if—

"(A) prior to the construction of the project the Secretary approves the plans and specifications therefor in the same manner as other projects on the Interstate System, and

"(B) the project conforms to the applicable standards under section 109 of this title."

Subsec. (b)(2), (3). Pub. L. 100-17, §113(d)(1)(B)–(D), inserted headings and aligned pars. (2) and (3) with par. (1), as amended.

Subsec. (c). Pub. L. 100-17, §113(d)(1)(E), (F), inserted heading and substituted "134, 144, 152, or 307" for "or 144".

Subsec. (d). Pub. L. 100-17, §113(c), added subsec. (d). 1983—Subsec. (a). Pub. L. 97-424, §113(c), designated existing provisions as pars. (1) and (2) and designated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1); in par. (1) as so redesignated, substituted "When a State has obligated all funds appropriated or allocated to it under section 103(e)(4), 104, or 144 of this title, other than "interstate funds, and proceeds to construct any highway substitute, Federal-aid system, or bridge project, respectively, other than an Interstate project funded under section 104(b)(5) of this title, without the aid of Federal funds in accordance with all procedures and all requirements applicable to such a project, except insofar as such procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to such State the Federal share of the costs of construction of such project when additional funds are apportioned to such State under section 103(e)(4), 104, or 144, respectively, of this title if—" for "When a State has obligated all funds for any of the Federal-aid systems, other than the Interstate System, apportioned to it under section 104 of this title, and proceeds to construct any project without the aid of Federal funds, including one or more parts of any project, on any of the Federal-aid systems in such State, other than the Interstate System, as any of those systems may be designated at that time, in accordance with all procedures and all requirements applicable to projects on any such system, except insofar as such procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to such State the Federal share of the costs of construction of such project when additional funds are apportioned to such State under section 104 of this title if—" ; in subpar. (A) thereof struck out "on the Federal-aid system involved" after "other projects"; and in par. (2) as so designated inserted "for section 103(e)(4), 104, or 144 of this title, as the case may be," after "unless authorization", and made a new sentence of existing provisions, beginning with "No application".

Subsec. (b)(2). Pub. L. 97-424, §113(a), substituted "1983" for "1978" wherever appearing.

Subsec. (b)(3). Pub. L. 97-424, §113(b), added par. (3).

Subsec. (c). Pub. L. 97-424, §113(d), substituted "section 103(e)(4), 104, or 144" for "section 104" after "provisions of".

1979—Subsec. (b). Pub. L. 96-106 designated existing provisions as par. (1) and cls. (1) and (2) thereof as subpars. (A) and (B) and added par. (2).

1975—Subsec. (a). Pub. L. 93-643, §111(a), substituted "other than the Interstate System" for "including the Interstate System" in two places.

Subsecs. (b), (c). Pub. L. 93-643, §111(b), added subsec. (b) and redesignated former subsec. (b) as (c).

1968—Subsec. (a). Pub. L. 90-495, §25(a), extended advance construction authority to all the Federal-aid

highway systems rather than just the Interstate System but provided that anticipation of future apportionments by States should only be permitted for those years for which authorizations have been established by law.

Subsec. (b). Pub. L. 90-495, §25(b), struck out reference to subsec. (b)(5) of section 104 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105-206 effective simultaneously with enactment of Pub. L. 105-178 and to be treated as included in Pub. L. 105-178 at time of enactment, and provisions of Pub. L. 105-178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105-206 to be treated as not enacted, see section 9016 of Pub. L. 105-206, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

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

§ 116. Maintenance

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

(1) PREVENTIVE MAINTENANCE.—The term “preventive maintenance” includes pavement preservation programs and activities.

(2) PAVEMENT PRESERVATION PROGRAMS AND ACTIVITIES.—The term “pavement preservation programs and activities” means programs and activities employing a network level, long-term strategy that enhances pavement performance by using an integrated, cost-effective set of practices that extend pavement life, improve safety, and meet road user expectations.

