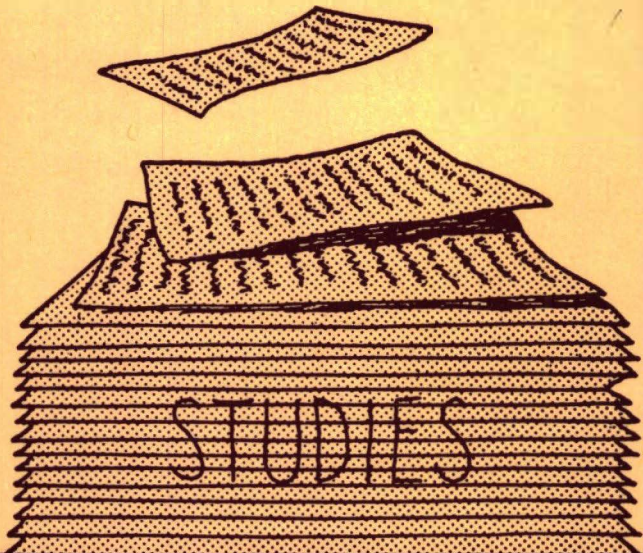
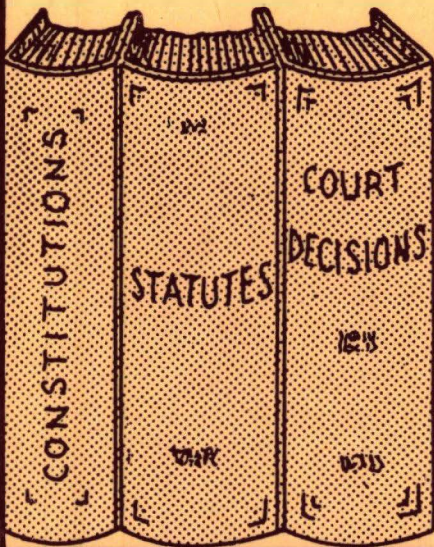
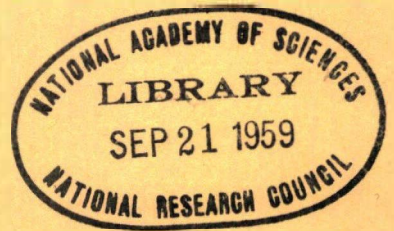


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Special Report 48

FEDERAL-AID PROVISIONS IN STATE HIGHWAY LAWS

AN ANALYSIS



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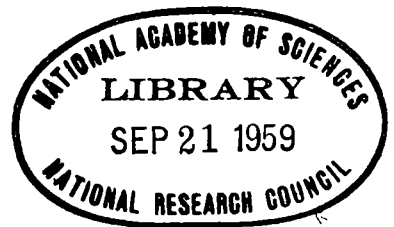
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**FEDERAL-AID PROVISIONS
IN STATE HIGHWAY LAWS**

AN ANALYSIS



A Report of the
Highway Laws Project

1959

Washington, D. C.

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PREFACE

The Highway Laws Committee of the Highway Research Board is in the process of preparing comprehensive reports on legal aspects of all major highway functions. To date the Committee staff has completed reports on several main segments of its program, including "Relocation of Public Utilities Due to Highway Improvement" (published as Special Report 21), "Expressway Law" (Special Report 26), "Acquisition of Land for Future Highway Use" (Special Report 27), "Condemnation of Property for Highway Purposes" Parts I (Special Report 32) and II (Special Report 33), "Legislative Purpose in Highway Law" (Special Report 39), "Outdoor Advertising Along Highways" (Special Report 41), and "Highway System Classification" (Special Report 42). Subjects now being researched include "Constitutional Provisions Concerning Highways," "Intergovernmental Relations," "Condemnation of Property for Highway Purposes" Part III, and "Contracts."

This report, concerning those provisions of State law specifically referring to Federal-aid highways, is intended to highlight those areas of highway law in which the States have enacted legislation to facilitate participation in the Federal-aid highway program. This study is limited to those State statutes that specifically mention Federal-aid, because a study of all State laws affecting construction and improvement of Federal-aid highways would require studying all aspects of highway law and all elements of a modern integrated highway code.

This report was researched and written by Helen J. Schwartz of the Highway Laws Staff. The photographs used are by courtesy of the U.S. Bureau of Public Roads.

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SUMMARY AND CONCLUSION

Since 1916, numerous Federal laws have been enacted which affect the Federal-aid highway program. Many of the provisions of the 1916 Federal-Aid Road Act have been so revised as to provide for objectives not contemplated in the original act and even in some instances at variance to those of the original act. With each change in the Federal law, various States have enacted statutes specifically referring to such changes in Federal-aid highway policy. In 1958 the Federal highway law was codified (Title 23, United States Code), however, State laws still reflect the changes made to implement the Federal statutes as they were enacted.

The objective of this study has been to ferret out these State statutes and to compare them in order to ascertain the types of statutes the States have enacted to assure their State's ability to participate in the benefits made available to them by Federal-aid highway legislation.

In an effort to categorize and analyze the pertinent provisions in the State statutes, the approach has been to compile those statutes which specifically mention Federal aid for highways, and to break down the subject, first, by elements of the original assent statutes enacted by the States following the passage of the 1916 Federal-Aid Road Act. That is, the plan was to isolate the provisions presently in the codes of the States with reference to the assent of the State legislature to the Federal statutes, the State's pledge to provide funds to match Federal apportionments and to maintain Federal-aid roads, and the general authority delegated to the State highway departments to cooperate with the Federal Government in the construction of such roads.

The remainder of this study considers statutes which pertain to the Interstate System, Federal-aid secondary roads, railway-highway crossings, public utility relocation, and other aspects of Federal highway aid.

In restricting the research to the State

statutes which specifically mention Federal aid it is impossible to ascertain the complete legislative picture in any one State, and of course, no one provision or statute determines a State's authority in a given case. The comparison of provisions herein is intended as a source of reference for anyone who is concerned with some provisions of his State law and is interested in how the other States have handled it. Other than to cite court opinions which have interpreted some of the sections referred to, this study contains merely references to the statutes which are found in the State codes at the present time. The fact that not all States have all of the provisions in no way proves any deficiencies.

The new outdoor advertising section in the Federal law (23 USC 131), provides that in order to avail itself of the increase in the Federal share payable on account of projects adjacent to which advertising is subject to control, a State must enter into an agreement with the Secretary of Commerce prior to July 1, 1961, to control advertising. In all likelihood, this will give rise to new State legislation drawn in terms of compliance with the Federal law, as are many of the State laws referred to in this report. However, the subject of outdoor advertising is not included in this report inasmuch as new State laws on this subject are just being introduced into the legislatures and a complete report on the existing laws on this subject was compiled in a recent Highway Research Board Report ("Outdoor Advertising Along Highways," Special Report 41).

ASSENT

The 1916 Federal-Aid Road Act required the specific assent of the legislature of a State in order for the State to obtain the funds apportioned to it under the Act. The Federal-aid highway program is based upon the voluntary cooperation of the States with the Federal Government, and in assenting to the provisions of the Federal law the State legislatures declared the

willingness of the State to accept the Federal funds apportioned to that State and to comply with the terms of the Federal law. Since the time the States originally enacted assent statutes in compliance with the 1916 Federal Act, different views have arisen as to the value of retaining "up-to-date" assent provisions in the State statutes.

Prior to the 1958 codification, the Congress of the United States continued to provide Federal aid for highways through statutes amending and supplementing the original 1916 Act, and during that time practically all of the provisions of the 1916 Act, except the assent requirement, were reenacted or revised.

Each State did assent to the 1916 Act and has received Federal-aid highway funds. In 15 States, where the assent requirement is evidently viewed as only a technical requirement of the 1916 Act, the specific assent provisions have been omitted from subsequent revisions of the State statutes. Despite the lack of a specific assent provision in the current statutes of these States, the fundamental purpose of the assent provision—to express the willingness of the State to accept the Federal funds and to agree to the conditions of the Federal law—can be found in other statutes in which the State legislatures have conferred upon the State highway departments the powers necessary to enable them to participate in the Federal-aid highway program. Assent may also be implied from the fact that the legislatures have continued to provide the funds necessary for the State to match the Federal-aid apportionments.

There are specific assent provisions in the current statutes of 34 States; however, these provisions vary from those which have been retained substantially as originally enacted, that is, expressing assent to the provisions of the 1916 Federal-Aid Road Act, to those which express assent to all Federal-aid highway legislation including any that may be enacted in the future.

While the question has never been raised with regard to Federal-aid highway legislation, in other areas of Federal-aid legislation, inquiry has been made as to whether a State relinquishes any of its sovereignty when it adopts future Federal legislation.

A review of the authorities indicates that the better view favors the validity of such statutes.

The fact that a State enacts a statute assenting to future Federal-aid legislation and authorizing compliance with future changes in that law does not amount to any permanent loss of sovereignty or legislative power by that State. It is possible that for a period of time after a change in the Federal law and before the State legislature convenes, the law of the jurisdiction may not reflect the desires of the State legislature, but the same thing can arise with respect to State laws. The State legislature retains its power to change the statute if it so desires. A statute which, in order to obtain Federal funds, declares the State's acceptance of the provisions of any Federal law which provides funds to be apportioned to the State for a certain purpose, does not surrender any State legislative power but merely signifies the State's acceptance of the terms of the Federal grant, the State legislature can revoke that acceptance at any time.

