

“(a) REQUIREMENT FOR INNOVATIVE BARRIERS.—Not less than 2½ percent of the mileage of new or replacement permanent or temporary crashworthy barriers included in awarded contracts along Federal-aid highways within the boundaries of a State in each calendar year shall be innovative crashworthy safety barriers.

“(b) CERTIFICATION.—Each State shall annually certify to the Secretary its compliance with the requirements of this section.

“(c) DEFINITION OF INNOVATIVE CRASHWORTHY SAFETY BARRIER.—For purposes of this section, the term ‘innovative crashworthy safety barrier’ means a barrier, other than a guardrail or guiderail, classified by the Federal Highway Administration as ‘experimental’ or that was classified as ‘operational’ after January 1, 1985, and that meets or surpasses the requirements of the National Cooperative Highway Research Program 350 for longitudinal barriers.”

#### ROADSIDE BARRIERS AND SAFETY APPURTENANCES

Section 1073 of Pub. L. 102-240 provided that:

“(a) INITIATION OF RULEMAKING PROCEEDING.—Not later than 30 days after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall initiate a rulemaking proceeding to revise the guidelines and establish standards for installation of roadside barriers and other safety appurtenances, including longitudinal barriers, end terminals, and crash cushions. Such rulemaking shall reflect state-of-the-art designs, testing, and evaluation criteria contained in the National Cooperative Highway Research Program Report 230, relating to approval standards which provide an enhanced level of crashworthy performance to accommodate vans, mini-vans, pickup trucks, and 4-wheel drive vehicles.

“(b) FINAL RULE.—Not later than 1 year after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall complete the rulemaking proceeding initiated under subsection (a), and issue a final rule regarding the implementation of revised guidelines and standards for acceptable roadside barriers and other safety appurtenances, including longitudinal barriers, end terminals, and crash cushions. Such revised guidelines and standards shall accommodate vans, mini-vans, pickup trucks, and 4-wheel drive vehicles and shall be applicable to the refurbishment and replacement of existing roadside barriers and safety appurtenances as well as to the installation of new roadside barriers and safety appurtenances.”

#### STUDIES RELATING TO ESTABLISHMENT OF STANDARDS FOR RESURFACING, RESTORATION, AND REHABILITATION OF HIGHWAYS AND TO ESTABLISHMENT OF UNIFORM STANDARDS AND CRITERIA FOR TESTING AND INSPECTING HIGHWAYS AND BRIDGES

Section 110(b), (c) of Pub. L. 97-424 provided that:

“(b) The Secretary of Transportation shall enter into appropriate arrangements with the National Academy of Sciences (1) to conduct a study of the safety cost-effectiveness of geometric design criteria of standards currently in effect for construction and reconstruction of highways, other than highways access to which is fully controlled, to determine the most appropriate minimum standards to apply to resurfacing, restoration, and rehabilitation projects on such highways, which study shall include a study of the cost effectiveness of the hot dip galvanizing process for the installation, repair, or replacement of exposed structural and miscellaneous steel, and (2) to propose standards to preserve and extend the service life of such highways and enhance highway safety. The National Academy of Sciences shall conduct such study in cooperation with the National Transportation Safety Board, the Congressional Budget Office, and the American Association of State Highway and Transportation Officials. Upon completion of such study, the National Academy of Sciences shall submit such study and its proposed standards to the Secretary of Transportation for review. Within ninety days after submission of such standards to the Secretary of Transportation, the Secretary shall

submit such study and the proposed standards of the National Academy of Sciences, together with the recommendations of the Secretary, to Congress for approval.

“(c)(1) The Secretary of Transportation is directed to coordinate a study with the National Bureau of Standards, the American Society for Testing and Materials, and other organizations as deemed appropriate, (A) to determine the existing quality of design, construction, products, use, and systems for highways and bridges; (B) to determine the need for uniform standards and criteria for design, processing, products, and applications, including personnel training and implementation of enforcement techniques; and (C) to determine the manpower needs and costs of developing a national system for the evaluation and accreditation of testing and inspection agencies.

“(2) The Secretary shall submit such study to the Congress not later than one year after the date of enactment of this section [Jan. 6, 1983].”

