

priate treatment for specialized hauling vehicles which do not comply with the existing Federal bridge formula and submit a final report to Secretary and Congress, not later than 30 months after appropriate arrangements were entered into.

STATE-IMPOSED VEHICLE WIDTH LIMITATIONS

Pub. L. 97-369, title III, §321, Dec. 18, 1982, 96 Stat. 1784, related to State-imposed vehicle width limitations, prior to repeal by Pub. L. 98-17, §2, Apr. 5, 1983, 97 Stat. 60. See section 31113 of Title 49, Transportation.

STEERING AXLE STUDY; REPORT TO CONGRESS

Section 210 of Pub. L. 94-280 directed Secretary of Transportation to conduct an investigation into relationship between gross load on front steering axles of truck tractors and safety of operation of vehicle combinations of which such truck tractors are a part, such investigation to be conducted in cooperation with representatives of (A) manufacturers of truck tractors and related equipment, (B) labor, and (C) users of such equipment, and the results of such study to be reported to Congress not later than July 1, 1977.

§ 128. Public hearings

(a) Any State transportation department which submits plans for a Federal-aid highway project involving the by passing 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 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 transportation department shall submit a copy of the transcript of said hearings to the Secretary, together with the certification and report.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 902; Pub. L. 90-495, §24, Aug. 23, 1968, 82 Stat. 828; Pub. L. 91-605, title I, §135, Dec. 31, 1970, 84 Stat. 1734; Pub. L. 105-178, title I, §1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193.)

AMENDMENTS

1998—Pub. L. 105-178 substituted “State transportation department” for “State highway department” wherever appearing.

1970—Subsec. (a). Pub. L. 91-605, §135(a), provided for submission of a report by the State highway department involved indicating consideration given to economic, social, environmental, and other effects of the plan or highway location or design plus the various alternatives which were considered.

Subsec. (b). Pub. L. 91-605, §135(b), inserted reference to report to be submitted by the State highway department together with the certification of public hearings. 1968—Subsec. (a). Pub. L. 90-495 inserted social effect of projects, the impact on environment, and their consistency with the goals and objectives of such urban planning as has been promulgated by the community to the list of factors to be considered by State highway departments in looking over projects involving the by-passing or passing through of municipalities.

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.

§ 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 Fed-

eral 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 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 ferry terminal facilities, whether toll or free, 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 or operated or majority publicly owned if the Secretary determines with respect to a majority publicly owned ferry or ferry terminal facility that such ferry boat or ferry terminal facility provides substantial public benefits.

(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, and¹ repair, debt service, negotiated management fees, and, in the case of a 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 any territory of the United States) 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 any territory of the United States, 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 operation 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 unprogrammed balance of Federal-aid highway funds of the same class last apportioned to such State. Any amount 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.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 902; Pub. L. 86-657, §§ 5, 8(a), July 14, 1960, 74 Stat. 523, 524; Pub. L. 90-495, § 28, Aug. 23, 1968, 82 Stat. 829; Pub. L. 91-605, title I, §§ 133, 139, Dec. 31, 1970, 84 Stat. 1732, 1736; Pub. L. 92-434, § 7, Sept. 26, 1972, 86 Stat. 732; Pub. L. 93-87, title I, §§ 118, 132, 139, Aug. 13, 1973, 87 Stat. 259, 267, 270; Pub. L. 93-643, § 108, Jan. 4, 1975, 88 Stat. 2284; Pub. L. 94-280, title I, § 121, May 5, 1976, 90 Stat. 438; Pub. L. 95-599, title I, § 120, Nov. 6, 1978, 92 Stat. 2700; Pub. L. 100-17, title I, § 120(a), (b), Apr. 2, 1987, 101 Stat. 157, 158; Pub. L. 100-202, § 101(l) [title III, § 347(d)], Dec. 22, 1987, 101 Stat. 1329-358, 1329-388; Pub. L. 100-457, title III, §§ 326, 335, Sept. 30, 1988, 102 Stat. 2150, 2153; Pub. L. 102-240, title I, § 1012(a), (c), Dec. 18, 1991, 105 Stat. 1936, 1938; Pub. L. 102-388, title IV, § 410, Oct. 6, 1992, 106 Stat. 1565; Pub. L. 104-59, title III, § 313(a)-(c),

Nov. 28, 1995, 109 Stat. 585, 586; Pub. L. 105-178, title I, §§ 1106(c)(1)(C), 1207(a), 1211(f), formerly 1211(g), June 9, 1998, 112 Stat. 136, 185, 189; Pub. L. 105-206, title IX, § 9003(d)(5), July 22, 1998, 112 Stat. 840; Pub. L. 109-59, title I, § 1801(f), Aug. 10, 2005, 119 Stat. 1456.)

