

TITLE 23--HIGHWAYS

CHAPTER 2--OTHER HIGHWAYS

Sec. 202. Allocations

(a) Allocation Based on Need.--

(1) In general.--On October 1 of each fiscal year, the Secretary shall allocate sums authorized to be appropriated for the fiscal year for forest development roads and trails according to the relative needs of the various national forests and grasslands.

(2) Planning.--The allocation under paragraph (1) shall be consistent with the renewable resource and land use planning for the various national forests.

(b) Allocation for Public Lands Highways.--

(1) Public lands highways.--

(A) In general.--On October 1 of each fiscal year, the Secretary shall allocate 34 percent of the sums authorized to be appropriated for that fiscal year for public lands highways among those States having unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations, on the basis of need in the States, respectively, as determined by the Secretary, on application of the State transportation departments of the respective States.

(B) Preference.--In making the allocation under subparagraph (A), the Secretary shall give preference to those projects that are significantly impacted by Federal land and resource management activities that are proposed by a State that contains at least 3 percent of the total public land in the United States.

(2) Forest highways.--

(A) In general.--On October 1 of each fiscal year, the Secretary shall allocate 66 percent of the funds authorized to be appropriated for public lands highways for forest highways in accordance with section 134 of the Federal-Aid Highway Act of 1987 (23 U.S.C. 202 note; 101 Stat. 173).

(B) Public access to and within national forest system.--In making the allocation under subparagraph (A), the Secretary shall give equal consideration to projects that provide access to and within the National Forest System, as identified by the Secretary of Agriculture through--

- (i) renewable resource and land use planning; and
- (ii) assessments of the impact of that planning on transportation facilities.

(c) On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for park roads and parkways each according to the relative needs of the various elements of the national park system, taking into consideration the need for access as identified through land use planning and the impact of such planning on existing transportation facilities.

(d) Indian Reservation Roads.--

(1) For fiscal years ending before October 1, 1999.--On October 1 of each fiscal year ending before October 1, 1999, the Secretary shall allocate the sums authorized to be appropriated for such

fiscal year for Indian reservation roads according to the relative needs of the various reservations as jointly identified by the Secretary and the Secretary of the Interior.

(2) Fiscal year 2000 and thereafter.--

(A) In general.--All funds authorized to be appropriated for Indian reservation roads shall be allocated among Indian tribes for fiscal year 2000 and each subsequent fiscal year in accordance with a formula established by the Secretary of the Interior under a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5.

(B) Regulations.--Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary of the Interior shall issue regulations governing the Indian reservation roads program, and establishing the funding formula for fiscal year 2000 and each subsequent fiscal year under this paragraph, in accordance with a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5. The regulations shall be issued in final form not later than April 1, 1999, and shall take effect not later than October 1, 1999.

(C) Negotiated rulemaking committee.--In establishing a negotiated rulemaking committee to carry out subparagraph (B), the Secretary of the Interior shall--

(i) apply the procedures under subchapter III of chapter 5 of title 5 in a manner that reflects the unique government-to-government relationship between the Indian tribes and the United States; and

(ii) ensure that the membership of the committee includes only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes.

(D) Basis for funding formula.--The funding formula established for fiscal year 2000 and each subsequent fiscal year under this paragraph shall be based on factors that reflect--

(i) the relative needs of the Indian tribes, and reservation or tribal communities, for transportation assistance; and

(ii) the relative administrative capacities of, and challenges faced by, various Indian tribes, including the cost of road construction in each Bureau of Indian Affairs area, geographic isolation and difficulty in maintaining all-weather access to employment, commerce, health, safety, and educational resources.

(E) Transferred funds.--

(i) In general.--Not later than 30 days after the date on which funds are made available to the Secretary of the Interior under this paragraph, the funds shall be distributed to, and available for immediate use by, the eligible Indian tribes, in accordance with the formula for distribution of funds under the Indian reservation roads program.

(ii) Use of funds.--Notwithstanding any other provision of this section, funds available to Indian tribes for Indian reservation roads shall be expended on projects identified in a transportation improvement program approved by the Secretary.