#### EXPENDITURE OF FEDERAL FUNDS FOR HIGHWAY SIGNS USING METRIC SYSTEM

Section 144 of Pub. L. 95-599, as amended by Pub. L. 96-106, §14, Nov. 9, 1979, 93 Stat. 798, which prohibited use of Federal funds for signing solely in the metric system, was repealed by Pub. L. 102-240, title I, §1053, Dec. 18, 1991, 105 Stat. 2001.

#### MODIFICATION OF PROJECT AGREEMENTS TO EFFECTUATE REQUIREMENT OF FOUR-LANES OF TRAFFIC

Authorization to modify projects agreements entered into prior to September 13, 1966, to effectuate the amendment of this section by Pub. L. 89-574 which added the requirement of four-lanes of traffic, see section 5(b) of Pub. L. 89-574, set out as a note under section 106 of this title.

### § 110. Revenue aligned budget authority

(a) IN GENERAL.—

(1) ALLOCATION.—On October 15 of fiscal year 2007 and each fiscal year thereafter, the Secretary shall allocate for such fiscal year and the succeeding fiscal year an amount of funds equal to the amount determined pursuant to section 251(b)(1)(B)(ii)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(B)(ii)(I)(cc))<sup>1</sup> if the amount determined pursuant to such section for such fiscal year is greater than zero.

(2) REDUCTION.—If the amount determined pursuant to section 251(b)(1)(B)(ii)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(B)(ii)(I)(cc))<sup>1</sup> for fiscal year 2007 or any fiscal year thereafter is less than zero, the Secretary on October 15 of such fiscal year shall reduce proportionately the amount of sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for such fiscal year and the succeeding fiscal year to carry out each of the Federal-aid highway and highway safety construction programs (other than emergency relief) and the motor carrier safety grant program by an aggregate amount equal to the amount determined pursuant to such section. No reduction under this paragraph and no reduction under section 1102(h), and no reduction under title VIII or any amendment made by title VIII, of the SAFETEA-LU shall be made for a fiscal year

<sup>1</sup>So in original. Probably should be “(2 U.S.C. 901(b)(1)(B)(ii)(I)(cc))”. See References in Text note below.

if, as of October 1 of such fiscal year the balance in the Highway Trust Fund (other than the Mass Transit Account) exceeds \$6,000,000,000.

(b) GENERAL DISTRIBUTION.—The Secretary shall—

(1) determine the ratio that—

(A) the sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for each of the Federal-aid highway and highway safety construction programs (other than the equity bonus program) and the motor carrier safety grant program for which funds are allocated from such Trust Fund by the Secretary under this title, the SAFETEA-LU, and subchapter I of chapter 311 of title 49 for a fiscal year, bears to

(B) the total of all sums authorized to be appropriated from such Trust Fund for such programs for such fiscal year;

(2) multiply the ratio determined under paragraph (1) by the total amount of funds to be allocated under subsection (a)(1) for such fiscal year;

(3) allocate the amount determined under paragraph (2) among such programs in the ratio that—

(A) the sums authorized to be appropriated from such Trust Fund for each of such programs for such fiscal year, bears to

(B) the sums authorized to be appropriated from such Trust Fund for all such programs for such fiscal year; and

(4) allocate the remainder of the funds to be allocated under subsection (a)(1) for such fiscal year to the States in the ratio that—

(A) the total of all funds authorized to be appropriated from such Trust Fund for Federal-aid highway and highway safety construction programs that are apportioned to each State for such fiscal year but for this section, bears to

(B) the total of all funds authorized to be appropriated from such Trust Fund for such programs that are apportioned to all States for such fiscal year but for this section.

(c) STATE PROGRAMMATIC DISTRIBUTION.—Of the funds to be apportioned to each State under subsection (b)(4) for a fiscal year, the Secretary shall ensure that such funds are apportioned for the Interstate and National Highway System program, the bridge program, the surface transportation program, the highway safety improvement program, and the congestion mitigation air quality improvement program in the same ratio that each State is apportioned funds for such programs for such fiscal year but for this section.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to carry out this section for fiscal years beginning after September 30, 1998.

(e) After making any calculation necessary to implement this section for fiscal year 2001, the amount available under paragraph (a)(1) shall be increased by \$128,752,000. The amounts added

under this subsection shall not apply to any calculation in any other fiscal year.