REFERENCES IN TEXT

The date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (a)(1)(B), is the date of enactment of Pub. L. 102-240, which was approved Dec. 18, 1991.

For the effective date of title I of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (a)(6), see section 1100 of Pub. L. 102-240, set out as an Effective Date of 1991 Amendment note under section 104 of this title.

AMENDMENTS

2005—Subsec. (c)(5). Pub. L. 109-59 substituted “any territory of the United States” for “the Commonwealth of Puerto Rico” in two places.

1998—Subsec. (b). Pub. L. 105-178, § 1106(c)(1)(C), substituted “which is a public road and has not” for “which has been classified as a public road and has not” in first sentence.

Subsec. (c)(3). Pub. L. 105-178, § 1207(a), substituted “owned or operated or majority publicly owned if the Secretary determines with respect to a majority publicly owned ferry or ferry terminal facility that such ferry boat or ferry terminal facility provides substantial public benefits.” for “owned.”

Subsec. (d). Pub. L. 105-178, § 1211(f), formerly § 1211(g), as renumbered by Pub. L. 105-206, § 9003(d)(5), struck out subsec. (d) which related to pilot toll collection program.

1995—Subsec. (a)(5). Pub. L. 104-59, § 313(a), amended par. (5) generally. Prior to amendment, par. (5) read as follows:

“(5) LIMITATION ON FEDERAL SHARE.—Except as otherwise provided in this paragraph, the Federal share payable for construction of a highway, bridge, tunnel, or approach thereto or conversion of a highway, bridge, or tunnel to a toll facility under this subsection shall be such percentage as the State determines but not to exceed 50 percent. The Federal share payable for construction of a new bridge, tunnel, or approach thereto or for reconstruction or replacement of a bridge, tunnel, or approach thereto shall be such percentage as the Secretary determines but not to exceed 80 percent. In the case of a toll facility subject to an agreement under section 119 or 129, the Federal share payable on any project for resurfacing, restoring, rehabilitating, or reconstructing such facility shall be 80 percent until the scheduled expiration of such agreement (as in effect on the day before the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991).”

Subsec. (a)(7). Pub. L. 104-59, § 313(b), amended par. (7) generally. Prior to amendment, par. (7) read as follows:

“(7) LOANS.—A State may loan all or part of the Federal share of a toll project under this section to a public or private agency constructing a toll facility. Such loan may be made only after all Federal environmental requirements have been complied with and permits obtained. The amount loaned shall be subordinated to other debt financing for the facility except for loans made by the State or any other public agency to the agency constructing the facility. Funds loaned pursuant to this section may be obligated for projects eligible under this section. The repayment of any such loan shall commence not more than 5 years after the facility has opened to traffic. Any such loan shall bear interest at the average rate the State's pooled investment fund earned in the 52 weeks preceding the start of repayment. The term of any such loan shall not exceed 30 years from the time the loan was obligated. Amounts repaid to a State from any loan made under this section may be obligated for any purpose for which the loaned funds were available. The Secretary shall establish procedures and guidelines for making such loans.”

¹ So in original. The word “and” probably should not appear.

Subsec. (c)(5). Pub. L. 104-59, §313(c), inserted before period at end of first sentence "or between a point in a State and a point in the Dominion of Canada" and in second sentence substituted "Hawaii," for "Hawaii and" and inserted ", operations between a point in a State and a point in the Dominion of Canada," after "Puerto Rico".

1992—Subsec. (b). Pub. L. 102-388, §410(1), which directed the substitution of "classified as a public road" for "approved under section 103(b) or (b) of this title as a part of one of the Federal-aid systems", was executed by making the substitution for "approved under section 103(b) or (c) of this title as a part of one of the Federal-aid systems" to reflect the probable intent of Congress.

Subsec. (c)(2). Pub. L. 102-388, §410(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The operation of the ferry shall be on a route which has been approved under section 103(b) or (c) of this title as a part of one of the Federal-aid systems within the State and has not been designated as a route on the Interstate System."

1991—Subsec. (a). Pub. L. 102-240, §1012(a), amended subsec. (a) generally, substituting present provisions for provisions authorizing Federal participation in construction or acquisition of toll bridges, tunnels and approaches, provided that facility was publicly owned and operated by State or public authority, and State or authority agreed that all tolls, less those used to offset cost of operation and maintenance, were to be applied to repayment of State or authority for cost of construction or acquisition, that no tolls were to be charged after such repayment, and that facility was to be free of charge thereafter, except in case of bridge connecting United States with foreign country.