(F) Administrative expenses.--

(i) In general.--Of the funds authorized to be appropriated for Indian reservation roads, \$20,000,000 for fiscal year 2006, \$22,000,000 for fiscal year 2007, \$24,500,000 for fiscal year 2008, and \$27,000,000 for fiscal year 2009 may be used by the Secretary of the Interior for

program management and oversight and project-related administrative expenses.

(ii) Health and safety assurances.--Notwithstanding any other provision of law, an Indian tribal government may approve plans, specifications, and estimates and commence road and bridge construction with funds made available for Indian reservation roads under the Transportation Equity Act for the 21st Century (Public Law 105-178) and SAFETEA-LU through a contract or agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.) \1\ if the Indian tribal government--

\1\ See References in Text note below.

(I) provides assurances in the contract or agreement that the construction will meet or exceed applicable health and safety standards;

(II) obtains the advance review of the plans and specifications from a State-licensed civil engineer that has certified that the plans and specifications meet or exceed the applicable health and safety standards; and

(III) provides a copy of the certification under subclause (I) to the Deputy Assistant Secretary for Tribal Government Affairs or the Assistant Secretary for Indian Affairs, as appropriate.

(G) National tribal transportation facility inventory.--

(i) In general.--Not later than 2 years after the date of enactment of the SAFETEA-LU, the Secretary, in cooperation with the Secretary of the Interior, shall complete a comprehensive national inventory of transportation facilities that are eligible for assistance under the Indian reservation roads program.

(ii) Transportation facilities included in the inventory.--For purposes of identifying the tribal transportation system and determining the relative transportation needs among Indian tribes, the Secretary shall include, at a minimum, transportation facilities that are eligible for assistance under the Indian reservation roads program that a tribe has requested, including facilities that--

(I) were included in the Bureau of Indian Affairs system inventory for funding formula purposes in 1992 or any subsequent fiscal year;

(II) were constructed or reconstructed with funds from the Highway Trust Funds (other than the Mass Transit Account) under the Indian reservation roads program since 1983;

(III) are owned by an Indian tribal government; or

(IV) are community streets or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities (including communities in former Indian reservations in Oklahoma) in which the majority of residents are American Indians or Alaska Natives; or

(V) are primary access routes proposed by tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal termini, such as airports, harbors, or boat landings.

(iii) Limitation on primary access routes.--For purposes of this subparagraph, a proposed primary access route is the

shortest practicable route connecting 2 points of the proposed route.

(iv) Additional facilities.--Nothing in this subparagraph shall preclude the Secretary from including additional transportation facilities that are eligible for funding under the Indian reservation roads program in the inventory used for the national funding allocation if such additional facilities are included in the inventory in a uniform and consistent manner nationally.

(v) Report to congress.--Not later than 90 days after the date of completion of the inventory under this subparagraph, the Secretary shall prepare and submit a report to Congress that includes the data gathered and the results of the inventory.

(3) Contracts and agreements with indian tribes.--

(A) In general.--Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available under this chapter and section 125(e) for Indian reservation roads and for highway bridges located on Indian reservation roads to pay for the costs of programs, services, functions, and activities, or portions thereof, that are specifically or functionally related to the cost of planning, research, engineering, and construction of any highway, road, bridge, parkway, or transit facility that provides access to or is located within the reservation or community of an Indian tribe shall be made available, upon request of the Indian tribal government, to the Indian tribal government for contracts and agreements for such planning, research, engineering, and construction in accordance with the Indian Self-Determination and Education Assistance Act.

(B) Exclusion of agency participation.--Funds for programs, functions, services, or activities, or portions thereof, including supportive administrative functions that are otherwise contractible to which subparagraph (A) applies, shall be paid in accordance with subparagraph (A) without regard to the organizational level at which the Department of the Interior that has previously carried out such programs, functions, services, or activities.

(4) Reservation of funds.--

(A) Nationwide priority program.--The Secretary shall establish a nationwide priority program for improving deficient Indian reservation road bridges.

(B) Funding.--

(i) Authorization of appropriations.--In addition to any other funds made available for Indian reservation roads for each fiscal year, there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) \$14,000,000 for each of fiscal years 2005 through 2009 to carry out planning, design, engineering, preconstruction, construction, and inspection of projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures for deficient Indian reservation road bridges, including multiple-pipe culverts.

