

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.

§ 206. Recreational trails program

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

(1) **MOTORIZED RECREATION.**—The term “motorized recreation” means off-road recreation using any motor-powered vehicle, except for a motorized wheelchair.

(2) **RECREATIONAL TRAIL.**—The term “recreational trail” means a thoroughfare or track across land or snow, used for recreational purposes such as—

- (A) pedestrian activities, including wheelchair use;
- (B) skating or skateboarding;
- (C) equestrian activities, including carriage driving;
- (D) nonmotorized snow trail activities, including skiing;
- (E) bicycling or use of other human-powered vehicles;
- (F) aquatic or water activities; and
- (G) motorized vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

(b) **PROGRAM.**—In accordance with this section, the Secretary, in consultation with the Secretary of the Interior and the Secretary of Agriculture, shall carry out a program to provide and maintain recreational trails.

(c) **STATE RESPONSIBILITIES.**—To be eligible for apportionments under this section—

- (1) the Governor of the State shall designate the State agency or agencies that will be responsible for administering apportionments made to the State under this section; and
- (2) the State shall establish a State recreational trail advisory committee that represents both motorized and nonmotorized recreational trail users, which shall meet not less often than once per fiscal year.

(d) **USE OF APPORTIONED FUNDS.**—

(1) **IN GENERAL.**—Funds apportioned to a State to carry out this section shall be obligated for recreational trails and related projects that—

- (A) have been planned and developed under the laws, policies, and administrative procedures of the State; and
- (B) are identified in, or further a specific goal of, a recreational trail plan, or a statewide comprehensive outdoor recreation plan required by chapter 2003 of title 54, that is in effect.

(2) **PERMISSIBLE USES.**—Permissible uses of funds apportioned to a State for a fiscal year to carry out this section include—

- (A) maintenance and restoration of existing recreational trails;

(B) development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails;

(C) purchase and lease of recreational trail construction and maintenance equipment;

(D) construction of new recreational trails, except that, in the case of new recreational trails crossing Federal lands, construction of the trails shall be—

- (i) permissible under other law;
- (ii) necessary and recommended by a statewide comprehensive outdoor recreation plan that is required by chapter 2003 of title 54 and that is in effect;
- (iii) approved by the administering agency of the State designated under subsection (c)(1); and
- (iv) approved by each Federal agency having jurisdiction over the affected lands under such terms and conditions as the head of the Federal agency determines to be appropriate, except that the approval shall be contingent on compliance by the Federal agency with all applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);

(E) acquisition of easements and fee simple title to property for recreational trails or recreational trail corridors;

(F) assessment of trail conditions for accessibility and maintenance;

(G) development and dissemination of publications and operation of educational programs to promote safety and environmental protection, (as those objectives relate to one or more of the uses of recreational trails, supporting non-law enforcement trail safety and trail use monitoring patrol programs, and providing trail-related training), but in an amount not to exceed 5 percent of the apportionment made to the State for the fiscal year; and

(H) payment of costs to the State incurred in administering the program, but in an amount not to exceed 7 percent of the apportionment made to the State for the fiscal year.

(3) **USE OF APPORTIONMENTS.**—

(A) **IN GENERAL.**—Except as provided in subparagraphs (B) and (C), of the apportionments made to a State for a fiscal year to carry out this section—

- (i) 40 percent shall be used for recreational trail or related projects that facilitate diverse recreational trail use within a recreational trail corridor, trailside, or trailhead, regardless of whether the project is for diverse motorized use, for diverse nonmotorized use, or to accommodate both motorized and nonmotorized recreational trail use;
- (ii) 30 percent shall be used for uses relating to motorized recreation; and
- (iii) 30 percent shall be used for uses relating to nonmotorized recreation.

(B) **SMALL STATE EXCLUSION.**—Any State with a total land area of less than 3,500,000 acres shall be exempt from the requirements of clauses (ii) and (iii) of subparagraph (A).