Subsec. (b). Pub. L. 102-240, §1012(c)(1), (2), redesignated subsec. (f) as (b) and struck out former subsec. (b) which authorized Secretary to approve toll roads, bridges and tunnels as part of Interstate System, authorized expenditure of Federal-aid highway funds on toll roads after they became toll-free, and required agreements between Secretary and State highway departments on construction of Interstate projects to forbid construction of toll roads, but not toll bridges and tunnels, on interstate highway route without official concurrence of Secretary, after June 30, 1968.

Subsec. (c). Pub. L. 102-240, §1012(c), redesignated subsec. (g) as (c), inserted "and ferry terminal facilities" after "boats" in introductory provisions, added par. (3) and struck out former par. (3) which read as follows: "Such ferry shall be publicly owned and operated.", in par. (4), inserted "or other public entity" after "State" and ", debt service, negotiated management fees, and, in the case of a privately operated toll ferry, for a reasonable rate of return" before period at end, and struck out former subsec. (c) which made available funds authorized for expenditure on Federal-aid highway systems for projects approaching toll roads, bridges or tunnels up to point where project had use irrespective of use for toll road, bridge or tunnel.

Subsec. (d). Pub. L. 102-240, §1012(c)(1), (2), redesignated subsec. (j) as (d) and struck out former subsec. (d) which made available funds authorized for expenditure on Interstate System for Interstate System projects approaching toll road and having no other use, if agreement was reached that section of toll road would become free to public upon collection of tolls sufficient to liquidate cost of road and outstanding bonds and cost of maintenance, operation and debt service during period of toll collection, and that there was a reasonably satisfactory alternative free route available to bypass toll section.

Subsec. (e). Pub. L. 102-240, §1012(c)(1), struck out subsec. (e) which authorized Secretary to permit Federal participation in reconstruction and improvement of two-lane toll road designated as part of the Interstate System before June 30, 1973, as necessary to bring such road to standards of Interstate System, provided that toll road authority agreed that no new indebtedness to be liquidated by tolls was to be incurred, that

all tolls be used for operation and maintenance and to repay outstanding bonds, and that, upon liquidation of such bonds, the road was to become free to public.

Subsecs. (f), (g). Pub. L. 102-240, §1012(c)(2), redesignated subsecs. (f) and (g) as (b) and (c), respectively.

Subsec. (h). Pub. L. 102-240, §1012(c)(1), struck out subsec. (h) which provided that, in case of interstate toll bridge on Federal-aid primary system, except Interstate System, owned by State or political subdivision, that became toll-free by Jan. 1, 1975, because of purchase or construction by State before Jan. 1, 1975, funds would be made available under section 104(b)(1) and (3) of this title to pay Federal share of lesser of value of bridge (after deducting portion of value already attributable to Federal funds) or amount by which principal amount of outstanding unpaid bonds issued for construction or acquisition of bridge exceeded amount accumulated for their amortization, on date bridge became free to public.

Subsec. (i). Pub. L. 102-240, §1012(c)(1), struck out subsec. (i) which authorized Secretary to permit Federal participation, through funds for Federal-aid highway system, other than Interstate System, in engineering and fiscal assessments, traffic analyses, network studies, etc., to determine whether privately owned toll bridges should be acquired by a State or subdivision.

Subsec. (j). Pub. L. 102-240, §1012(c)(2), redesignated subsec. (j) as (d).

Subsec. (k). Pub. L. 102-240, §1012(c)(1), struck out subsec. (k) which required operators of toll roads, tunnels, ferries and bridges on Federal-aid highway system to biennially certify to Governor of State that facilities were adequately maintained and that operator had ability to fund such facilities that were not adequately maintained without using Federal-aid highway funds, and which required Governor of each State to report biennially to Secretary on facilities required to so certify.

1988—Subsec. (j)(1), (3). Pub. L. 100-457, §335, amended Pub. L. 100-202, §101(7) [title III, §347(d)(1), (2)(A), (C)], see 1987 Amendment note below.

Subsec. (j)(6). Pub. L. 100-457, §326(1), inserted "(and, in the case of the State of Texas, the Texas Turnpike Authority)" after "State highway department".

Subsec. (j)(10). Pub. L. 100-457, §326(2), added par. (10). 1987—Subsec. (j). Pub. L. 100-17, §120(a), added subsec. (j).