(ii) Availability.--Funds made available to carry out this subparagraph shall be available for obligation in the same manner as if such funds were apportioned under chapter 1.

(C) Eligible bridges.--To be eligible to receive funding

under this subsection, a bridge described in subparagraph (A) must--

- (i) have an opening of 20 feet or more;
- (ii) be on an Indian reservation road;
- (iii) be structurally deficient or functionally obsolete; and
- (iv) be recorded in the national bridge inventory administered by the Secretary under subsection (b).

(D) Approval requirement.--

(i) In general.--Subject to clause (ii), on request by an Indian tribe or the Secretary of the Interior, the Secretary may make funds available under this subsection for preliminary engineering for Indian reservation road bridge projects.

(ii) Construction and construction engineering.--The Secretary may make funds available under clause (i) for construction and construction engineering after approval of applicable plans, specifications, and estimates in accordance with this title.

(5) Contracts and agreements with Indian tribes.--

(A) In general.--Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available to an Indian tribal government under this chapter for a highway, road, bridge, parkway, or transit facility program or project that is located on an Indian reservation or provides access to the reservation or a community of the Indian tribe shall be made available, on the request of the Indian tribal government, to the Indian tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), contracts and agreements for the planning, research, design, engineering, construction, and maintenance relating to the program or project.

(B) Exclusion of agency participation.--In accordance with subparagraph (A), all funds for a program or project to which subparagraph (A) applies shall be paid to the Indian tribal government without regard to the organizational level at which the Department of the Interior has previously carried out, or the Department of Transportation has previously carried out under the Federal lands highway programs, the programs, functions, services, or activities involved.

(C) Consortia.--Two or more Indian tribes that are otherwise eligible to participate in a program or project to which this chapter applies may form a consortium to be considered as a single Indian tribe for the purpose of participating in the project under this section.

(D) Secretary as signatory.--Notwithstanding any other provision of law, the Secretary is authorized to enter into a funding agreement with an Indian tribal government to carry out a highway, road, bridge, parkway, or transit program or project under subparagraph (A) that is located on an Indian reservation or provides access to the reservation or a community of the Indian tribe.

(E) Funding.--The amount an Indian tribal government receives for a program or project under subparagraph (A) shall equal the sum of the funding that the Indian tribal government would otherwise receive for the program or project in accordance with the funding formula established under this subsection and such additional amounts as the Secretary determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project.

(F) Eligibility.--

(i) In general.--Subject to clause (ii), funds may be made available under subparagraph (A) to an Indian tribal government for a program or project in a fiscal year only if the Indian tribal government requesting such funds demonstrates to the satisfaction of the Secretary financial stability and financial management capability during the 3 fiscal years immediately preceding the fiscal year for which the request is being made.

(ii) Criteria for determining financial stability and financial management capability.--An Indian tribal government that had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribal government self-determination contracts or self-governance funding agreements with any Federal agency during the 3-fiscal year period referred in clause (i) shall be conclusive evidence of the financial stability and financial management capability for purposes of clause (i).

(G) Assumption of functions and duties.--An Indian tribal government receiving funding under subparagraph (A) for a program or project shall assume all functions and duties that the Secretary of the Interior would have performed with respect to a program or project under this chapter, other than those functions and duties that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.).\1\

(H) Powers.--An Indian tribal government receiving funding under subparagraph (A) for a program or project shall have all powers that the Secretary of the Interior would have exercised in administering the funds transferred to the Indian tribal government for such program or project under this section if the funds had not been transferred, except to the extent that such powers are powers that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.).\1\

(I) Dispute resolution.--In the event of a disagreement between the Secretary or the Secretary of the Interior and an Indian tribe over whether a particular function, duty, or power may be lawfully transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.),\1\ the Indian tribe shall have the right to pursue all alternative dispute resolutions and appeal procedures authorized by such Act, including regulations issued to carry out such Act.

(J) Termination of contract or agreement.--On the date of the termination of a contract or agreement under this section by an Indian tribal government, the Secretary shall transfer all funds that would have been allocated to the Indian tribal government under the contract or agreement to the Secretary of the Interior to provide continued transportation services in accordance with applicable law.