(b) It shall be the duty of the State transportation department or other direct recipient to maintain, or cause to be maintained, any project constructed under the provisions of this chapter or constructed under the provisions of prior Acts.

(c) AGREEMENT.—In any State in which the State transportation department or other direct recipient is without legal authority to maintain a project described in subsection (b), the transportation department or direct recipient shall enter into a formal agreement with the appropriate officials of the county or municipality in which the project is located to provide for the maintenance of the project.

(d) If at any time the Secretary shall find that any project constructed under the provisions of this chapter, or constructed under the provisions of prior Acts, is not being properly maintained, he shall call such fact to the attention of the State transportation department or other direct recipient. If, within ninety days after receipt of such notice, such project has not been put in proper condition of maintenance, the Secretary shall withhold approval of further projects of all types in the State highway district, municipality, county, other political or administrative subdivision of the State, or the entire State in which such project is located, whichever the Secretary deems most appropriate, until such project shall have been put in proper condition of maintenance.

(e) PREVENTIVE MAINTENANCE.—A preventive maintenance activity shall be eligible for Federal assistance under this title if the State demonstrates to the satisfaction of the Secretary that the activity is a cost-effective means of extending the useful life of a Federal-aid highway.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 86-70, §21(d)(2), (e)(3), June 25, 1959, 73 Stat. 145, 146; Pub. L. 90-495, §26, Aug. 23, 1968, 82 Stat. 829; Pub. L. 95-599, title I, §124(d), Nov. 6, 1978, 92 Stat. 2705; Pub. L. 97-424, title I, §114, Jan. 6, 1983, 96 Stat. 2107; Pub. L. 100-17, title I, §125(b)(2), Apr. 2, 1987, 101 Stat. 167; Pub. L. 104-59, title III, §309, Nov. 28, 1995, 109 Stat. 582; Pub. L. 105-178, title I, §1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193; Pub. L. 109-59, title I, §1111(b)(1), Aug. 10, 2005, 119 Stat. 1171; Pub. L. 112-141, div. A, title I, §1507, July 6, 2012, 126 Stat. 565.)

Editorial Notes

AMENDMENTS

2012—Subsec. (a). Pub. L. 112-141, §1507(2), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 112-141, §1507(1), (3), redesignated subsec. (a) as (b), inserted “or other direct recipient” before “to maintain”, and struck out at end “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.” Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 112-141, §1507(4), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: “In any State wherein the State transportation department is without legal authority to maintain a project constructed on the Federal-aid secondary system, or within a municipality, such transportation 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.”

Pub. L. 112-141, §1507(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 112-141, §1507(1), (5), redesignated subsec. (c) as (d) and inserted “or other direct recipient” after “State transportation department”. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 112-141, §1507(1), redesignated subsec. (d) as (e).

2005—Subsec. (b). Pub. L. 109-59 substituted “such transportation department” for “such highway department”.

1998—Subsecs. (a) to (c). Pub. L. 105-178 substituted “State transportation department” for “State highway department”.

1995—Subsec. (d). Pub. L. 104-59 added subsec. (d).

1987—Subsecs. (d), (e). Pub. L. 100-17 struck out subsecs. (d) and (e) which read as follows:

“(d) The Secretary in consultation with the State highway departments and interested and knowledgeable private organizations and individuals shall as soon as possible establish national bridge inspection standards in order to provide for the proper safety inspection of bridges. Such standards shall specify in detail the method by which inspections shall be conducted by the State highway departments, the maximum time lapse between inspections and the qualifications for those charged with the responsibility for carrying out such inspections. Each State shall be required to maintain written reports to be available to the Secretary pursuant to such inspections together with a notation of the action taken pursuant to the findings of such inspections. Each State shall be required to maintain a current inventory of all bridges.

“(e) The Secretary shall establish in cooperation with the State highway departments a program designed to