Subsec. (j)(1). Pub. L. 100-202, §101(7) [title III, §347(d)(1)], as amended by Pub. L. 100-457, §335, which directed the amendment of par. (1) by substituting "(9)" for "(9)" was executed by substituting "9" for "7" as the probable intent of Congress.

Subsec. (j)(3). Pub. L. 100-202, §101(7) [title III, §347(d)(2)(A)], as amended by Pub. L. 100-457, §335, which directed the amendment of par. (3) by substituting "(9)" for "(7)" was executed by substituting "9" for "7" as the probable intent of Congress.

Pub. L. 100-202, §101(7) [title III, §347(d)(2)(B)-(D)], as amended by Pub. L. 100-457, §335, substituted "States of Pennsylvania and West Virginia" for "State of Pennsylvania" in two places and inserted "States of Georgia and West Virginia," and "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."

Subsec. (k). Pub. L. 100-17, §120(b), added subsec. (k). 1978—Subsec. (i). Pub. L. 95-599 added subsec. (i).

1976—Subsec. (g)(5). Pub. L. 94-280 authorized ferry operations within the islands which comprise the Commonwealth of Puerto Rico and excepted ferry operations between the islands which comprise the Commonwealth of Puerto Rico from the prohibition of ferry operations in foreign or international waters.

1975—Subsec. (g)(5). Pub. L. 93-643 substituted "operations between the islands which comprise the State of Hawaii and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada" for "operations between the islands which comprise the State of Hawaii and operations between the States of

Alaska and Washington, or between any two points within the State of Alaska”.

1973—Subsec. (b). Pub. L. 93-87, §118(a), inserted third sentence providing that when any toll road which the Secretary has approved as a part of the Interstate System is made a toll-free facility, Federal-aid highway funds apportioned under section 104(b)(5) of this title may be expended for the construction, reconstruction, or improvement of that road to meet the standards adopted for the improvement of projects located on the Interstate System.

Subsec. (e). Pub. L. 93-87, §118(b), struck from first sentence “on the date of enactment of this subsection” before “as he may find necessary” and substituted in third sentence “1973” for “1968”.

Subsecs. (f), (g). Pub. L. 93-87, §139, redesignated the second subsec. (f) as (g) and in par. (5) substituted “may be operated” for “shall be operated”, inserted “(including the islands which comprise the State of Hawaii)” after “within the State”, and excepted operations between the islands which comprise the State of Hawaii and operations between the States of Alaska and Washington, or between any two points within the State of Alaska from the prohibition against ferry operations in foreign or international waters.

Subsec. (h). Pub. L. 93-87, §132, added subsec. (h).

1972—Subsec. (a)(3). Pub. L. 92-434 substituted “or” for “and” making text read “maintained or operated”, and required domestic and foreign tolls for international bridges, and that the tolls be limited to amount necessary for maintenance, repair, and operation thereof.

1970—Subsec. (e). Pub. L. 91-605, §133, added subsec. (e). Former subsec. (e), pertaining to ferry approaches, redesignated (f).

Subsec. (f). Pub. L. 91-605, §§133, 139, redesignated subsec. (e), relating to ferry approaches, as (f) and added a second subsec. (f) relating to ferry boats.

1968—Subsec. (b). Pub. L. 90-495 required that, after June 30, 1968, as a condition for the addition of toll highway facilities on the Interstate System, the approval of the Secretary is required, with an affirmative finding that the construction of the road as a toll facility rather than a toll-free facility is in the public interest, but with such limitation on the construction of toll facilities not to extend to toll bridges and tunnels.

1960—Pub. L. 86-657, §5(b), included ferries in section catchline.

Subsec. (c). Pub. L. 86-657, §8(a), struck out “under prior Acts” after “Funds authorized”.

Subsec. (e). Pub. L. 86-657, §5(a), added subsec. (e).

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 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 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.

EXPRESS LANES DEMONSTRATION PROGRAM

Pub. L. 109-59, title I, §1604(b), Aug. 10, 2005, 119 Stat. 1250, provided that:

“(1) DEFINITIONS.—In this subsection, the following definitions apply:

“(A) ELIGIBLE TOLL FACILITY.—The term ‘eligible toll facility’ includes—

“(i) a facility in existence on the date of enactment of this Act [Aug. 10, 2005] that collects tolls;

“(ii) a facility in existence on the date of enactment of this Act that serves high occupancy vehicles;

“(iii) a facility modified or constructed after the date of enactment of this Act to create additional tolled lane capacity (including a facility constructed by a private entity or using private funds); and

“(iv) in the case of a new lane added to a previously non-tolled facility, only the new lane.