(C) **STATE ADMINISTRATIVE COSTS.**—State administrative costs eligible for funding under paragraph (2)(H) shall be exempt from the requirements of subparagraph (A).

(4) **GRANTS.**—

(A) **IN GENERAL.**—A State may use funds apportioned to the State to carry out this section to make grants to private organizations, municipal, county, State, and Federal Government entities, and other government entities as approved by the State after considering guidance from the State recreational trail advisory committee established under subsection (c)(2), for uses consistent with this section.

(B) **COMPLIANCE.**—A State that makes grants under subparagraph (A) shall establish measures to verify that recipients of the grants comply with the conditions of the program for the use of grant funds.

(e) **ENVIRONMENTAL BENEFIT OR MITIGATION.**—To the extent practicable and consistent with the other requirements of this section, a State should give consideration to project proposals that provide for the redesign, reconstruction, nonroutine maintenance, or relocation of recreational trails to benefit the natural environment or to mitigate and minimize the impact to the natural environment.

(f) **FEDERAL SHARE.**—

(1) **IN GENERAL.**—Subject to the other provisions of this subsection, the Federal share of the cost of a project and the Federal share of the administrative costs of a State under this section shall be determined in accordance with section 120(b).

(2) **FEDERAL AGENCY PROJECT SPONSOR.**—Notwithstanding any other provision of law, a Federal agency that sponsors a project under this section may contribute additional Federal funds toward the cost of a project, except that—

(A) the share attributable to the Secretary of Transportation may not exceed the amount determined in accordance with section 120(b) for the cost of a project under this section; and

(B) the share attributable to the Secretary and the Federal agency sponsoring the project may not exceed 95 percent of the cost of a project under this section.

(3) **USE OF FUNDS FROM FEDERAL PROGRAMS TO PROVIDE NON-FEDERAL SHARE.**—Notwithstanding any other provision of law, the non-Federal share of the cost of the project may include amounts made available by the Federal Government under any Federal program that are—

(A) expended in accordance with the requirements of the Federal program relating to activities funded and populations served; and

(B) expended on a project that is eligible for assistance under this section.

(4) **USE OF RECREATIONAL TRAILS PROGRAM FUNDS TO MATCH OTHER FEDERAL PROGRAM**

FUNDS.—Notwithstanding any other provision of law, funds made available under this section may be used toward the non-Federal matching share for other Federal program funds that are—

(A) expended in accordance with the requirements of the Federal program relating to activities funded and populations served; and

(B) expended on a project that is eligible for assistance under this section.

(5) **PROGRAMMATIC NON-FEDERAL SHARE.**—A State may allow adjustments to the non-Federal share of an individual project for a fiscal year under this section if the Federal share of the cost of all projects carried out by the State under the program (excluding projects funded under paragraph (2) or (3)) using funds apportioned to the State for the fiscal year does not exceed the Federal share as determined in accordance with section 120(b).

(g) **USES NOT PERMITTED.**—A State may not obligate funds apportioned to carry out this section for—

(1) condemnation of any kind of interest in property;

(2) construction of any recreational trail on National Forest System land for any motorized use unless—

(A) the land has been designated for uses other than wilderness by an approved forest land and resource management plan or has been released to uses other than wilderness by an Act of Congress; and

(B) the construction is otherwise consistent with the management direction in the approved forest land and resource management plan;

(3) construction of any recreational trail on Bureau of Land Management land for any motorized use unless the land—

(A) has been designated for uses other than wilderness by an approved Bureau of Land Management resource management plan or has been released to uses other than wilderness by an Act of Congress; and

(B) the construction is otherwise consistent with the management direction in the approved management plan; or

(4) upgrading, expanding, or otherwise facilitating motorized use or access to recreational trails predominantly used by nonmotorized recreational trail users and on which, as of May 1, 1991, motorized use was prohibited or had not occurred.