Of the assent statutes which are currently found in the laws of 34 States, some specifically refer to assent to future Federal-aid highway acts, however, the majority of statutes simply provide the State's assent to the Federal-aid highway acts as amended and supplemented. Such a provision might raise the question of whether the legislature intended to include only the Federal law in force as of the time of the enactment of the State statute, or whether it intended to include future Federal enactments as well. In many of these statutes, there is additional language, sometimes with reference to the authority delegated to the State highway department, which indicates that the legislature intended to include future amendments and supplements to the Federal law.

An "up-to-date" assent provision serves as a directive to the State highway department to carry out its duties in accordance with the intent of the legislature to secure all of the benefits of Federal-aid legislation; it also serves as an aid to the court in the form of a specific declaration of the intent of the legislature in conferring cer-

tain powers upon the State highway department

Such a statute declares the assent of the legislature to Federal highway laws and the acceptance of the provisions and benefits of any act of Congress heretofore enacted or that may be hereafter enacted providing Federal aid for the construction and maintenance of highways in the State. The legislature would further declare its purpose and intent to make provisions that will insure receipt by the State of any Federal highway aid that has been or hereafter may be allotted to the State including all increased and advanced appropriations, and to insure that such highway and related facilities in the State as may be eligible to be improved or constructed in accordance with the provisions of any such Federal highway acts may be improved, constructed and maintained in accordance therewith.

Two elements contained in many of the original assent provisions—the State's pledge to provide the funds necessary to match the Federal-aid apportionments and to maintain the Federal-aid highways in accordance with the Federal requirements—have, in most States, been replaced with specific statutes providing the necessary funds for matching and placing responsibility for maintenance upon the State highway departments and political subdivisions.

An important element of the assent statutes is the general delegation of authority to the State highway department with respect to Federal-aid highways. The Federal-aid highway program is based on State-Federal cooperation, and the requirement in the Federal law that the State and Federal Government cooperate through the State highway departments was instrumental in the establishment of many State highway departments.

These provisions, which may be found listed among the statutory duties of the State highway department, as well as in the assent statutes, usually refer to the duties specifically required of the State highway departments by the 1916 Act; the departments are authorized to enter into all contracts and agreements with the United States, to submit such schemes or programs of construction and maintenance

as may be required and to do all other things necessary to fully carry out the cooperation contemplated in the Federal acts to secure the full benefits of all present and future allotments in aid of highway improvement in the State.

Value of Assent

The value of the assent provisions enacted along with the general authority conferred upon the State highway department to cooperate with the Federal Government has been demonstrated in a number of court decisions wherein certain action taken by the State highway departments has been upheld notwithstanding the lack of specific statutory authority for such action. The existence of specific statutory authority for the highway department to contract with the Federal Government and to comply fully with the requirements of the Federal-aid laws in order to obtain Federal-aid highway funds apportioned to the State, has been interpreted to mean that the department can contract to do that which is required as a condition precedent to Federal aid, unless that power is withheld from the department expressly or by clear implication.

Objections to the change of route of Federal-aid highways have been disallowed by the courts when such changes were found to be necessary in order to carry out the specifically declared legislative intent that the State highway department shall comply with the Federal-aid requirements in order to obtain the Federal apportionment.

In cases involving the width and the classification of highways, the courts have found it a valid exercise of the discretion of the highway departments to act in such a manner as to obtain the benefits of Federal aid for the highway.

The presence of a specific assent provision and authority for the State highway department to cooperate with the Federal Government in order to obtain Federal aid for highways in the State is generally looked upon by the courts as furnishing a valid justification for the action of a State highway department; as such, they may have a

decided influence upon the court's interpretation of the powers of the highway department under other specific State statutes

SPECIFIC AREAS OF COOPERATION

Selection of Federal-Aid Highways—In many States, the State highway departments are given specific authority with regard to the selection and designation of Federal-aid highways. Some of these State statutes provide for the selection of the Federal-aid systems in accordance with specific provisions of the Federal laws. Such provisions may authorize the State highway department to cooperate with the Federal Government in the selection of the Federal-aid systems and to act for the State or political subdivisions in matters relating to the location of highways to be built with Federal-aid funds. Most State highway classification systems are independent of the Federal-aid highway systems, and Federal-aid roads may be located on any of the various State and local systems, however, in a few States there are provisions setting up certain inter-relationships between the State and the Federal-aid systems.

Some States have statutory requirements for public hearings in connection with proposed highway routes. In two States which do not have statutes specifically requiring such hearings, recent cases have challenged the adequacy of public hearings which were held with reference to Federal-aid highway projects. These courts found the hearings adequate when a fair opportunity had been given for the citizens to express their views, and the department had not acted arbitrarily or capriciously.

Acquisition of Land—A thorough study of the State laws pertaining to the acquisition of land for highway purposes is now being completed by the Highway Laws staff. "The Acquisition of Land for Future Use," Highway Research Board Special Report 27 and "Condemnation of Property for Highway Purposes," Part I and Part II, Special Reports 32 and 33, are presently available, and a monograph on the other aspects of land acquisition is now being completed. All of the State laws relating

to the acquisition of land are vital to the State's Federal-aid highway program. They do not, for the most part, mention Federal aid specifically and reference herein is merely to a few statutes which, in order to expedite the Federal-aid program, provide for cooperative agreements between the State and local officials for the acquisition of land for Federal-aid highways.

Contracts.—Specific statutes relating to the letting of contracts for Federal-aid highway construction may provide for certain procedures such as the advertising for bids, and for the inclusion of specifications required by the Federal law. In connection with some State laws, the State highway departments are authorized to disregard provisions with regard to highway contracts when they would violate the Federal-aid requirements.

Highway Research—Provision in the Federal law authorizing the use of Federal funds for highway research has fostered, in many States, the enactment of specific legislation authorizing the State highway departments to participate in various phases of highway planning and research. Such provisions include the general authority to cooperate with the Federal Government, research organizations, subdivisions of the State, other States and associations formed by them, in highway research. Comprehensive statutes on this subject spell out the numerous types of research in which the State may participate.

Railway-Highway Crossings—State statutes authorizing the use of available Federal funds for the elimination of hazards at railway-highway crossings have been enacted in some States with specific reference to the provisions of the Federal law. Such statutes authorize the State highway departments to cooperate with the Federal Government in such projects and to enter into agreements with the Federal Government and the railroad company involved, for the apportionment and payment of costs as provided by the Federal laws. For the purpose of obtaining 100 percent Federal funds for such projects, these statutes provide that the amount of the railroad's contribution, unless otherwise agreed on, shall

not be in excess of the percentage provided for in the Federal law, notwithstanding any provision of other State laws governing the apportionment of costs between the State and the railroad company.

In cases concerning railway-highway crossings, the courts in restricting Federal regulations to Federal-aid projects have had to point out the distinctions between the apportionment of costs on Federal-aid projects and on projects which were not to receive Federal funds. In a case where the railroad wanted to show what the effect of the Federal regulations would have been if the project had been eligible for Federal aid, the court refused to consider it, saying that the railroad was not concerned with how the State spends its Federal-aid funds. In a case where the highway department contended that the public utility commission had arbitrarily based its allocation of cost on the fact that Federal funds were to be used on the project, it was held that in such a case, the Federal regulations pertaining to the allocation of costs, were one of the factors which the commission would validly take into consideration in apportioning the costs.

COUNTY AND LOCAL COOPERATION

The extent of local participation in the construction of Federal-aid highways is dependent on factors which vary from State to State. The governmental structure of the State as well as the financial position of counties and other political subdivisions determine the type of legislation necessary to afford the State the maximum utilization of available Federal-aid benefits. In addition to those statutes enacted with specific reference to Federal-aid secondary highways, there are statutes in some States providing for cooperation between the State highway department and counties or other political subdivisions for the purpose of constructing all Federal-aid highways.

Federal-Aid Secondary System—The State statutes specifically referring to Federal-aid secondary highways usually reflect the requirements of the Federal provisions. These statutes authorize cooperation between the State highway departments and

the counties or other political subdivisions in order to obtain the benefits of Federal aid for secondary highways; and specifically, cooperation is authorized with respect to the selection of these highways. The establishment of secondary road units within the State highway department was required by the 1950 Federal-Aid Highway Act. Many States evidently accomplished this administratively; however, some have statutes establishing such divisions within the State highway departments to discharge the duties required by the Federal law. In those States where the Federal-aid and State classification systems do not usually coincide, Federal-aid secondary highways may be constructed on either the State or county systems. Accordingly, authority is specifically conferred upon the State highway departments with regard to Federal-aid secondary systems which are not on the State highway system.

In a few States where the legislatures have recognized that county roads are in greater need of Federal assistance than State highways, statutes have been enacted requiring that at least a specified percentage of the funds available for Federal-aid secondary roads be used on county highways.