“(B) NONATTAINMENT AREA.—The term ‘nonattainment area’ has the meaning given that term in section 171 of the Clean Air Act (42 U.S.C. 7501).

“(2) DEMONSTRATION PROGRAM.—Notwithstanding sections 129 and 301 of title 23, United States Code, the Secretary [of Transportation] shall carry out 15 demonstration projects during the period of fiscal years 2005 through 2009 to permit States, public authorities, or a [sic] public or private entities designated by States, to collect a toll from motor vehicles at an eligible toll facility for any highway, bridge, or tunnel, including facilities on the Interstate System—

“(A) to manage high levels of congestion;

“(B) to reduce emissions in a nonattainment area or maintenance area; or

“(C) to finance the expansion of a highway, for the purpose of reducing traffic congestion, by constructing one or more additional lanes (including bridge, tunnel, support, and other structures necessary for that construction) on the Interstate System.

“(3) LIMITATION ON USE OF REVENUES.—

“(A) USE.—

“(i) IN GENERAL.—Toll revenues received under paragraph (2) shall be used by a State, public authority, or private entity designated by a State, for—

“(I) debt service;

“(II) a reasonable return on investment of any private financing;

“(III) the costs necessary for proper operation and maintenance of any facilities under paragraph (2) (including reconstruction, resurfacing, restoration, and rehabilitation); or

“(IV) if the State, public authority, or private entity annually certifies that the tolled facility is being adequately operated and maintained, any other purpose relating to a highway or transit project carried out under title 23 or 49, United States Code.

“(B) REQUIREMENTS.—

“(i) VARIABLE PRICE REQUIREMENT.—A facility that charges tolls under this subsection may establish a toll that varies in price according to time of day or level of traffic, as appropriate to manage congestion or improve air quality.

“(ii) HOV VARIABLE PRICING REQUIREMENT.—The Secretary [of Transportation] shall require, for each high occupancy vehicle facility that charges tolls under this subsection, that the tolls vary in price according to time of day or level of traffic, as appropriate to manage congestion or improve air quality.

“(iii) HOV PASSENGER REQUIREMENTS.—Pursuant to section 166 of title 23, United States Code, a State may permit motor vehicles with fewer than two occupants to operate in high occupancy vehicle lanes as part of a variable toll pricing program established under this subsection.

“(C) AGREEMENT.—

“(i) IN GENERAL.—Before the Secretary may permit a facility to charge tolls under this subsection, the Secretary and the applicable State, public authority, or private entity designated by a State shall enter into an agreement for each facility in-

corporating the conditions described in subparagraphs (A) and (B).

“(ii) TERMINATION.—An agreement under clause (i) shall terminate with respect to a facility upon the decision of the State, public authority, or private entity designated by a State to discontinue the variable tolling program under this subsection for the facility.

“(iii) DEBT.—If there is any debt outstanding on a facility at the time at which the decision is made to discontinue the program under this subsection with respect to the facility, the facility may continue to charge tolls in accordance with the terms of the agreement until such time as the debt is retired.

“(D) LIMITATION ON FEDERAL SHARE.—The Federal share of the cost of a project on a facility tolled under this subsection, including a project to install the toll collection facility shall be a percentage, not to exceed 80 percent, determined by the applicable State.

“(4) ELIGIBILITY.—To be eligible to participate in the program under this subsection, a State, public authority, or private entity designated by a State shall provide to the Secretary [of Transportation]—

“(A) a description of the congestion or air quality problems sought to be addressed under the program;

“(B) a description of—

“(i) the goals sought to be achieved under the program; and

“(ii) the performance measures that would be used to gauge the success made toward reaching those goals; and

“(C) such other information as the Secretary may require.

“(5) AUTOMATION.—Fees collected from motorists using an express lane shall be collected only through the use of noncash electronic technology that optimizes the free flow of traffic on the tolled facility.

“(6) INTEROPERABILITY.—

“(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Aug. 10, 2005], the Secretary [of Transportation] shall promulgate a final rule specifying requirements, standards, or performance specifications for automated toll collection systems implemented under this section [enacting provisions set out as a note under this section and amending provisions set out as a note under section 149 of this title].

“(B) DEVELOPMENT.—In developing that rule, which shall be designed to maximize the interoperability of electronic collection systems, the Secretary shall, to the maximum extent practicable—

“(i) seek to accelerate progress toward the national goal of achieving a nationwide interoperable electronic toll collection system;

“(ii) take into account the use of noncash electronic technology currently deployed within an appropriate geographical area of travel and the non-cash electronic technology likely to be in use within the next 5 years; and

“(iii) seek to minimize additional costs and maximize convenience to users of toll facility and to the toll facility owner or operator.