(e) Refuge Roads.--On October 1 of each fiscal year, the Secretary shall allocate the sums made available for that fiscal year for refuge roads according to the relative needs of the various refuges in the National Wildlife Refuge System, and taking into consideration--

(1) the comprehensive conservation plan for each refuge;

(2) the need for access as identified through land use planning;

and

(3) the impact of land use planning on existing transportation facilities.

Sec. 126(a), Jan. 6, 1983, 96 Stat. 2113; Pub. L. 102-240, title I, Sec. 1032(a), Dec. 18, 1991, 105 Stat. 1974; Pub. L. 105-178, title I, Secs. 1115(b), (e)(2), (f)(2), 1212(a)(2)(A)(ii), June 9, 1998, 112 Stat. 154, 158, 193; Pub. L. 105-206, title IX, Sec. 9002(i), July 22, 1998, 112 Stat. 836; Pub. L. 109-59, title I, Sec. 1119(c)-(g), Aug. 10, 2005, 119 Stat. 1182-1185.)

References in Text

Section 134 of the Federal-Aid Highway Act of 1987, referred to in subsec. (b)(2)(A), is section 134 of Pub. L. 100-17, which is set out below.

The Transportation Equity Act for the 21st Century, referred to in subsec. (d)(2)(F)(ii), is Pub. L. 105-178, June 9, 1998, 112 Stat. 107, as amended. For complete classification of this Act to the Code, see section 1(a) of Pub. L. 105-178, set out as a Short Title of 1998 Amendment note under section 101 of this title and Tables.

The SAFETEA-LU, referred to in subsec. (d)(2)(F)(ii), (G)(i), 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. 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.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (d)(2)(F)(ii), (3)(A), (5)(A), (G)-(I), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (Sec. 450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

Amendments

2005--Subsec. (a). Pub. L. 109-59, Sec. 1119(c)(1), inserted subsec. heading, substituted par. (1) for ``On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for forest development roads and trails according to the relative needs of the various national forests.'', inserted par. (2) designation and heading, and substituted ``The allocation under paragraph (1)'' for ``Such allocation''.

Subsec. (b). Pub. L. 109-59, Sec. 1119(d), added subsec. (b) and struck out former subsec. (b) which read as follows: ``On October 1 of each fiscal year, the Secretary shall allocate 34 percent of the sums authorized to be appropriated for such fiscal year for public lands highways among those States having unappropriated or unreserved public lands, nontaxable Indian lands or other Federal reservations, on the basis of need in such States, respectively, as determined by the Secretary upon application of the State transportation departments of the respective States. The Secretary shall give preference to those projects which are significantly impacted by Federal land and resource management activities which are proposed by a State which contains at least 3 percent of the total public lands in the Nation. The Secretary shall allocate 66 percent of the remainder of the authorization for public lands highways for each fiscal year as is provided in section 134 of the Federal-Aid Highway Act of 1987, and with respect to these allocations the Secretary shall give equal consideration to projects that provide access to and within the National Forest System, as identified by the Secretary of Agriculture through renewable resources and land use planning and the impact of such planning on existing transportation facilities.''

Subsec. (d)(2)(E). Pub. L. 109-59, Sec. 1119(c)(2)(A), added subpar. (E).

Subsec. (d)(2)(F). Pub. L. 109-59, Sec. 1119(e), added subpar. (F).

Subsec. (d)(2)(G). Pub. L. 109-59, Sec. 1119(f), added subpar. (G).

Subsec. (d)(3)(A). Pub. L. 109-59, Sec. 1119(c)(2)(B), substituted ``under this chapter and section 125(e)'' for ``under this title''.

Subsec. (d)(4)(B). Pub. L. 109-59, Sec. 1119(g)(1), substituted ``Funding'' for ``Reservation'' in heading, designated existing provisions as cl. (i), inserted heading, substituted ``In addition to any other funds made available for Indian reservation roads for each fiscal year, there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) \$14,000,000 for each of fiscal years 2005 through 2009 to carry out planning, design, engineering, preconstruction, construction, and inspection of projects to replace,' for ``Of the amounts authorized to be appropriated for Indian reservation roads for each fiscal year, the Secretary, in cooperation with the Secretary of the Interior, shall reserve not less than \$13,000,000 for projects to replace,'', and added cl. (ii).