The maintenance of Federal-aid secondary highways is usually the duty of the political subdivision in which such highway is located. However, in order to comply with the Federal maintenance requirements, State highway departments are authorized to maintain such highways when the local authorities fail to meet the Federal standards, and such provisions frequently include the authority to withhold funds which the State holds to the credit of that political subdivision.

NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

An outstanding feature of the Interstate System is the principle of control of access contained in the geometric design standards approved by the Secretary of Commerce in cooperation with the State highway departments. The controlled-access laws of the States are therefore important in the

construction of the Interstate System, and a complete study of this subject has been published in "Expressway Law—An Analysis," Highway Research Board Special Report 26

The controlled-access legislation in most States confers general authority upon the State highway departments and the governing bodies of cities, counties and towns, to enter into agreements with each other and with the Federal Government with respect to the financing, planning, establishment, improvement, maintenance, use, regulation or vacation of controlled-access highways. Three States have controlled-access legislation which applies only to highways on the Interstate System.

In one State, prior to the enactment of controlled-access legislation, a case arose contesting the authority of the State highway commission to control access. The court, in finding that the commission's authority to acquire property was broad enough to acquire access rights, referred to the importance of the Interstate System and cited the statute authorizing the commission to comply fully with the provisions of present and future Federal-aid grants.

The Federal requirement that the routes of the Interstate System be selected by joint action of the State highway departments of adjoining States has its counterpart in some State statutes authorizing highway departments to cooperate in accordance with that Federal requirement.

PUBLIC UTILITY RELOCATION

The availability of Federal-aid funds for the reimbursement of utilities for the cost of relocation of facilities necessitated by the construction of projects on the Federal-aid primary, and secondary systems and on the Interstate System, including extensions thereof within urban areas, is limited to those instances where such payment does not violate the law of the State involved or a legal contract between the utility and the State. On projects for which Federal funds are obligated subsequent to the enactment of the 1958 Federal-Aid Highway Act, such reimbursement is dependent also, upon evidence satisfactory to the Secretary, that the State has paid such cost from its own funds.

Statutes authorizing the payment of utility relocation costs are restricted in some States to projects on the Interstate System while other States include projects on the Federal-aid primary and secondary systems as well. Generally, these statutes provide that when the State highway department determines that it is necessary for utility facilities on such system to be relocated, the utility owning or operating such facilities shall relocate and the cost of relocation shall be paid by the State. In two States the State highway department's authority to reimburse the utility for such costs is permissive rather than mandatory.

Statutes providing for the reimbursement of utilities for the cost of relocating facilities located in public highways, when such relocation is necessitated by public highway improvement, change the common law which required the utilities to relocate at their own expense under such circumstances. The right of legislatures to make this change has been upheld in two States where opinions of the justices were requested in connection with proposed reimbursement statutes. However, these two courts reached opposite conclusions on the question of whether such reimbursement out of highway funds would violate the State constitutional provision prohibiting the use of highway funds for non-highway purposes.

Recent cases contesting the validity of utility relocation reimbursement statutes have reached the State supreme courts in Minnesota, New Mexico, and Tennessee. The Minnesota statute was upheld but the New Mexico and Tennessee statutes were declared unconstitutional. In Texas, the Court of Appeals has upheld the utility relocation reimbursement statute but the Texas Supreme Court has not as yet rendered its decision.

Some questions involved in determining the validity of utility relocation reimbursement statutes are whether such expenditure are for a valid public purpose, whether they violate State constitutional prohibitions against donations to private corporations and whether such reimbursement constitutes a diversion of highway funds.

CONCLUSION

State statutes enacted with reference to a particular aspect of Federal-aid highway construction in one State may be unnecessary in other States which have adequate legislation concerning that particular element of highway construction pertaining to all highways in that State. Federal-aid highways are constructed by the State subject to the requirements of the Federal legislation, rules and regulations, and whether a given State has sufficient authority to construct highways to standards comparable to the Federal-aid requirements depends upon the entire highway law of that State.

The one provision which can be valuable to every State with respect to Federal-aid highways is the assent provision. A declaration by the State legislature—that it as-

sents to the provisions of all present and future Federal-aid highway acts and accepts the conditions and benefits of any act of Congress providing Federal aid for the construction and maintenance of highways, that its purpose and intent is to insure receipt by the State of any Federal-aid highway funds that may be allotted to the State, and for that purpose it authorizes the State highway department to cooperate with the Federal Government and to do all things necessary to secure the full benefits of all present and future Federal allotments in aid of highway improvement in the State—serves as a directive to the State highway department as well as an aid to the courts in interpreting other specific powers granted to the department and utilized with reference to Federal-aid highways.

ASSENT

BACKGROUND

On July 11, 1916, an Act of Congress, Public Law No. 156, entitled, "An act to provide that the United States shall aid States in the construction of rural post roads, and for other purposes," was approved. Thus came into being the charter of the Federal-aid highway program as it is known today.

This 1916 Act was passed amid an atmosphere of general agreement as to the need for some type of good roads program but wide divergence of opinion as to the type of program which would effectively provide for that need. The proponents of a cooperative Federal-State program prevailed over those who regarded as insurmountable the problem of providing adequate supervision and control by the Federal Government, over the expenditure of Federal funds, while at the same time protecting the States from Federal interference in local affairs.¹ As finally enacted, the Federal-aid highway act followed the pattern of Federal aid to the States which had developed in many other areas where the Federal Government had helped the States provide for the general welfare.

Federal grants-in-aid to the States, either in the form of money or land had become an established practice long before 1916. The very early Federal aid consisted of outright grants subject only to the understanding that they were to be used for the purposes specified by the Federal Government. One example is the land grant for public schools which was included in Ohio's admission to the Union in 1802.

As a result of the injudicious handling of the unrestricted grants, Congress in 1862² began the practice of attaching some limiting conditions to its grants. It was not, however, until 1914³ that Congress instituted the present Federal-aid policy based upon National-State cooperation. Since that time, Federal grants-in-aid have been

made available to any State which enters into an agreement in which the Federal Government indicates its willingness to extend aid provided the State will meet certain conditions, and the State by its acceptance of the Federal act indicates its willingness to meet these conditions in order to obtain the benefits offered.

Characteristic of the Federal-aid legislation enacted during the period, when the 1916 Federal-Aid Road Act was passed, are three basic conditions which had to be met by any State desiring to participate and obtain Federal aid.

1. The State legislature was required to formally accept the Federal act and to designate a State agency with adequate power and funds to cooperate with specified Federal authorities.

2. The plan of proposed activities formulated by this agency had to be submitted for Federal approval, and the work undertaken was made subject to Federal inspection.

3. State funds were required to be made available to match Federal appropriations and Federal money could be withheld from a State that failed to fulfill the conditions prescribed in the Federal legislation.

That a State may make contracts which are binding upon it, and that a grant by the United States to a State, accepted by it upon certain conditions named, is such a contract are well established propositions.⁴

The conditions contained in Federal-aid legislation reserve to the Federal Government a certain amount of control over the administration of the Federal-aid program by the State agencies. Such control is only for the purpose of assuring the fulfillment of the objectives of the acts insofar as they have been accepted by the States. Whether the objectives of the acts are being fulfilled is determined in the first instance by the administrative officers of the Federal Government, but there is no surrender by the State of its essential governmental

¹ 33 Cong. Rec. part 7 (1916)

² Land Grant College Act, 12 Stat. 533

³ Smith Lever Act, 38 Stat. 372

⁴ *McGee v. Mathis*, 71 U.S. (4 Wall.) 143 (1866)

power. By accepting the offer of the Federal Government, the State agrees to administer a trust according to its terms, and if its agents do not so administer it, the State forfeits its right to the Federal aid. But the right of the State to legislate on all subjects and to administer its laws is in no way curtailed; and there is nothing to prevent it from at any time withdrawing its consent to any of the Federal-aid legislation and surrendering the benefits of those acts⁵

The question of the constitutionality of grants of money from the Federal treasury, which have been conditioned upon the doing by the State of certain things, reached the Supreme Court in the case of *Massachusetts v. Mellon*⁶ This case involved the validity of the Maternity Act, a Federal-aid act which followed the established pattern of Federal grants-in-aid to the States. The act provided for appropriations to be apportioned among such of the several States as accepted and complied with its provisions, and for the creation of a bureau to administer the act in cooperation with State agencies. It also authorized the bureau to withhold payments to any State whenever it determined that funds had not been properly expended by that State. Although the Court disposed of the case on jurisdictional grounds, it did consider certain of the constitutional questions raised. The complaint of Massachusetts that the act invaded the local concerns of the State and was a usurpation of the power of local self government reserved to the States was rejected by the Court which said that the powers of the States were not involved since the statute imposed no obligation but simply extended an option which the State was free to accept or reject. The following excerpt from a discussion of this case by Edward S. Corwin,⁷ sums up the basic philosophy of Federal-aid legislation:

In a word, the powers which the national government is exercising in the Maternity Act are powers which indubitably belong to it, and the powers which the states ac-

cepting the act are called upon to exercise indubitably belong to them, that the two governments should elect to exercise their respective powers for a common purpose of legitimate interest to both is certainly no constitutional objection in a sound theory of our federal system

The Supreme Court, in upholding the constitutionality of the Federal Social Security Act said that it did not require the surrender of any State sovereignty, and State laws providing for cooperation with that act were not in violation of any provision of the Federal Constitution⁸

In the early Federal-aid legislation, the only condition attached to the Federal grant was that the State assent to the Federal act. A very early example of the assent requirement in the field of road construction is found in the Cumberland Road Act⁹ which provided that the Federal Government build a road from Maryland to Ohio. The Act was made subject to the consent of the States through which the road was to be built. In this instance, the Federal Government was initiating and sponsoring a project of interstate character which it was fully capable of executing itself but which it preferred as a matter of policy to submit to the States as a cooperative venture.