(h) **PROJECT ADMINISTRATION.**—

(1) **CREDIT FOR DONATIONS OF FUNDS, MATERIALS, SERVICES, OR NEW RIGHT-OF-WAY.**—

(A) **IN GENERAL.**—Nothing in this title or other law shall prevent a project sponsor from offering to donate funds, materials, services, or a new right-of-way for the purposes of a project eligible for assistance under this section. Any funds, or the fair market value of any materials, services, or new right-of-way, may be donated by any project sponsor and shall be credited to the non-Federal share in accordance with subsection (f).

(B) FEDERAL PROJECT SPONSORS.—Any funds or the fair market value of any materials or services may be provided by a Federal project sponsor and shall be credited to the Federal agency's share in accordance with subsection (f).

(C) PLANNING AND ENVIRONMENTAL ASSESSMENT COSTS INCURRED PRIOR TO PROJECT APPROVAL.—The Secretary may allow preapproval planning and environmental compliance costs to be credited toward the non-Federal share of the cost of a project described in subsection (d)(2) (other than subparagraph (H)) in accordance with subsection (f), limited to costs incurred less than 18 months prior to project approval.

(2) RECREATIONAL PURPOSE.—A project funded under this section is intended to enhance recreational opportunity and is not subject to section 138 of this title or section 303 of title 49.

(3) CONTINUING RECREATIONAL USE.—At the option of each State, funds apportioned to the State to carry out this section may be treated as Land and Water Conservation Fund apportionments for the purposes of section 200305(f)(3) of title 54.

(4) COOPERATION BY PRIVATE PERSONS.—

(A) WRITTEN ASSURANCES.—As a condition of making available apportionments for work on recreational trails that would affect privately owned land, a State shall obtain written assurances that the owner of the land will cooperate with the State and participate as necessary in the activities to be conducted.

(B) PUBLIC ACCESS.—Any use of the apportionments to a State to carry out this section on privately owned land must be accompanied by an easement or other legally binding agreement that ensures public access to the recreational trail improvements funded by the apportionments.

(i) CONTRACT AUTHORITY.—Funds authorized to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1, except that the Federal share of the cost of a project under this section shall be determined in accordance with this section.

(j) USE OF OTHER APPORTIONED FUNDS.—Funds apportioned to a State under section 104(b) that are obligated for a recreational trail or a related project shall be administered as if the funds were made available to carry out this section.

(Added Pub. L. 105-178, title I, §1112(a), June 9, 1998, 112 Stat. 146; amended Pub. L. 109-59, title I, §1109(b)-(e), Aug. 10, 2005, 119 Stat. 1168-1170; Pub. L. 110-244, title I, §101(q), June 6, 2008, 122 Stat. 1576; Pub. L. 113-287, §5(f)(3), Dec. 19, 2014, 128 Stat. 3268; Pub. L. 117-58, div. A, title I, §§11134, 11525(n), Nov. 15, 2021, 135 Stat. 515, 608.)

Editorial Notes

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (d)(2)(D)(iv), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health

and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Forest and Rangeland Renewable Resources Planning Act of 1974, referred to in subsec. (d)(2)(D)(iv), is Pub. L. 93-378, Aug. 17, 1974, 88 Stat. 476, which is classified generally to subchapter I (§1600 et seq.) of chapter 36 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1600 of Title 16 and Tables.

The Federal Land Policy and Management Act of 1976, referred to in subsec. (d)(2)(D)(iv), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, which is classified principally to chapter 35 (§1701 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

PRIOR PROVISIONS

A prior section 206, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 908, provided for use of funds for construction and improvement of park roads and trails and for administration of such funds according to regulations jointly approved by the Secretary and the Secretary of the Interior, prior to repeal by Pub. L. 97-424, title I, §126(d), Jan. 6, 1983, 96 Stat. 2115.

AMENDMENTS

2021—Subsec. (d)(2)(G). Pub. L. 117-58, §11525(n), substituted “uses of recreational trails” for “use of recreational trails”.

Subsec. (j). Pub. L. 117-58, §11134, added subsec. (j).

2014—Subsec. (d)(1)(B). Pub. L. 113-287, §5(f)(3)(A), substituted “chapter 2003 of title 54” for “the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.)”.