Subsec. (d)(4)(C)(iii). Pub. L. 109-59, Sec. 1119(g)(2), added cl. (iii) and struck out former cl. (iii) which read as follows: ``be unsafe because of structural deficiencies, physical deterioration, or functional obsolescence; and''.

Subsec. (d)(4)(D). Pub. L. 109-59, Sec. 1119(g)(3), added subpar. (D) and struck out heading and text of former subpar. (D). Text read as follows: ``Funds to carry out Indian reservation road bridge projects under this subsection shall be made available only on approval of plans, specifications, and estimates by the Secretary.''

Subsec. (d)(5). Pub. L. 109-59, Sec. 1119(g)(4), added par. (5).

1998--Subsec. (b). Pub. L. 105-178, Sec. 1212(a)(2)(A)(ii), substituted ``State transportation departments'' for ``State highway departments''.

Subsec. (d). Pub. L. 105-178, Sec. 1115(b), inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, realigned margins, inserted ``ending before October 1, 1999'' after ``each fiscal year'', and added pars. (2) to (4).

Subsec. (d)(4)(B). Pub. L. 105-178, Sec. 1115(f)(2), as added by Pub. L. 105-206, Sec. 9002(i), substituted ``sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions'' for ``to, apply sodium acetate/formate de-icer to,''.

Subsec. (e). Pub. L. 105-178, Sec. 1115(e)(2), added subsec. (e).

1991--Subsec. (a). Pub. L. 102-240, Sec. 1032(a)(1), (2), redesignated subsec. (b) as (a) and struck out former subsec. (a) which read as follows: ``On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for forest highways according to the relative needs of the various elements of the national forest system as determined by the Secretary, taking into consideration the need for access as identified by the Secretary of Agriculture through renewable resource and land use planning, and the impact of such planning on existing transportation facilities.''

Subsec. (b). Pub. L. 102-240, Sec. 1032(a)(2)-(4), redesignated subsec. (c) as (b), inserted ``34 percent of'' after ``allocate'', and substituted for period at end ``which are proposed by a State which contains at least 3 percent of the total public lands in the Nation. The Secretary shall allocate 66 percent of the remainder of the authorization for public lands highways for each fiscal year as is provided in section 134 of the Federal-Aid Highway Act of 1987, and with respect to these allocations the Secretary shall give equal consideration to projects that provide access to and within the National Forest System, as identified by the Secretary of Agriculture through renewable resources and land use planning and the impact of such planning on existing transportation facilities.''

Former subsec. (b) redesignated (a).

Subsecs. (c) to (e). Pub. L. 102-240, Sec. 1032(a)(2), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (c) redesignated (b).

1983--Subsec. (a). Pub. L. 97-424 substituted provisions relating to allocation of sums authorized to be appropriated by the Secretary for

provisions relating to apportionment of sums authorized to be appropriated by the Secretary.

Subsec. (b). Pub. L. 97-424 substituted provisions requiring allocation of sums on October 1 of each fiscal year to be consistent with renewable resource and land use planning for provisions requiring allocation of sums to take into consideration existing transportation facilities, value of resources served, fire danger, and road and trail construction difficulties.

Subsec. (c). Pub. L. 97-424 inserted provisions requiring allocation of sums on October 1 of each fiscal year, and substituted provisions requiring preferences to be given to projects impacted by Federal land and resource management for provisions requiring preferences to be given to projects located on a Federal-aid system.

Subsecs. (d), (e). Pub. L. 97-424 added subsecs. (d) and (e).

1976--Subsec. (a). Pub. L. 94-280 substituted introductory ``On October 1 of each fiscal year'' for ``On or before January 1 next preceding the commencement of each fiscal year''.

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.

Additional Authorization of Contract Authority for States With Indian Reservations

Pub. L. 105-178, title I, Sec. 1214(d), June 9, 1998, 112 Stat. 205, as amended by Pub. L. 109-59, title I, Sec. 1806, Aug. 10, 2005, 119 Stat. 1460, provided that:

``(1) Availability to states.--Not later than October 1 of each fiscal year, funds made available under paragraph (5) for the fiscal year shall be made available by the Secretary, in equal amounts, to each State that has within the boundaries of the State all or part of an Indian reservation having a land area of 10,000,000 acres or more.