As previously pointed out, specific assent was required in all early Federal legislation as a manifestation of the State's willingness to accept the Federal grant and the conditions attached thereto. The addition of conditions to Federal-aid grants had the effect of requiring enactment of State legislation in addition to the assent provision before a State could participate in Federal aid. For example, the 1916 Federal-Aid Road Act provided for gubernatorial assent to the act pending action of the legislature during its next regular session. However, as a practical matter, despite the governor's assent, actual participation under the Act still had to wait for legislative action in the matter of providing matching funds. As Federal aid has expanded and government become more complex, States have found

⁵ Burdick, *Federal Aid Legislation*, 8 Cornell LQ 324 (1923)

⁶ 262 U.S. 477 (1922)

⁷ *The Spending Power of Congress*, 36 Harv L Rev 548 (1923)

⁸ Carmichael, Atty Gen v Southern Coal & Coke Co., 301 U.S. 495 (1937), *Steward Machine Co v Davis*, 301 U.S. 548 (1937)

⁹ 2 Stat 173, 357 (1845)

it advisable to enact a great deal of legislation, in addition to specific assent, to insure their ability to participate fully in the Federal-aid programs. An intention to assent, that is, to comply with the terms of the Federal legislation, can be found in all of these subsequent State laws.

With respect to State statutes enacted with reference to Federal acts, a question has been raised as to whether the adoption of prospective Federal legislation is an unconstitutional delegation of State legislative power in that the discretion of the legislative body of another jurisdiction is being substituted for that of the domestic legislature. Some cases have held this to be an unconstitutional delegation of legislative power. It should be noted, however, that these cases frequently pertain to statutes involving property rights or criminal penalties.¹⁰

The better view favors the validity of such statutes, notwithstanding the fact that another legislature may change not only the operation of local law but its substantive content because its enactment has not amounted to any permanent loss of sovereignty or legislative power.¹¹

It is possible that for a period of time after the change in the "foreign statute" and before the local legislature convenes, the law of the jurisdiction may not reflect local legislative desires, but this is so even with regard to purely local enactments. The local legislature retains its power to change the statute if it is not satisfied.¹²

The question of the constitutionality of a statute which adopts prospective Federal legislation may turn ultimately on the more basic problem of the lack of adequate standards for the guidance of the State administrative agencies.¹³

There are a number of cases involving Federal-State relations, in which State legislation permitting Federal law to affect or determine State law has been upheld. In

these cases the courts have found that such legislation did not constitute a surrender of any State legislative power.¹⁴

When a State legislature makes a policy decision that uniformity of Federal-State regulation in a particular field is desirable it does not abdicate its legislative judgment or authority. In order to achieve uniformity, it may adopt Federal laws and regulations then in effect without setting them forth in detail in the State statute. But unless the legislature may also in the same enactment provide suitably for the State's immediate adoption of amendments to the Federal laws and regulations, the State policy of uniformity would, as a practical matter, soon be defeated.¹⁵

ASSENT TO THE FEDERAL-AID HIGHWAY LAW

Section 1 of the Federal-Aid Road Act of 1916 provided in part:

That the Secretary of Agriculture is authorized to cooperate with the States, through their respective State highway departments, in the construction of rural post roads, but no money apportioned under this Act to any State shall be expended therein until its legislature shall have assented to the provisions of this Act, except that, until the final adjournment of the first regular session of the legislature held after the passage of this Act, the assent of the governor of the State shall be sufficient.

A typical State provision enacted in response to the above quoted requirement provided the assent of the State legislature to the provisions of the Act of Congress, approved July 11, 1916, entitled, "An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes." It further authorized the State highway department to enter into all contracts and agreements with the United States Government relating to the survey, construction and maintenance of roads under the provisions of the said Act, to submit such scheme or program of construction and maintenance as may be required by the Secretary of Agriculture,

¹⁰ State statutes incorporating by reference future acts of Congress concerning the 18th Amendment. In re Opinion of the Justices, 239 Mass 606, 133 N E 452 (1921), *State v Intoxicating Liquors*, 121 Me 438, 117 Atl 588 (1922). State statute adopting codes to be adopted by the Federal Government under the National Industrial Recovery Act. *Darweger v Staats*, 287 N Y 290, 196 N E 61 (1935).

¹¹ 1 SUTHERLAND, STATUTORY CONSTRUCTION, §310

¹² *Supra*, p 68

¹³ *Smithberger v Banning*, 129 Neb 651, 262 N W 492 (1936), *Hutchins v Mayo*, 143 Fla 707, 197 So 495 (1940)

¹⁴ *Ex parte Lasswell*, 1 Cal App 2d 183, 36 P 2d 678 (1934), *Pratt v Goldfogel*, 242 N Y 277, 151 N E 452 (1926), *Watkins v Hotel Pennsylvania*, 195 N Y App Div 624 (1921)

¹⁵ *State v Hotel Bar Foods*, 18 N J 115, 112 A 2d 726 (1955), *Alaska Steamship Co v Mullaney*, 180 F 2d 805 (9th Cir 1950)

and to do all other things necessary to fully carry out the cooperation contemplated and provided for by the said Act. The State legislature pledged the good faith of the State to make available funds sufficient to equal the sum apportioned to the State by or under the United States Government, to maintain the roads constructed under the provisions of the Act and to make adequate provisions for carrying out such maintenance. The legislatures of all the States enacted assent provisions following the passage of the 1916 Act.

The requirement that the State legislature of any State which desired to participate in the Federal-aid highway program, specifically assent to the Federal Act appeared only in the 1916 Act. It was not repeated in any of the subsequent highway laws which Congress enacted during the period 1921 to 1958 as amendatory or supplementary to the 1916 Act, and it is not contained in the 1958 codification of the Federal highway law.¹⁶

Specific Assent Statutes

The specific assent provision can be viewed as more than merely an act passed in compliance with the terms of the 1916 Federal-Aid Road Act. Assent provisions have served as legislative directives to the highway departments to assist them in carrying out their functions in accordance with the wishes of the legislature and have been used as such by the courts.

Since 1916, Congress has, from time to time, expanded the coverage of the Federal highway acts and in some respects completely reversed the policy of the 1916 Act. Therefore, many States have felt it advisable to revise and reenact their assent provisions to specify their acceptance of these changes.

In order to express its assent to all prior Federal-aid highway legislation and to indicate its intention to accept future Federal acts, the legislature of Nebraska, in 1955, enacted a law specifically assenting to the Act of Congress approved July 11, 1916, the Congressional Federal Aid Acts, Federal Highway Acts, and Federal Aid High-

way Acts approved subsequent to July 11, 1916 and further providing that.

In the absence of contrary legislative action regarding the assent hereby given, the Legislature shall be deemed to have given a continuing assent to subsequent acts, rules, and regulations which either amend or supplement the above-mentioned acts or otherwise provide funds for the same or similar purposes.¹⁷

In 1957, the Nebraska legislature reaffirmed its continuing assent to the Federal acts.¹⁸

The legislatures of some States have enacted provisions expressly stating their acceptance of future Federal highway legislation without referring to the obvious fact that such provisions would not preclude future contrary legislative action.