“(7) REPORTING.—

“(A) IN GENERAL.—The Secretary [of Transportation], in cooperation with State and local agencies and other program participants and with opportunity for public comment, shall—

“(i) develop and publish performance goals for each express lane project;

“(ii) establish a program for regular monitoring and reporting on the achievement of performance goals, including—

“(I) effects on travel, traffic, and air quality;

“(II) distribution of benefits and burdens;

“(III) use of alternative transportation modes; and

“(IV) use of revenues to meet transportation or impact mitigation needs.

“(B) REPORTS TO CONGRESS.—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—

“(i) not later than 1 year after the date of enactment of this Act [Aug. 10, 2005], and annually thereafter, a report that describes in detail the uses of funds under this subsection in accordance with paragraph (8)(D) [no par. (8) has been enacted]; and

“(ii) not later than 3 years after the date of enactment of this Act, and every 3 years thereafter, a report that describes any success of the program under this subsection in meeting congestion reduction and other performance goals established for express lane programs.”

INTERSTATE SYSTEM CONSTRUCTION TOLL PILOT PROGRAM

Pub. L. 109-59, title I, §1604(c), Aug. 10, 2005, 119 Stat. 1253, provided that:

“(1) ESTABLISHMENT.—The Secretary [of Transportation] shall establish and implement an Interstate System construction toll pilot program under which the Secretary, notwithstanding sections 129 and 301 of title 23, United States Code, may permit a State or an interstate compact of States to collect tolls on a highway, bridge, or tunnel on the Interstate System for the purpose of constructing Interstate highways.

“(2) LIMITATION ON NUMBER OF FACILITIES.—The Secretary [of Transportation] may permit the collection of tolls under this section on three facilities on the Interstate System.

“(3) ELIGIBILITY.—To be eligible to participate in the pilot program, a State shall submit to the Secretary [of Transportation] an application that contains, at a minimum, the following:

“(A) An identification of the facility on the Interstate System proposed to be a toll facility.

“(B) In the case of a facility that affects a metropolitan area, an assurance that the metropolitan planning organization designated under section 134 or 135 for the area has been consulted concerning the placement and amount of tolls on the facility.

“(C) An analysis demonstrating that financing the construction of the facility with the collection of tolls under the pilot program is the most efficient and economical way to advance the project.

“(D) A facility management plan that includes—

“(i) a plan for implementing the imposition of tolls on the facility;

“(ii) a schedule and finance plan for the construction of the facility using toll revenues;

“(iii) a description of the public transportation agency that will be responsible for implementation and administration of the pilot program;

“(iv) a description of whether consideration will be given to privatizing the maintenance and operational aspects of the facility, while retaining legal and administrative control of the portion of the Interstate route; and

“(v) such other information as the Secretary may require.

“(4) SELECTION CRITERIA.—The Secretary [of Transportation] may approve the application of a State under paragraph (3) only if the Secretary determines that—

“(A) the State’s analysis under paragraph (3)(C) is reasonable;

“(B) the State plan for implementing tolls on the facility takes into account the interests of local, regional, and interstate travelers;

“(C) the State plan for construction of the facility using toll revenues is reasonable;

“(D) the State will develop, manage, and maintain a system that will automatically collect the tolls; and

“(E) the State has given preference to the use of a public toll agency with demonstrated capability to build, operate, and maintain a toll expressway system meeting criteria for the Interstate System.

“(5) PROHIBITION ON NONCOMPETE AGREEMENTS.—Before the Secretary [of Transportation] may permit a State to participate in the pilot program, the State must enter into an agreement with the Secretary that provides that the State will not enter into an agreement with a private person under which the State is prevented from improving or expanding the capacity of public roads adjacent to the toll facility to address conditions resulting from traffic diverted to such roads from the toll facility, including—

“(A) excessive congestion;

“(B) pavement wear; and

“(C) an increased incidence of traffic accidents, injuries, or fatalities.

“(6) LIMITATIONS ON USE OF REVENUES; AUDITS.—Before the Secretary [of Transportation] may permit a State to participate in the pilot program, the State must enter into an agreement with the Secretary that provides that—

“(A) all toll revenues received from operation of the toll facility will be used only for—

“(i) debt service;

“(ii) reasonable return on investment of any private person financing the project; and

“(iii) any costs necessary for the improvement of and the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation of the toll facility; and

“(B) regular audits will be conducted to ensure compliance with subparagraph (A) and the results of such audits will be transmitted to the Secretary.