Subsec. (d)(2)(D)(ii). Pub. L. 113-287, §5(f)(3)(B), substituted “chapter 2003 of title 54” for “the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.)”.

Subsec. (h)(3). Pub. L. 113-287, §5(f)(3)(C), substituted “section 200305(f)(3) of title 54” for “section 6(f)(3) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-8(f)(3))”.

2008—Subsec. (d)(3)(A). Pub. L. 110-244 substituted “(B) and (C)” for “(B), (C), and (D)” in introductory provisions.

2005—Subsec. (d)(2). Pub. L. 109-59, §1109(b), amended par. (2) generally. Prior to amendment, par. (2) consisted of subpars. (A) to (G) relating to permissible uses of funds apportioned to carry out this section.

Subsec. (d)(3)(C), (D). Pub. L. 109-59, §1109(c), redesignated subpar. (D) as (C), substituted “(2)(H)” for “(2)(F)”, and struck out heading and text of former subpar. (C). Text read as follows: “A State recreational trail advisory committee established under subsection (c)(2) may waive, in whole or in part, the requirements of clauses (ii) and (iii) of subparagraph (A) if the State recreational trail advisory committee determines and notifies the Secretary that the State does not have sufficient projects to meet the requirements of clauses (ii) and (iii) of subparagraph (A).”

Subsec. (f)(1). Pub. L. 109-59, §1109(d)(1), inserted “and the Federal share of the administrative costs of a State” after “project” and substituted “be determined in accordance with section 120(b)” for “not exceed 80 percent”.

Subsec. (f)(2)(A). Pub. L. 109-59, §1109(d)(2), substituted “the amount determined in accordance with section 120(b) for the cost” for “80 percent of the cost”.

Subsec. (f)(2)(B). Pub. L. 109-59, §1109(d)(3), inserted “sponsoring the project” after “Federal agency”.

Subsec. (f)(4), (5). Pub. L. 109-59, §1109(d)(4)-(7), added par. (4), redesignated former par. (4) as (5), substituted “the Federal share as determined in accordance with section 120(b)” for “80 percent”, and struck out heading and text of former par. (5). Text read as follows: “The Federal share of the administrative costs of a State under this subsection shall be determined in accordance with section 120(b).”

Subsec. (h)(1)(C). Pub. L. 109-59, § 1109(e), added subpar. (C).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117-58, set out as a note under section 101 of this title.

NONHIGHWAY RECREATIONAL FUEL STUDY

Pub. L. 117-58, div. A, title I, § 11512, Nov. 15, 2021, 135 Stat. 594, provided that:

“(a) DEFINITIONS.—In this section:

“(1) HIGHWAY TRUST FUND.—The term ‘Highway Trust Fund’ means the Highway Trust Fund established by section 9503(a) of the Internal Revenue Code of 1986 [26 U.S.C. 9503(a)].

“(2) NONHIGHWAY RECREATIONAL FUEL TAXES.—The term ‘nonhighway recreational fuel taxes’ means taxes under section[s] 4041 and 4081 of the Internal Revenue Code of 1986 [26 U.S.C. 4041, 4081] with respect to fuel used in vehicles on recreational trails or back country terrain (including vehicles registered for highway use when used on recreational trails, trail access roads not eligible for funding under title 23, United States Code, or back country terrain).

“(3) RECREATIONAL TRAILS PROGRAM.—The term ‘recreational trails program’ means the recreational trails program under section 206 of title 23, United States Code.

“(b) ASSESSMENT; REPORT.—

“(1) ASSESSMENT.—Not later than 1 year after the date of enactment of this Act [Nov. 15, 2021] and not less frequently than once every 5 years thereafter, as determined by the Secretary [of Transportation], the Secretary shall carry out an assessment of the best available estimate of the total amount of nonhighway recreational fuel taxes received by the Secretary of the Treasury and transferred to the Highway Trust Fund for the period covered by the assessment.