The legislature of the State of Idaho hereby renews its assent to the provisions of the act of Congress approved July 11, 1916 entitled "An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes" and amendments thereof, or acts supplementary thereto and accepts the provisions and benefits of any act of Congress heretofore or hereafter enacted having for its purpose the construction, improvement and/or maintenance of public roads or highways in the State of Idaho.¹⁹

Illinois assents to the provisions, terms, conditions and purposes of the 1916 Act as heretofore or hereafter amended and all other Acts supplemental thereto.²⁰ The State of Florida assents to the 1916 Act

to all subsequent amendments to such act of congress and any other act heretofore passed or that may be hereafter passed providing for federal aid to the states for the construction of highways and other related projects.²¹

In Wisconsin, the legislature specifically assented to the 1916 Act, amendments and supplements and further:

declares its purpose and intent to give assent to all federal highway acts and to make provisions that will insure receipt by this state of any federal highway aids that heretofore have been or hereafter may be allotted to the state including all increased and advanced appropriations, and insure

¹⁷ REV. STAT. OF NEB. 1943, §39 1304

¹⁸ REV. STAT. OF NEB. 1943, §39 1304 01

¹⁹ IDAHO CODE, §40-2401

²⁰ SMITH HURD ILL. ANN. STAT., ch. 121, §257

²¹ FLA. STAT. 1957, §339 05

¹⁶ Title 23, United States Code

that such highways and related facilities in this state as may be eligible to be improved or constructed in accordance with the provisions of any such federal highway acts may be improved, constructed and maintained in accordance therewith²²

Other statutes expressing specific assent to future highway acts contain language which would seem to be more restricted in their application. A Nevada statute which provides assent to the provisions of the Federal-Aid Road Act approved July 11, 1916, and the Federal Highway Act approved November 9, 1921, also provides that:

The state accepts as a continuing obligation any and all acts amendatory or supplementary to such federal acts²³

A West Virginia statute providing specific assent to the 1916 Act also contains the following:

The State of West Virginia hereby further assents to any similar provision or provisions that may be made by any subsequent act of Congress making appropriation for the survey, construction and maintenance of rural post roads²⁴

In 1955, the California legislature clearly set forth its intention to assent only to the Federal highway laws enacted as of that time by enacting a statute which provided "assent to the provisions of the Federal Highway Act, as amended and supplemented" and declared that

This further re-enactment of this section is for the purpose of bringing the assent of the State of California to the provisions of the applicable federal statutes up to the effective date of this enactment²⁵

It is interesting to note however, that in another part of the California law, a chapter entitled "Federal Aid for Secondary Highways" contains the following language:

While this chapter by its terms applies only to the funds made available by the Federal-Aid Highway Act of 1950, the same provisions and procedure shall be followed as to past unobligated and future federal-aid appropriations for federal-aid secondary highways where such appropriations are made on substantially the same basis of ap-

portionment as those made pursuant to the Federal-Aid Highway Act of 1950²⁶

Unlike the California assent provision, most assent statutes which refer to the acts amendatory and supplementary to the 1916 Act do not specify whether the legislature intended to include future Federal enactments or was referring only to those which were law as of the time of the enactment of the assent statute. Such a statute recently enacted by the legislature of Kansas provides assent to the Federal-Aid Road Act of 1916 and to:

all subsequent federal-aid acts, federal highway acts, federal-aid highway acts and the federal aid highway act of 1956 and all acts amendatory thereof and supplementary thereto²⁷

Similar statutes, manifesting assent to the 1916 Act, amendments and supplements are found in other States with slight variations in wording,²⁸ and in references to other specific Federal laws or types of laws²⁹

In a few States where assent provisions refer to the 1916 Act and amendments, there is additional language which when read with the specific assent indicates an intention to include future Federal enactments

Arkansas assents to the 1916 Act and all acts amendatory thereof or supplemental thereto and in the same section authorizes the State Highway Commission to cooperate in every way contemplated by said Acts of Congress or any other Acts of Congress hereafter passed and to enter into all necessary contracts with the proper Federal authorities in order to secure the full cooperation of the United States Government, and benefits of *all present and future* allotments in aid of highway construction³⁰

Indiana assents to the provisions of the 1916 Act and acts amendatory and supplementary thereto, and in the same section authorizes the State Highway Commission to cooperate with the United States Govern-

²² *Supra*, §2202

²³ GEN. STATS. OF KAN. 1949, §68-401

²⁴ REV. STATS. OF ME. 1954, ch. 23, §15, N. H. REV. STATS. ANN., §239 1, UTAH CODE ANN. 1953, §27 5-1, REV. CODE OF WASH., §48 04 050

²⁵ CODE OF ALA. 1940, tit. 23, §§32, 32(1), N. MEX. STATS. 1953, §§56-2-25, BALDWIN'S OHIO REV. CODE, §5531 02, OHIO REV. STATS., §366 705, CODE OF LAWS OF S. C. 1952, §33-2, VT. STATS. 1947, §5004, WYO. COMP. STATS. 1945, §48 109

²⁶ ARK. STATS. 1947, §76-522

²² WIS. STATS. 1957, §84 015

²³ NEV. REV. STATS., §408 245 Emphasis added

²⁴ W. VA. CODE OF 1955, §1455 Emphasis added

²⁵ DEERING'S CALIF. CODES, Sts. & Hwy., §820

ment under any Federal law in any manner necessary to secure for the State of Indiana the proportion of any Federal appropriation which *may be made in the future*³¹

Maryland retains its provision assenting to the 1916 Act³² and in addition has a section assenting to the provisions of:

. the following Acts of Congress and amendments thereto, act of Congress approved July 11, 1916, entitled "Federal-Aid Act" and act of Congress approved November 9, 1921, entitled "Federal-Highway Act," and act of Congress approved December 20, 1944, entitled "Federal-Aid Highway Act of 1944" The term "federal acts" when used in this section means the aforesaid acts, as from time to time amended or supplemented, together with subsequent acts of Congress of like character and together with rules and regulations lawfully promulgated in connection with any such acts³³

Statutes specifically expressing assent to the 1916 Federal-Aid Road Act only, still appear in the laws of a few States.³⁴ Some have been retained as originally enacted but in each case there is additional language manifesting the legislature's acceptance of Federal legislation in addition to the 1916 Act³⁵

In 1953, North Dakota enacted a statute specifically assenting to the 1916 Act and further providing that:

The commissioner is authorized and empowered to make all contracts and to do all things necessary to cooperate with the United States government in the construction of roads under the provisions of the said act or other act of congress that hereafter may be enacted, including the Federal-Aid Highway Act of 1950 regarding secondary roads³⁶

The specific assent statute of South Dakota, as enacted in 1919, which provides assent to the 1916 Act, provides that:

The state of South Dakota having heretofore assented to the [1916 Act] . . . and in order further, to facilitate the cooperation of the state with such Federal

Aid Road Act and for other purposes, the State Highway Commission heretofore created is hereby perpetuated³⁷

However, a section of the South Dakota law pertaining to secondary and feeder roads provides for cooperation with the Federal Government under acts amendatory of the 1916 Act³⁸

The Missouri assent provision does not specifically refer to the date of the Federal enactments, but provides:

That assent is hereby given to an act of Congress of the United States, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes"³⁹

and Tennessee has an even more general provision which assents:

. to the provisions of any act of congress which provides that the United States shall aid the states in the construction of roads⁴⁰

The New York law contains specific assent to "the federal-aid highway acts" and provides that:

If moneys of the federal government are or may reasonably be expected to be available therefore, under federal aid highway acts, the superintendent of public works is authorized to use such moneys, or so much thereof as he shall determine to accept together with other available moneys⁴¹

Indirect Assent

The entire Federal-aid highway program is based on the voluntary participation of the States. The assent provision has served as the State's declaration of its willingness to accept Federal allotments for the purpose specified in the Federal legislation and to comply with the terms of the Federal acts

As the Federal highway program has been continued and expanded, the legislatures of the States have regularly had to provide the funds necessary to match the Federal allotments and to make provisions for the administration of those funds. A vast amount of legislation has been enacted by the States for the purpose of con-

³¹ BURNS' IND STATS ANN, §§86-127, 36-2953
³² ANN CODE OF MD 1957, art 89B, §73
³³ *Supra*, §76(1)
³⁴ CODE OF GA ANN, §95-1502, MICH STAT ANN, §9 831, CODES OF MONT 1947, §32-1609, PURDON'S PA STATS ANN, tit 36, §2641, CODE OF VA 1950, §33 130
³⁵ CODE OF GA ANN, §95-1502, MICH STATS ANN, §9 831, REV CODES OF MONT 1947, §32 1606, PURDON'S PA STATS ANN, tit 36, §670-1004, CODE OF VA 1950, §33-131
³⁶ N D REV CODE OF 1943, §24 0401 Alaska has a similar provision which refers to the 1956 act rather than the 1950 act ALASKA COMP LAWS ANN 1949, §14A-2 12

³⁷ S D CODE OF 1939, §28 0201
³⁸ S D CODE OF 1939, §28 0225
³⁹ MO REV STATS 1949, §226 100
⁴⁰ TENN CODE ANN, §54-301
⁴¹ N Y CONSOL LAWS SERVICE, Highway Law, §80

ferring sufficient powers upon the State highway departments to enable them to comply with the Federal requirements and to thereby obtain for the States the full benefits available under the Federal-aid highway program

Where a State legislature has throughout the years conferred sufficient powers upon its highway department to enable it to cooperate with the Federal Government, and has provided for the funds necessary to match the Federal apportionments, it has never been contended that the absence of a specific assent provision in its current code of laws casts any doubt upon a State's ability to receive Federal-aid highway funds

At the present time there are fifteen States whose codes do not contain any statutes specifically assenting to the Federal highway acts. However, in each of these States assent to the Federal law is implicit in statutes specifically providing for cooperation with the Federal Government in the construction of Federal-aid highways

Arizona State Highway Commission to pass on projects and authorize State engineer to enter into contracts with the United States for the cooperative construction of Federal-aid highways⁴²

Colorado Subject to the terms of any agreement made by the department of highways on behalf of the State and the Federal Government, for highway construction the chief engineer shall have direct control of the letting of contracts, preparation and approval of plans together with the supervision of construction⁴³

Connecticut The section delegating authority to the highway commission to set aside trunk line highway funds for the purpose of matching Federal aid is prefaced with a reference to the State's "having assented" to the provisions of the 1916 Act⁴⁴