“(7) LIMITATION ON USE OF INTERSTATE MAINTENANCE FUNDS.—During the term of the pilot program, funds apportioned for Interstate maintenance under section 104(b)(4) of title 23, United States Code, may not be used on a facility for which tolls are being collected under the program.

“(8) PROGRAM TERM.—The Secretary [of Transportation] may approve an application of a State for permission to collect a toll under this section only if the application is received by the Secretary before the last day of the 10-year period beginning on the date of enactment of this Act [Aug. 10, 2005].

“(9) INTERSTATE SYSTEM DEFINED.—In this section, the term ‘Interstate System’ has the meaning such term has under section 101 of title 23, United States Code.”

NATIONAL FERRY DATABASE

Pub. L. 109–59, title I, §1801(e), Aug. 10, 2005, 119 Stat. 1456, provided that:

“(1) ESTABLISHMENT.—The Secretary [of Transportation], acting through the Bureau of Transportation Statistics, shall establish and maintain a national ferry database.

“(2) CONTENTS.—The database shall contain current information regarding ferry systems, including information regarding routes, vessels, passengers and vehicles carried, funding sources and such other information as the Secretary considers useful.

“(3) UPDATE REPORT.—Using information collected through the database, the Secretary shall periodically modify as appropriate the report submitted under section 1207(c) of the Transportation Equity Act for the 21st Century [Pub. L. 105–178] (23 U.S.C. 129 note; 112 Stat. 185–186).

“(4) REQUIREMENTS.—The Secretary shall—

“(A) compile the database not later than 1 year after the date of enactment of this Act [Aug. 10, 2005] and update the database every 2 years thereafter;

“(B) ensure that the database is easily accessible to the public; and

“(C) make available, from the amounts made available for the Bureau of Transportation Statistics by section 5101 of this Act [119 Stat. 1779], not more than \$500,000 for each of fiscal years 2006 through 2009 to establish and maintain the database.”

FERRY TRANSPORTATION STUDY

Pub. L. 105–178, title I, §1207(c), June 9, 1998, 112 Stat. 185, provided that:

“(1) IN GENERAL.—The Secretary shall conduct a study of ferry transportation in the United States and its possessions—

“(A) to identify existing ferry operations, including—

“(i) the locations and routes served; and

“(ii) the source and amount, if any, of funds derived from Federal, State, or local government sources supporting ferry construction or operations;

“(B) to identify potential domestic ferry routes in the United States and its possessions and to develop information on those routes; and

“(C) to identify the potential for use of high-speed ferry services and alternative-fueled ferry services.

“(2) REPORT.—The Secretary shall submit a report on the results of the study to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.”

INTERSTATE SYSTEM RECONSTRUCTION AND REHABILITATION PILOT PROGRAM

Pub. L. 105–178, title I, §1216(b), June 9, 1998, 112 Stat. 212, provided that:

“(1) ESTABLISHMENT.—The Secretary shall establish and implement an Interstate System reconstruction and rehabilitation pilot program under which the Secretary, notwithstanding sections 129 and 301 of title 23, United States Code, may permit a State to collect tolls on a highway, bridge, or tunnel on the Interstate System for the purpose of reconstructing and rehabilitating Interstate highway corridors that could not otherwise be adequately maintained or functionally improved without the collection of tolls.

“(2) LIMITATION ON NUMBER OF FACILITIES.—The Secretary may permit the collection of tolls under this subsection on 3 facilities on the Interstate System. Each of such facilities shall be located in a different State.

“(3) ELIGIBILITY.—To be eligible to participate in the pilot program, a State shall submit to the Secretary an application that contains, at a minimum, the following:

“(A) An identification of the facility on the Interstate System proposed to be a toll facility, including the age, condition, and intensity of use of the facility.

“(B) In the case of a facility that affects a metropolitan area, an assurance that the metropolitan planning organization established under section 134 of title 23, United States Code, for the area has been consulted concerning the placement and amount of tolls on the facility.

“(C) An analysis demonstrating that the facility could not be maintained or improved to meet current or future needs from the State’s apportionments and allocations made available by this Act [see Tables for classification] (including amendments made by this Act) and from revenues for highways from any other source without toll revenues.

“(D) A facility management plan that includes—

“(i) a plan for implementing the imposition of tolls on the facility;

“(ii) a schedule and finance plan for the reconstruction or rehabilitation of the facility using toll revenues;

“(iii) a description of the public transportation agency that will be responsible for implementation and administration of the pilot program;

“(iv) a description of whether consideration will be given to privatizing the maintenance and operational aspects of the facility, while retaining legal and administrative control of the portion of the Interstate route; and

“(v) such other information as the Secretary may require.