“(2) REPORT.—After carrying out each assessment under paragraph (1), the Secretary shall submit to the Committees on Finance and Environment and Public Works of the Senate and the Committees on Ways and Means and Transportation and Infrastructure of the House of Representatives a report that includes—

“(A) to assist Congress in determining an appropriate funding level for the recreational trails program—

“(i) a description of the results of the assessment; and

“(ii) an evaluation of whether the current recreational trails program funding level reflects the amount of nonhighway recreational fuel taxes collected and transferred to the Highway Trust Fund; and

“(B) in the case of the first report submitted under this paragraph, an estimate of the frequency with which the Secretary anticipates carrying out the assessment under paragraph (1), subject to the condition that such an assessment shall be carried out not less frequently than once every 5 years.

“(c) CONSULTATION.—In carrying out an assessment under subsection (b)(1), the Secretary may consult with, as the Secretary determines to be appropriate—

“(1) the heads of—

“(A) State agencies designated by Governors pursuant to section 206(c)(1) of title 23, United States Code, to administer the recreational trails program; and

“(B) division offices of the Department [of Transportation];

“(2) the Secretary of the Treasury;

“(3) the Administrator of the Federal Highway Administration; and

“(4) groups representing recreational activities and interests, including hiking, biking and mountain

biking, horseback riding, water trails, snowshoeing, cross-country skiing, snowmobiling, off-highway motorcycling, all-terrain vehicles and other offroad motorized vehicle activities, and recreational trail advocates.”

USE OF YOUTH SERVICE AND CONSERVATION CORPS

Pub. L. 112-141, div. A, title I, § 1524, July 6, 2012, 126 Stat. 580, provided that:

“(a) IN GENERAL.—The Secretary shall encourage the States and regional transportation planning agencies to enter into contracts and cooperative agreements with qualified youth service or conservation corps, as defined in sections 122(a)(2) of Public Law 101-610 (42 U.S.C. 12572(a)(2)) and 106(c)(3) of Public Law 103-82 (42 U.S.C. 12656(c)(3)) to perform appropriate projects eligible under sections 162, 206, [former] 213, and 217 of title 23, United States Code, and under section 1404 of the SAFETEA-LU (119 Stat. 1228).

“(b) REQUIREMENTS.—Under any contract or cooperative agreement entered into with a qualified youth service or conservation corps under this section, the Secretary shall—

“(1) set the amount of a living allowance or rate of pay for each participant in such corps at—

“(A) such amount or rate as required under State law in a State with such requirements; or

“(B) for corps in States not described in subparagraph (A), at such amount or rate as determined by the Secretary, not to exceed the maximum living allowance authorized by section 140 of Public Law 101-610 (42 U.S.C. 12594); and

“(2) not subject such corps to the requirements of section 112 of title 23, United States Code.”

Similar provisions were contained in the following prior acts:

Pub. L. 109-59, title I, § 1109(f), Aug. 10, 2005, 119 Stat. 1170.

Pub. L. 105-178, title I, § 1112(e), June 9, 1998, 112 Stat. 151.

§ 207. Tribal transportation self-governance program

(a) ESTABLISHMENT.—Subject to the requirements of this section, the Secretary shall establish and carry out a program to be known as the tribal transportation self-governance program. The Secretary may delegate responsibilities for administration of the program as the Secretary determines appropriate.

(b) ELIGIBILITY.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), an Indian tribe shall be eligible to participate in the program if the Indian tribe requests participation in the program by resolution or other official action by the governing body of the Indian tribe, and demonstrates, for the preceding 3 fiscal years, financial stability and financial management capability, and transportation program management capability.

(2) CRITERIA FOR DETERMINING FINANCIAL STABILITY AND FINANCIAL MANAGEMENT CAPACITY.—For the purposes of paragraph (1), evidence that, during the preceding 3 fiscal years, an Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe’s self-determination contracts or self-governance funding agreements with any Federal agency shall be conclusive evidence of the required financial stability and financial management capability.

(3) CRITERIA FOR DETERMINING TRANSPORTATION PROGRAM MANAGEMENT CAPABILITY.—