``(2) Availability to eligible counties.--

``(A) In general.--Each fiscal year, each county that is located in a State to which funds are made available under paragraph (1), and that has in the county a public road described in subparagraph (B), shall be eligible to apply to the State for all or a portion of the funds made available to the State under this subsection to be used by the county to maintain such roads.

``(B) Roads.--A public road referred to in subparagraph (A) is a public road that--

``(i) is within, adjacent to, or provides access to an Indian reservation described in paragraph (1);

``(ii) is used by a school bus to transport children to or from a school or Headstart program carried out under the Head Start Act (42 U.S.C. 9831 et seq.); and

``(iii) is maintained by the county in which the public road

is located.

``(C) Allocation among eligible counties.--

``(i) In general.--Except as provided in clause (ii), each State that receives funds under paragraph (1) shall provide directly to each county that applies for funds the amount that the county requests in the application.

``(ii) Allocation among eligible counties.--If the total amount of funds applied for under this subsection by eligible counties in a State exceeds the amount of funds available to the State, the State shall equitably allocate the funds among the eligible counties that apply for funds.

``(3) Supplementary funding.--For each fiscal year, the Secretary shall ensure that funding made available under this subsection supplements (and does not supplant)--

``(A) any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations; and

``(B) any funding provided by a State to a county for road maintenance programs in the county.

``(4) Use of unallocated funds.--Any portion of the funds made available to a State under this subsection that is not made available to counties within 1 year after the funds are made available to the State shall be apportioned among the States in accordance with section 104(b) of title 23, United States Code.

``(5) Funding.--

``(A) In general.--There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection \$1,800,000 for each of fiscal years 2005 through 2009.

``(B) Contract authority.--Funds authorized by this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.''

Indian Reservation Roads

Section 1032(d) of Pub. L. 102-240 provided that: ``Notwithstanding any other provision of law, funds allocated for Indian reservation roads may be used for the purpose of funding road projects on roads of tribally controlled postsecondary vocational institutions.''

Pub. L. 102-240, title I, Sec. 1042, Dec. 18, 1991, 105 Stat. 1993, directed Secretary of Transportation to conduct a study on funding needs for Indian reservation roads and to report to Congress on results of the study not later than one year after Dec. 18, 1991, prior to repeal by Pub. L. 105-362, title XV, Sec. 1501(c), Nov. 10, 1998, 112 Stat. 3294.

Study and Report on Method of Allocating Funds

Section 1032(e) of Pub. L. 102-240 provided that: ``The Secretary shall undertake a study to determine if the method for allocating funds authorized for Federal lands highways is adequate to meet the relative transportation needs of the Federal lands served. The report shall be submitted within 2 years of the date of the enactment of this Act [Dec. 18, 1991].''

Forest Highways

Pub. L. 100-17, title I, Sec. 134, Apr. 2, 1987, 101 Stat. 173, as amended by Pub. L. 100-202, Sec. 101(l) [title III, Sec. 348(a)], Dec. 22, 1987, 101 Stat. 1329-358, 1329-388, provided that: ``Notwithstanding section 202(a) of title 23, United States Code, the Secretary shall, after making the transfer provided by section 204(g) of such title, as soon as practicable after the date of the enactment of this Act [Apr. 2,

1987] in fiscal year 1987 and on October 1 of each of fiscal years 1988, 1989, 1990, and 1991, allocate 66 percent of the remainder of the authorization for forest highways provided for such fiscal year by this Act [see Short Title of 1987 Amendment note set out under section 101 of this title] in the same percentage as the amounts allocated for expenditure in each State and the Commonwealth of Puerto Rico from funds authorized for forest highways for the fiscal year ending June 30, 1958, adjusted (1) to eliminate the 0.003243547 percent for the State of Iowa to the State by deed executed May 26, 1964, and (2) to redistribute the percentage formerly apportioned to the State of Iowa to other participating States on a proportional basis. The remaining funds authorized to be appropriated for forest highways for such fiscal year shall be allocated pursuant to section 202(a) of such title.'