“(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under paragraph (3) only if the Secretary determines that—

“(A) the State is unable to reconstruct or rehabilitate the proposed toll facility using existing apportionments;

“(B) the facility has a sufficient intensity of use, age, or condition to warrant the collection of tolls;

“(C) the State plan for implementing tolls on the facility takes into account the interests of local, regional, and interstate travelers;

“(D) the State plan for reconstruction or rehabilitation of the facility using toll revenues is reasonable; and

“(E) the State has given preference to the use of a public toll agency with demonstrated capability to build, operate, and maintain a toll expressway system meeting criteria for the Interstate System.

“(5) LIMITATIONS ON USE OF REVENUES; AUDITS.—Before the Secretary may permit a State to participate in the pilot program, the State must enter into an agreement with the Secretary that provides that—

“(A) all toll revenues received from operation of the toll facility will be used only for—

“(i) debt service;

“(ii) reasonable return on investment of any private person financing the project; and

“(iii) any costs necessary for the improvement of and the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation of the toll facility; and

“(B) regular audits will be conducted to ensure compliance with subparagraph (A) and the results of such audits will be transmitted to the Secretary.

“(6) LIMITATION ON USE OF INTERSTATE MAINTENANCE FUNDS.—During the term of the pilot program, funds apportioned for Interstate maintenance under section 104(b)(4) of title 23, United States Code, may not be used on a facility for which tolls are being collected under the program.

“(7) PROGRAM TERM.—The Secretary shall conduct the pilot program under this subsection for a term to be determined by the Secretary, but not less than 10 years.

“(8) INTERSTATE SYSTEM DEFINED.—In this subsection, the term ‘Interstate System’ has the meaning such term has under section 101 of title 23, United States Code.”

CONTINUATION OF EXISTING AGREEMENTS

Section 1012(d) of title I of Pub. L. 102-240 provided that: “Unless modified under section 129(a)(6) of such title [this title], as amended by subsection (a) of this section, agreements entered into under section 119(e) or 129 of such title before the effective date of this title [Dec. 18, 1991] and in effect on the day before such effective date shall continue in effect on and after such effective date in accordance with the provisions of such agreement and such section 119(e) or 129.”

CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES

Pub. L. 102-240, title I, §1064, Dec. 18, 1991, 105 Stat. 2005, as amended by Pub. L. 102-388, title III, §332, Oct. 6, 1992, 106 Stat. 1550; Pub. L. 105-178, title I, §1207(b), June 9, 1998, 112 Stat. 185, which directed the Secretary to carry out a program for construction of ferry boats and ferry terminal facilities in accordance with section 129(c) of this title, was repealed by Pub. L. 109-59, title I, §1801(c), Aug. 10, 2005, 119 Stat. 1456. See section 147 of this title.

STUDY TO DETERMINE EXTENT OF BONDED INDEBTEDNESS OF STATES FOR CONSTRUCTION OF TOLL ROADS INCORPORATED INTO INTERSTATE SYSTEM

Section 164 of Pub. L. 95-599, as amended by Pub. L. 96-106, §16, Nov. 19, 1979, 93 Stat. 798, directed Secretary of Transportation to report not later than July 1, 1980, respecting extent of outstanding bonded indebtedness for each State as of Jan. 1, 1979, incurred by each State or public authority prior to June 29, 1956, for road construction or portions incorporated within Interstate

System, and methods of allocating bonded indebtedness and removal of toll provisions.

RICHMOND-PETERSBURG TURNPIKE

Section 131 of Pub. L. 91-605 provided that: “The Secretary of Transportation is authorized to amend any agreement heretofore entered into under the provisions of section 129(d) of title 23, United States Code, in order to permit the continuation of tolls on the existing Richmond-Petersburg Turnpike to finance the construction within the existing termini of such turnpike of two lanes thereon in addition to the lanes in existence on the date of enactment of this section [Dec. 31, 1970] necessary to meet traffic and highway safety requirements. Any amended agreement entered into for such purposes shall provide assurances that the existing turnpike (including the additional lanes) shall become free to the public upon the collection of tolls sufficient to liquidate all construction costs, and the costs of maintenance, operation, and debt service during the period of toll collections to liquidate such construction costs, but in no event shall tolls be collected after date of maturity of those bonds outstanding on the date of enactment of this section [Dec. 31, 1970] issued for construction of such turnpike having the latest maturity date.”

§ 130. Railway-highway crossings

(a) Subject to section 120 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 the relocation of highways to eliminate grade crossings, 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, subject to section 120 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 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 mate-