(f) For fiscal year 2001, prior to making any distribution under this section, \$22,029,000 of the allocation under paragraph (a)(1) shall be available only for each program authorized under chapter 53 of title 49, United States Code, and title III of Public Law 105-178, in proportion to each such program's share of the total authorization in section 5338 (other than 5338(h)) of such title and sections 3037 and 3038 of such Public Law, under the terms and conditions of chapter 53 of such title.

(g) For fiscal year 2001, prior to making any distribution under this section, \$399,000 of the allocation under paragraph (a)(1) shall be available only for motor carrier safety programs under sections 31104 and 31107 of title 49, United States Code; \$274,000 for NHTSA operations and research under section 403 of title 23, United States Code; and \$787,000 for NHTSA highway traffic safety grants under chapter 4 of title 23, United States Code.

(Added and amended Pub. L. 105-178, title I, §1105(a), (c), June 9, 1998, 112 Stat. 130; Pub. L. 105-206, title IX, §9002(e), July 22, 1998, 112 Stat. 835; Pub. L. 106-113, div. B, §1000(a)(5) [title III, §304], Nov. 29, 1999, 113 Stat. 1536, 1501A-306; Pub. L. 106-159, title I, §102(a)(2), Dec. 9, 1999, 113 Stat. 1752; Pub. L. 109-59, title I, §1105(a)-(e), Aug. 10, 2005, 119 Stat. 1165, 1166.)

#### REFERENCES IN TEXT

Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsecs. (a)(1) and (2), is section 251 of Pub. L. 99-177, title II, Dec. 12, 1985, 99 Stat. 1063, which is classified to section 901 of Title 2, The Congress. Section 251 of Pub. L. 99-177 was amended generally by Pub. L. 112-25, title I, §101, Aug. 2, 2011, 125 Stat. 241, and as so amended, par. (1) no longer contains a subpar. (B).

Section 1102(h) of the SAFETEA-LU, referred to in subsec. (a)(2), is section 1102(h) of Pub. L. 109-59, which is set out as a note under section 104 of this title.

The SAFETEA-LU, referred to in subsecs. (a)(2) and (b)(1)(A), is Pub. L. 109-59, Aug. 10, 2005, 119 Stat. 1144, also known as the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. Title VIII of the Act amended sections 900 and 901 of Title 2, The Congress, and enacted provisions set out as a note under section 901 of Title 2. For complete classification of this Act to the Code, see Short Title of 2005 Amendments note set out under section 101 of this title and Tables.

Title III of Public Law 105-178, referred to in subsec. (f), is title III of Pub. L. 105-178, June 9, 1998, 112 Stat. 338, as amended, known as the Federal Transit Act of 1998. Sections 3037 and 3038 of title III of Pub. L. 105-178 are set out as notes under sections 5309 and 5310, respectively, of Title 49, Transportation. For complete classification of title III to the Code, see Short Title of 1998 Amendment note set out under section 5101 of Title 49 and Tables.

#### CODIFICATION

Another section 110 was renumbered section 126 of this title.

#### PRIOR PROVISIONS

A prior section 110, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 894, related to project agreements, prior to repeal by Pub. L. 105-178, title I, §1105(a), June 9, 1998, 112 Stat. 130.

#### AMENDMENTS

2005—Subsec. (a)(1). Pub. L. 109-59, §1105(a), substituted “2007” for “2000” and inserted “and the suc-

ceeding fiscal year” after “allocate for such fiscal year”.

Subsec. (a)(2). Pub. L. 109–59, §1105(b), substituted “2007” for “2000” and “October 15 of such” for “October 1 of the succeeding”, inserted “for such fiscal year and the succeeding fiscal year” after “Account”, and inserted at end “No reduction under this paragraph and no reduction under section 1102(h), and no reduction under title VIII or any amendment made by title VIII, of the SAFETEA–LU shall be made for a fiscal year if, as of October 1 of such fiscal year the balance in the Highway Trust Fund (other than the Mass Transit Account) exceeds \$6,000,000,000.”

Subsec. (b)(1)(A). Pub. L. 109–59, §1105(c), (e), struck out “for” before “Federal-aid highway” and substituted “equity bonus” for “minimum guarantee” and “SAFETEA–LU” for “Transportation Equity Act for the 21st Century”.