Delaware A provision of the Delaware Code establishing accounting procedures and providing for the administration of all Federal-aid funds received by the State ap-

pears to have superceded the original assent provision.⁴⁵

Iowa State highway commission is authorized to supervise and direct construction work and to comply with the Federal statutes, rules and regulations and to cooperate with the Federal Government in the expenditure of Federal funds allotted for the improvement of streets and highways⁴⁶

Kentucky Department of highways is authorized to contract with the Federal Government in regard to the survey, construction and maintenance of roads under Federal-aid road acts and the State treasurer is authorized to receive money due under any Federal-aid act⁴⁷

Louisiana Department of highways authorized to enter into agreements with the Federal Government or any Federal agency for the purpose of building or improving public highways, to the extent the Federal Government or its agency is authorized by Federal statutes to enter into such agreements, and with the same limitations⁴⁸

Massachusetts Highway department is authorized to make all contracts and agreements and do all other things necessary to cooperate with the United States in the costs and maintenance of highways under the 1916 Act as amended and supplemented and may make agreements or contracts that may be required to secure Federal aid in the construction of highways⁴⁹

Minnesota Commissioner of highways is authorized to cooperate with the United States and to comply with the provisions of the Federal laws and rules and regulations made thereunder for the expenditure of Federal moneys in the construction, improvement and maintenance of roads and bridges in Minnesota and to accept Federal moneys therefor⁵⁰

Mississippi State Highway Commission is authorized to make such contracts and execute such instruments as necessary for obtaining financial assistance, grants or loans from the United States, or any department or agency thereof⁵¹

⁴² ARIZ. REV. STATS., §18 106(4)

⁴³ COLO. REV. STATS. 1953, §120 3-23

⁴⁴ GEN. STATS. OF CONN. REV. OF 1958, §13-141

⁴⁵ DEL. CODE ANN., tit. 29, §2712

⁴⁶ CODE OF IOWA 1958, §307 7

⁴⁷ KY. REV. STATS., §176 240

⁴⁸ LA. REV. STATS. 1950, §48 212

⁴⁹ ANN. LAWS OF MASS., ch. 81, §30

⁵⁰ MINN. STATS., §161 03, subds. 26-29

⁵¹ MISS. CODE 1942, §8038(a)

New Jersey State Highway Commission may apply to and contract with the Federal Government for and in road work ⁵²

North Carolina State Highway Commission shall have such powers as are necessary to comply fully with the provision of the present and future Federal-aid acts ⁵³

Oklahoma State Highway Director has duty of supervision of State and Federal-aid highway constructed in whole or in part by the aid of Federal appropriations so far as such supervision is consistent with the Acts of Congress relating thereto ⁵⁴

Rhode Island The Department of Public Works is authorized to cooperate with the Federal Government in connection with public works projects (which include the construction, reconstruction, maintenance and repair of roads and bridges) ⁵⁵

Texas. Improvement of State highway system with Federal aid shall be made under the exclusive and direct control of the State Highway Department ⁵⁶

Such statutes indicate the State legislature's intent to authorize continuing participation in the Federal-aid highway program.

FUNCTION OF SPECIFIC ASSENT STATUTES IN HIGHWAY LAW

Among the State statutes which specifically assent to the Federal-aid highway laws, differences in wording and in the references to some or all of the Federal enactments range from those statutes which express assent only to the 1916 Federal-Aid Road Act, to those which express assent to all Federal laws pertaining to Federal aid for highways, including any such Federal laws which may be enacted in the future

Standing alone, some of these statutes might be said to be more adequate than others. However, such a comparison would be misleading because whether the assent provision is viewed as merely a requirement of the 1916 Federal Act, or as a necessary expression of the State's intention to participate in the Federal-aid highway program as it exists today, it is at all times

within the province of each State legislature to determine whether the State shall participate in the Federal-aid program

Once having given its assent, as every State did with reference to the 1916 Federal-Aid Road Act, a State legislature's intention that the State continue to participate can be found in various other provisions, such as those providing for matching funds and those conferring sufficient power upon the State highway department to enable it to meet the requirements of the Federal laws

Specific assent statutes have been valuable to the courts in determining legislative intent in connection with various actions taken by the State highway departments. Such statutes are usually accompanied by provisions authorizing the State highway departments to comply with the Federal requirements in order to participate in the Federal-aid highway program. Therefore, when courts are confronted with questions involving Federal-aid highway construction, they frequently refer to the legislative directives found in connection with assent provisions. A discussion of such cases will be found under the heading, State-Federal Cooperation.

PLEDGE TO MATCH FEDERAL APPORTIONMENTS

This report does not include the State statutes which provide funds for matching Federal-aid allotments because the various methods of financing Federal-aid highways will be a part of the complete study on highway financing which is to be done by the Highway Laws Committee. However, in addition to actual financing provisions there are in several States, statutes declaring the State's pledge to provide the funds necessary to match Federal funds available for the construction of Federal-aid highways ⁵⁷

⁵⁷ CODE OF ALA 1940, tit 23, §33, CODE OF GA ANN, §95-1609, IDAHO CODE, §40-2403, BURNS' IND STATS ANN, §86-127, CODE OF IOWA, 1958, §313 1, ANN. CODE OF MD 1957, art 89B, §73, MICH STATS ANN, §9 831, MINN STATS 1957, §161 03, subd 2(4), NEV REV STATS, §408 250, N H REV STATS ANN, §§239 2, 239 3, N MEX STATS 1953, §55-2 25, N Y CONSOL LAWS SERVICE, Highway Law, §85, GEN STATS OF N C §136-18(12), BALDWIN'S OHIO REV CODE, §5531 02, ORE REV STATS, §366 715, PURDON'S PA STATS ANN, tit 36, §2641, CODE OF LAWS OF S C 1952, §33-2, TENN CODE ANN, §54 303, UTAH CODE ANN 1953, §27 5-1, REV CODE OF WASH, §47 08 020, WA CODE OF 1955, §1455, WIS STATS 1957, §84 015, WYO COMP STATS 1945, §48 109

⁵² N J S A, §27-8-1

⁵³ GEN STATS OF N C, §136 18(12)

⁵⁴ OKLA STATS 1951, tit 69, §20 7

⁵⁵ GEN LAWS OF R I 1956, §§37 5 2, 42 13-2

⁵⁶ VERNON'S TEX CIV STATS 1948, art 6674d

Federal participation in the Federal-aid highway program was originally limited to 50 percent of the total cost of each project⁵⁸ Subsequent Federal acts have substantially increased the Federal share of the cost of Federal-aid highways with respect to:

- 1 State containing unappropriated and unreserved public lands and nontaxable Indian lands exceeding five percent of the total area of the State;⁵⁹
- 2 The elimination of hazards of railway-highway crossings;⁶⁰ and
- 3 The National System of Interstate and Defense Highways⁶¹

Despite the numerous changes in the Federal law, a few States retain statutes which refer to the State's providing funds to equal the sums apportioned by the Federal Government.⁶² Although as a practical matter there is little likelihood of any question arising when a State with such a statute participates in Federal-aid construction for which it is required to provide less than the Federal share, these statutes are anachronisms and it may be wise to consider their revision

The requirement contained in the present Federal highway law is that as soon as practicable after the plans, specifications and estimates for a specific project have been approved, the Secretary of Commerce shall enter into a formal project agreement with the State highway department concerning the construction and maintenance of such project and that project agreement shall make provision for the State funds required for the State's pro rata share of the cost of construction of such project and for the maintenance thereof after completion of construction⁶³

MAINTENANCE OF FEDERAL-AID HIGHWAYS

In some Federal-aid statutes, the State legislatures pledge the good faith of the

State to maintain the roads constructed with the aid of Federal funds and to make adequate provision for carrying out such maintenance.⁶⁴

The Federal law provides that it is the duty of the State highway department to maintain, or to cause to be maintained, projects constructed under the Federal-aid acts, as long as any such project constitutes a part of a Federal-aid highway system⁶⁵

If a State highway department does not have legal authority to maintain a project constructed on the Federal-aid secondary system, or within a municipality, the highway department must enter into a formal maintenance agreement with the county or municipality in which the project is located⁶⁶

When the Secretary of Commerce finds that a Federal-aid project is not being properly maintained he is to notify the State highway department and if within 90 days of that notice, the project is not put in proper condition of maintenance the Secretary shall withhold approval of all further projects in the entire State (until such time as the project is put into proper condition, unless the project is on the Federal-aid secondary system, or within a municipality) for which a maintenance agreement has been entered into by the department and the county or municipality, in which case approval shall be withheld only for secondary or urban projects in the county or municipality where such project is located.⁶⁷

Some State highway departments are given general authority to maintain Federal-aid highways or to enter into contracts and agreements with the United States relative to their maintenance in accordance with the Federal-aid highway acts.⁶⁸ Kentucky specifies that primary

⁵⁸ 39 Stat 355, §6

⁵⁹ 23 U S C 120(a)

⁶⁰ 23 U S C 120(d)

⁶¹ 23 U S C 120 (b), (c)

