

AT-RISK PROJECT PREAGREEMENT AUTHORITY

Pub. L. 114-94, div. A, title I, §1440, Dec. 4, 2015, 129 Stat. 1434, provided that:

“(a) DEFINITION OF PRELIMINARY ENGINEERING.—In this section, the term ‘preliminary engineering’ means allowable preconstruction project development and engineering costs.

“(b) AT-RISK PROJECT PREAGREEMENT AUTHORITY.—A recipient or subrecipient of Federal-aid funds under title 23, United States Code, may—

“(1) incur preliminary engineering costs for an eligible project under title 23, United States Code, before receiving project authorization from the State, in the case of a subrecipient, and the Secretary [of Transportation] to proceed with the project; and

“(2) request reimbursement of applicable Federal funds after the project authorization is received.

“(c) ELIGIBILITY.—The Secretary may reimburse preliminary engineering costs incurred by a recipient or subrecipient under subsection (b)—

“(1) if the costs meet all applicable requirements under title 23, United States Code, at the time the costs are incurred and the Secretary concurs that the requirements have been met;

“(2) in the case of a project located within a designated nonattainment or maintenance area for air quality, if the conformity requirements of the Clean Air Act (42 U.S.C. 7401 et seq.) have been met; and

“(3) if the costs would have been allowable if incurred after the date of the project authorization by the Department.

“(d) AT-RISK.—A recipient or subrecipient that elects to use the authority provided under this section shall—

“(1) assume all risk for preliminary engineering costs incurred prior to project authorization; and

“(2) be responsible for ensuring and demonstrating to the Secretary that all applicable cost eligibility conditions are met after the authorization is received.

“(e) RESTRICTIONS.—Nothing in this section—

“(1) allows a recipient or subrecipient to use the authority under this section to advance a project beyond preliminary engineering prior to the completion of the environmental review process;

“(2) waives the applicability of Federal requirements to a project other than the reimbursement of preliminary engineering costs incurred prior to an authorization to proceed in accordance with this section; or

“(3) guarantees Federal funding of the project or the eligibility of the project for future Federal-aid highway funding.”

SUBMISSION OF RECOMMENDATIONS TO CONGRESS FOR REIMBURSEMENT OF STATES FOR CERTAIN HIGHWAYS

Pub. L. 85-845, Aug. 28, 1958, 72 Stat. 1083, required Secretary of Commerce, within ten days after first day of first session of Eighty-sixth Congress, to submit to Congress recommendations for legislation for purpose of assisting Congress to determine whether or not to reimburse each State of any portion of a toll or free highway (1) which was on National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways], (2) which met standards required by Federal-Aid Highway Act of 1956 for such System of Interstate and Defense Highways, and (3) construction of which had been completed since Aug. 2, 1947, or which had been in actual use or under construction by contract, for completion, awarded not later than June 30, 1957.

§ 122. Payments to States for bond and other debt instrument financing

(a) DEFINITION OF ELIGIBLE DEBT FINANCING INSTRUMENT.—In this section, the term “eligible debt financing instrument” means a bond or other debt financing instrument, including a note, certificate, mortgage, or lease agreement,

issued by a State or political subdivision of a State or a public authority, the proceeds of which are used for an eligible project under this title.

(b) FEDERAL REIMBURSEMENT.—Subject to subsections (c) and (d), the Secretary may reimburse a State for expenses and costs incurred by the State or a political subdivision of the State and reimburse a public authority for expenses and costs incurred by the public authority for—

(1) interest payments under an eligible debt financing instrument;

(2) the retirement of principal of an eligible debt financing instrument;

(3) the cost of the issuance of an eligible debt financing instrument;

(4) the cost of insurance for an eligible debt financing instrument; and

(5) any other cost incidental to the sale of an eligible debt financing instrument (as determined by the Secretary).

(c) CONDITIONS ON PAYMENT.—The Secretary may reimburse a State or public authority under subsection (b) with respect to a project funded by an eligible debt financing instrument after the State or public authority has complied with this title with respect to the project to the extent and in the manner that would be required if payment were to be made under section 121.

(d) FEDERAL SHARE.—The Federal share of the cost of a project payable under this section shall not exceed the Federal share of the cost of the project as determined under section 120.

(e) STATUTORY CONSTRUCTION.—Notwithstanding any other provision of law, the eligibility of an eligible debt financing instrument for reimbursement under subsection (b) shall not—

(1) constitute a commitment, guarantee, or obligation on the part of the United States to provide for payment of principal or interest on the eligible debt financing instrument; or

(2) create any right of a third party against the United States for payment under the eligible debt financing instrument.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 900; Pub. L. 95-599, title I, §115(b), Nov. 6, 1978, 92 Stat. 2698; Pub. L. 97-424, title I, §107(f), Jan. 6, 1983, 96 Stat. 2103; Pub. L. 100-17, title I, §133(b)(7), Apr. 2, 1987, 101 Stat. 171; Pub. L. 104-59, title III, §311(a), Nov. 28, 1995, 109 Stat. 583.)

Editorial Notes

AMENDMENTS

1995—Pub. L. 104-59 amended section generally, substituting present provisions for provisions which authorized States to use portion of Federal highway payments to retire principal of bonds proceeds of which were used for certain Federal highway projects.

1987—Pub. L. 100-17 inserted “or for substitute highway projects approved under section 103(e)(4) of this title” before “and the retirement” in first sentence.

1983—Pub. L. 97-424 inserted “or for substitute highway projects approved under section 103(e)(4) of this title,” after “highway systems in urban areas,” and “or on highway projects approved under section 103(e)(4) of this title” after “expenditure on such system”.

1978—Pub. L. 95-599 inserted provisions relating to the retirement of bonds the proceeds of which were used for program projects, provisions that section was not to be construed as a commitment on the part of the

United States to pay the principal of any such bonds, and provisions prohibiting inclusion of interest and incidental costs of bonds in estimated cost of completion.

Statutory Notes and Related Subsidiaries

PAYMENT OF INTEREST ON BONDS ISSUED PRIOR TO AND AFTER NOVEMBER 6, 1978

Pub. L. 95-599, title I, §115(c), Nov. 6, 1978, 92 Stat. 2698, provided that: "No interest shall be paid under authority of section 122 of title 23, United States Code, on any bonds issued prior to the date of enactment of this Act [Nov. 6, 1978], unless such bonds were issued for projects which were under construction on January 1, 1978. Interest on bonds issued in any fiscal year by a State after the date of enactment of this Act may be paid under authority of section 122 of title 23, United States Code, only if (1) such State was eligible to obligate funds of another State under subsection (a) of this section during such fiscal year and (2) the Secretary of Transportation certifies that such eligible State utilized, or will utilize, to the fullest extent possible during such fiscal year its authority to obligate funds under such subsection (a) of this section [amending section 118(b) of this title]. No interest shall be paid under section 122 of title 23, United States Code, on that part of the proceeds of bonds issued after the date of enactment of this Act used to retire or otherwise refinance bonds issued prior to such date."

§ 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 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.)

Editorial Notes

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,".

Statutory Notes and Related Subsidiaries

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, directed the Comptroller General to 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, including an assessment of methods States use to mitigate such delays, and directed the Comptroller General to transmit to Congress a report on the results of the study with any appropriate recommendations not later than 1 year after June 9, 1998.

[§ 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.

Statutory Notes and Related Subsidiaries

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.**—