Subsec. (c). Pub. L. 109–59, §1105(d), inserted “the highway safety improvement program,” after “the surface transportation program,”.

1999—Subsec. (a)(2). Pub. L. 106–159, §102(a)(2)(A), inserted “and the motor carrier safety grant program” after “relief”.

Subsec. (b)(1)(A). Pub. L. 106–159, §102(a)(2)(B), inserted “and the motor carrier safety grant program” after “program”, substituted “title,” for “title and”, and inserted “, and subchapter I of chapter 311 of title 49” after “21st Century”.

Subsecs. (e) to (g). Pub. L. 106–113, which directed amendment of section 110 by adding subsecs. (e) to (g) at the end, was executed to this section to reflect the probable intent of Congress. See Codification note above.

1998—Subsec. (a). Pub. L. 105–178, §1105(c)(1), as added by Pub. L. 105–206, §9002(e), substituted “In general” for “Determination of amount” in heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “On October 15 of fiscal year 1999, and each fiscal year thereafter, the Secretary shall allocate an amount of funds equal to the amount determined pursuant to section 251(b)(1)(B)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(B)(I)(cc)).”

Subsec. (b)(2), (4). Pub. L. 105–178, §1105(c)(2), as added by Pub. L. 105–206, §9002(e), substituted “subsection (a)(1)” for “subsection (a)”.

Subsec. (c). Pub. L. 105–178, §1105(c)(3), as added by Pub. L. 105–206, §9002(e), substituted “the Interstate and National Highway System program” for “the Interstate Maintenance program, the National Highway System program”.

#### 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.

#### SPECIAL RULE

Pub. L. 109–59, title I, §1105(f), Aug. 10, 2005, 119 Stat. 1166, provided that: “If the amount available pursuant to section 110 of title 23, United States Code, for fiscal year 2007 is greater than zero, the Secretary [of Transportation] shall—

“(1) determine the total amount necessary to increase each State’s rate of return (as determined under section 105(b)(1)(A) of title 23, United States Code) to 92 percent, excluding amounts provided under this paragraph;

“(2) allocate to each State the lesser of—

“(A) the amount computed for that State under paragraph (1); or

“(B) an amount determined by multiplying the total amount calculated under section 110 of title

23, United States Code, for fiscal year 2007 by the ratio that—

“(i) the amount determined for such State under paragraph (1); bears to

“(ii) the total amount computed for all States in paragraph (1); and

“(3) allocate amounts remaining in excess of the amounts allocated in paragraph (2) to all States in accordance with section 110 of title 23, United States Code.”

#### § 111. Agreements relating to use of and access to rights-of-way—Interstate System

(a) IN GENERAL.—All agreements between the Secretary and the State transportation department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. Such agreements shall also contain a clause providing that the State will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the Interstate System. Such agreements may, however, authorize a State or political subdivision thereof to use or permit the use of the airspace above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway, as will not require or permit vehicular access to such space directly from such established grade line of the highway, or otherwise interfere in any way with the free flow of traffic on the Interstate System. Nothing in this section, or in any agreement entered into under this section, shall require the discontinuance, obstruction, or removal of any establishment for serving motor vehicle users on any highway which has been, or is hereafter, designated as a highway or route on the Interstate System (1) if such establishment (A) was in existence before January 1, 1960, (B) is owned by a State, and (C) is operated through concessionaries or otherwise, and (2) if all access to, and exits from, such establishment conform to the standards established for such a highway under this title.

(b) VENDING MACHINES.—Notwithstanding subsection (a), any State may permit the placement of vending machines in rest and recreation areas, and in safety rest areas, constructed or located on rights-of-way of the Interstate System in such State. Such vending machines may only dispense such food, drink, and other articles as the State transportation department determines are appropriate and desirable. Such vending machines may only be operated by the State. In permitting the placement of vending machines, the State shall give priority to vending machines which are operated through the State licensing agency designated pursuant to section 2(a)(5) of the Act of June 20, 1936, commonly known as the “Randolph-Sheppard Act” (20 U.S.C. 107a(a)(5)). The costs of installation, operation, and maintenance of vending machines shall not be eligible for Federal assistance under this title.

(c) MOTORIST CALL BOXES.—

(1) IN GENERAL.—Notwithstanding subsection (a), a State may permit the placement of mo-