⁶² CODE OF ALA 1940, tit 23, §33, CODE OF GA ANN, §95-1609, BURNS' IND STATS ANN §36-127, CODE OF IOWA 1958, §313 1; ANN CODE OF MD 1957, art 89B, §73, MINN STATS 1957, §161 03, subd 2(4); N MEX STATS 1953, §55 2-25; TENN CODE ANN, §54-303, REV CODE OF WASH, §47 08 020, W VA CODE OF 1955, §1455, WYO COMP STATS 1945, §48-109

⁶³ 23 U S O 110(a)

⁶⁴ CODE OF ALA 1940, tit 23, §33, ARK STATS 1947, §76-522, BURNS' IND STATS ANN, §36-127, CODE OF IOWA 1958, §313 1, ANN CODE OF MD 1957, art 89B, §73, NEV REV STATS, §408 250, N MEX STATS, 1953, §55 2-25, GEN STATS OF N C, §136-18(12), BALDWIN'S OHIO REV CODE, §5531 02, PURDON'S PA STATS ANN, tit 36, §2641, TENN CODE ANN, §54-303, UTAH CODE ANN 1953, §27-5-1, W VA CODE OF 1955, §1455, WIS STATS 1957, §84 015

⁶⁵ 23 U S C 116(a)

⁶⁶ 23 U S C 116(b)

⁶⁷ 23 U S C 116(c)

⁶⁸ IDAHO CODE, §40 2402, SMITH HURD ILL ANN STATS, ch 121, §250, 264, ANN LAWS OF MASS, ch 81, §30, MICH STATS ANN, §9 831, REV CODES OF MONT 1947, §32-1609, GEN STATS OF N C, §136-18(12)

roads built with Federal-aid funds are to be maintained entirely by the State,⁶⁹ and in South Dakota the State highway commission has the duty to maintain all Federal-aid highways constructed or improved by the commission and may at its option maintain other portions of the State Trunk Highway System which were not constructed by the commission.⁷⁰ Maintenance

provisions with respect to Federal-aid secondary projects are discussed subsequently in this report

Federal-aid highway funds are not available for highway maintenance, however, a few State statutes include authority for the highway departments to maintain highways with funds which are or may become available from the Federal Government.⁷¹

⁶⁹ KY REV STATS, §177 030
⁷⁰ S D CODE OF 1939, §28 0211

⁷¹ FLA STATS 1957, §885 02, ANN CODE OF MD 1957, art 89B, §74

STATE-FEDERAL COOPERATION

AUTHORITY OF STATE HIGHWAY DEPARTMENTS TO COOPERATE WITH THE FEDERAL GOVERNMENT

The basis of the Federal-aid road program is State-Federal cooperation. The foundation for the administration of the program was established by the 1916 Federal-Aid Road Act⁷² which authorized cooperation with the States through their respective State highway departments. The term "State Highway Department" in the 1921 Act, was defined to include any State department, commission, board, or official having adequate powers and suitably equipped and organized to discharge the duties required by the Act.⁷³ The present Federal highway law defines "State highway department" as that department, commission, board or official of any State charged by its laws with the responsibility for highway construction,⁷⁴ and provides that any State desiring to avail itself of the provisions of Federal highway law must have a State highway department with adequate powers and be suitably equipped and organized to discharge to the satisfaction of the Secretary the duties required by the Federal-aid highway law.⁷⁵

The requirement that Federal authorities deal only with the States in furnishing funds to aid in the construction of roads, was instrumental in establishing the important place of the State highway departments in the road building programs of the States.⁷⁶

In response to the requirements of the Federal law, the State legislatures conferred upon their highway departments the specific authority to cooperate with the Federal Government in the construction of Federal-aid highways. This authority, enacted as part of the assent statute or as one of the duties of the State highway department, is

found in the statutes of practically every State.

In Georgia the State Highway Board is authorized to designate divisions of the State Highway Department, in conjunction with other engineering and design divisions of the State Highway Department, to prepare, in conjunction with the United States Public Roads Administration in matters involving Federal funds, long range biennial programs of improvement to be made under Federal-aid urban, Federal-aid primary, and Federal-aid secondary classifications.⁷⁷

Authority for the State highway department to cooperate with the Federal Government is expressed in various ways throughout the States. However, the legislative directive most frequently occurring in the State statutes is that authorizing the State highway department to enter into contracts and agreements with the Federal Government for the construction of Federal-aid highways. In addition to the authority to make contracts and agreements with the Federal Government, many such statutes contain a list of the specific duties referred to in the Federal law and conclude with either the authority to do all other things necessary fully to carry out the cooperation contemplated in the Federal acts, or the authority to do all other things necessary to secure the full benefits of the Federal-aid highway legislation.⁷⁸ The following is a composite of the elements frequently included in these statutes.

The State highway department is hereby authorized and empowered to enter into all contracts and agreements with the United States Government or any officer, department or bureau thereof relative to the construction or maintenance of highways in this State,⁷⁹ to submit such schemes or programs

⁷² 39 Stat 355 (1916)
⁷³ 42 Stat 212, §2 (1921)

⁷⁴ 23 U.S.C. 101(a)

⁷⁵ 23 U.S.C. 301(a)

⁷⁶ State v. State Highway Commission, 139 Kan 858, 33 P.2d 324 (1934); State v. State Highway Commission, 82 Mont 63, 265 Pac 1 (1928); Heathman v. Singletary, (Comm. of App. of Tex 1929), 12 S.W.2d 150, S.D. CODE OF 1939, §28 0201

⁷⁷ CODE OF GA ANN., §95-1615

⁷⁸ See Table 1

⁷⁹ CODE OF ALA 1940, tit 23, §§32, 32(1), ALASKA COMP LAWS ANN 1949, §14A-2-12, ARIZ. REV. STATS., §18-106(4), ARK. STATS 1947, §§76-201 5(c), 76 522, DEERING'S CALIF CODES, Streets & Highways Code, §821, COLO. REV. STATS 1953, §120 3-23, FLA. STATS 1957, §339 05, IDAHO CODE, §340-2402, 40-2403, SMITH-HURD ILL. ANN. STATS ch 121, §259, BURNH' IND. STATS ANN., §336 127, 36 2912, 36 2920,



PLATE A

US 99, Vancouver Freeway on the National System of Interstate and Defense Highways, State of Washington. Federal-State cooperation of the type obviously involved on this facility must necessarily be authorized by law.

of construction and maintenance as may be required,⁸⁰ to act for the State in conjunction with the Federal Government in matters relating to the location and construction of Federal-aid highways and modify or revise said designation as re-

quired by proper Federal authorities,⁸¹ to enforce all reasonable rules and regulations which may be deemed necessary for the effective cooperation with the provisions of the Federal-aid acts, and to do all other things necessary fully to carry out the cooperation contemplated by the Federal-aid highways acts,⁸² and to obtain for the State

36-2921, 36-2953; CODE OF IOWA 1958, §313.1; GEN. STATS. OF KAN. 1949, §68-402; KY. REV. STATS. §§176.240, 177.043; LA. REV. STATS. 1950, §48-212; REV. STATS. OF ME. 1954, ch. 23, §15; ANN. CODE OF MD. 1957, art. 89B, §73; ANN. LAWS OF MASS., ch. 81, §30; MICH. STATS. ANN., §9.831; MISS. CODE 1942, §§8038(s), 8328-09; REV. CODES OF MONT. 1947, §32-1609; REV. STATS. OF NEB. 1943, §39-1305; NEV. REV. STATS. §§408.250, 408.255; N.J. S. A., §27-8-1; N.MEX. STATS. 1953, §§55-2-20, 55-2-25; GEN. STATS. OF N.C., §138-18(12); N.D. REV. CODE OF 1943, §27-0401; BALDWIN'S OHIO REV. CODE, §5531.02; ORE. REV. STATS., §§366.710, 366.730; PURDON'S PA. STATS. ANN., tit. 36, §§36-2642, 670-1004; CODE OF LAWS OF S. C. 1952, §33-76; TENN. CODE ANN., §54-302; UTAH CODE ANN. 1953, §§27-2-7(4), 27-5-1; CODE OF VA. 1950, §33-12(5); REV. CODE OF WASH., §47.04.060; W.VA. CODE OF 1955, §§1448(8)(28), 1455; WIS. STATS., 1957, §§84.011, 84.015; WYO. COMP. STATS. 1945, §48-109.

⁸⁰ CODE OF ALA. 1940, tit. 23, §32; ARK. STATS. 1947, §72-201.5(c); DEERING'S CALIF. CODES, Streets & Highways Code, §821; IDAHO CODE, §40-2402; SMITH-HURD ILL. ANN. STATS., ch. 121, §§259, 261; BURNS' IND. STATS. ANN., §36-127; ANN. CODE OF MD. 1957, art. 89B, §73; ANN. LAWS OF MASS., ch. 81, §30; MICH. STATS. ANN., §9.831; NEV. REV. STATS., §§408.250, 408.255; N.MEX. STATS. 1953, §55-2-25; GEN. STATS. OF N.C., §138-18(12); BALDWIN'S OHIO REV. CODE, §5531.02; OKLA. STATS. 1951, tit. 69, §20.8; ORE. REV. STATS., §366.710; UTAH CODE ANN. 1953, §27-5-1; CODE OF VA. 1950, §§33-12(5), 33-130; W.VA. CODE OF 1955, §1455; WIS. STATS. 1957, §84.015; WYO. COMP. STATS. 1945, §48-109.

⁸¹ CODE OF ALA., tit. 23, §30; ARK. STATS. 1947, §76-522; REV. STATS. OF ME. 1954, ch. 23, §15; REV. CODES OF MONT. 1947, §32-1606; NEV. REV. STATS., §408.290; N.H. REV. STATS. ANN., §239.4; UTAH CODE ANN. 1953, §27-5-2; VT. STATS. 1947, §5006; REV. CODE OF WASH., §47.04.060.

⁸² CODE OF ALA., tit. 23, §32; ALASKA COMP. LAWS ANN. 1949, §14A-2-12; ARK. STATS. 1947, §76-201.5; FLA. STATS. 1957, §339.05; CODE OF GA. ANN., §95-1502; IDAHO CODE, §40-2402; SMITH-HURD ILL. ANN. STATS., ch. 121, §259; BURNS' IND. STATS. ANN., §36-127; CODE OF IOWA 1958, §313.1; GEN. STATS. OF KAN. 1949, §68-402; KY. REV. STATS., §176.240; REV. STATS. OF ME. 1954, ch. 23, §15; ANN. CODE OF MD. 1957, art. 89B, §73; ANN. LAWS OF MASS., ch. 81, §30; MICH. STATS. ANN., §9.831; MINN. STATS. 1957, §161.03, subd. 25, 26; REV. CODES OF MONT. 1947, §32-1609; REV. STATS. OF NEB. 1943, §1305; NEV. REV. STATS., §§408.250, 408.255; N.MEX. STATS. 1953, §55-2-25; N.Y. CONSOL. LAWS SERVICE, Highway Law, §85; GEN. STATS. OF N.C., §138-18(12); N.D. REV. CODE OF 1943, §24-0401; BALDWIN'S OHIO REV. CODE, §5531.02; ORE. REV. STATS., §366.710; GEN. LAWS OF R.I. 1956, §§37-5-2, 42-13-2; CODE OF LAWS OF S.C. 1952, §33-76; UTAH CODE ANN. 1953, §27-5-1; CODE OF VA. 1950, §§33-12(5), 33-130; W.VA. CODE OF 1955, §1455; WIS. STATS. 1957, §84.015; WYO. COMP. STATS. 1945, §48-109.

Table 1 Statutory Authority

State	Specific Assent in Current Statutes	State Highway Department Specifically Authorized To		
		Enter Contracts and Agreements with the U S ^a	Do All Things Necessary to Cooperate with the U S ^b	Do All Things Necessary to Secure Federal-Aid Benefits ^c
Ala	×	×	×	×
Alaska	×	×	×	
Ariz		×	×	
Ark	×	×	×	×
Calif	×	×	×	
Colo		×	×	
Fla	×	×	×	
Ga	×	×	×	×
Idaho	×	×	×	
Ill	×	×	×	
Ind	×	×	×	×
Iowa		×	×	×
Kan.	×	×	×	×
Ky.		×	×	
La.		×	×	
Me	×	×	×	
Md	×	×	×	×
Mass		×	×	
Mich.	×	×	×	
Minn			×	
Miss		×		×
Mo.	×			×
Mont	×	×	×	×
Neb	×	×	×	×
Nev.	×	×	×	
N. H	×			×
N. J.		×		
N. M	×	×	×	
N. Y.	×		×	
N. C.		×	×	
N. D	×	×	×	
Ohio	×	×	×	
Okla				
Ore.	×	×	×	×
Pa.	×	×		×
R. I			×	×
S. C.	×	×	×	
S. D	×			
Tenn.	×	×		
Tex				
Utah	×	×	×	
Vt	×			×
Va.	×	×	×	
Wash	×	×		
W. Va.	×	×	×	
Wis	×	×	×	×
Wyo.	×	×	×	

^a For citations see footnote 79^b For citations see footnote 82^c For citations see footnote 83

the benefits of all present and future allotments in aid of highway construction.⁸³

THE STATE AND FEDERAL-AID HIGHWAYS— JUDICIAL DECISIONS

Statutes specifically authorizing State highway departments to cooperate with the Federal Government have been very useful to the courts in determining questions arising out of the construction of Federal-aid highways

General authority given the State highway department to comply fully with the provisions of the present or future Federal-aid grants, aided the Supreme Court of North Carolina in finding that the State Highway Department was within its authority when it designated a limited-access highway in compliance with the standards and requirements of the Federal-Aid Highway Act, despite the absence at that time of any specific controlled-access legislation in the State laws.⁸⁴

The existence of specific authority of the highway department to make any contract with the Federal Government necessary to procure Federal aid for highway construction has been interpreted by a Kentucky court to mean that the highway department may contract to do that which the Federal Government required as a condition precedent to the Federal aid, at least unless that power be withheld from the department expressly or by clear implication⁸⁵

Where the Missouri legislature has clearly stated⁸⁶ that its purpose was to secure all of the funds allotted to the State by the Federal Government for road construction, and for that purpose directed the State highway commission to comply with any of the rules or conditions made by the Federal Government, the Supreme Court of Missouri held that the highway commission would defeat the intention of the legislature

⁸³ CODE OF ALA 1940, tit 23, §32(1), ARK STATS 1947, §76 522, CODE OF GA ANN., §95-1613, BURNS' IND STATS ANN §36-180, CODE OF IOWA 1958, §313 1, GEN STATS OF KAN 1949, §68-402, ANN CODE OF MD 1957, art 89B, §76, MISS. CODE 1942, §§5038(s), §328-09, MO REV STATS 1949, §226 150, REV CODES OF MONT 1947, §82-1606, REV STATS OF NEB 1943, §1306, N H REV STATS ANN §239 4, ORE REV STATS, §366 730, PURDON'S PA STATS ANN, tit 36, §870 1004, GEN LAWS OF RI 1956, §24-8-81, VT STATS 1947, §§5004, 5005, WIS STATS. 1957, §84 105 for National Parkways

⁸⁴ Hedrick v Graham, 245 N. C. 249, 96 S E 2d 129 (1957)

⁸⁵ State Highway Commission v Smith, 260 Ky. 269, 82 S W 2d 1044 (1933)

⁸⁶ MO. REV STATS 1949, §226 150

if it were to refuse to comply with the Federal requirement⁸⁷

A Texas court found that the highway commission had properly exercised its discretion when it selected a new highway location on which the Federal Bureau of Roads was willing to extend Federal aid⁸⁸

The control of the State highway department over State highways has been interpreted to include the authority to alter the course of a State highway through a county, even though the county is furnishing funds toward its construction, when such relocation is necessary in order to obtain Federal approval of the project so that Federal-aid funds will be available toward the cost of its construction⁸⁹

However, when a county raised funds by issuing bonds for the stipulated purpose of improving an existing highway, it was held in Georgia that those funds constitute a trust fund which cannot be diverted to a new route even though the new route is more feasible and the change is necessary in order to obtain Federal-aid funds⁹⁰ The Oklahoma highway department was upheld where it, in good faith, abandoned its contract with a county, to construct a specified highway, when it found this necessary in order to avoid the loss of Federal-aid funds The court said that such action was a proper exercise of the discretion of the highway department performed in the interest of the State as a whole and in keeping with its paramount duty to the State, but the funds raised by the county bond issue had to be returned to the county when they were not used for the purpose for which they were voted⁹¹

A municipality receives its power over city streets from the State, therefore, a Montana statute⁹² authorizing the highway commission to enter into all contracts and agreements with the United States Government relative to the construction and maintenance of highways and to do all things

necessary or required to carry out fully the cooperation contemplated by the Federal act would sustain the right of a municipality in Montana to surrender some of its police power for the purpose of obtaining Federal aid on a city street.⁹³

Many of the duties of the highway department involve a large measure of discretion In cases contesting the validity of discretionary acts concerning Federal-aid highways, the courts frequently look to the requirements of the Federal laws and Federal authorities and to the benefits to be derived by the State from the Federal-aid program in determining whether a highway department has acted within its discretionary limits.

A Louisiana court found that the request of the chief engineer for a right-of-way of greater width than that on other sections of the same highway was justified because the chief engineer's opinion, that the wider right-of-way was necessary in order to insure public convenience and safety in the future and also to secure Federal aid in the construction of the highway, effectively refuted any charge that he had abused his discretion or acted arbitrarily.⁹⁴

In answer to the contention that the state highway commission had reclassified a highway, from a secondary highway to a primary highway, in order to avoid the necessity of getting local approval for the construction of the highway as a Federal-aid project, an Oregon court said that even if the commission had reclassified the highway for that purpose, that in itself would have been no mark of bad faith on the part of the commission⁹⁵

State statutes assenting to the Federal-aid laws and authorizing the State highway departments to comply with those laws and the regulations pertaining thereto, have been of great assistance to the courts in determining the validity of the actions of the highway departments, however, such statutes do not interfere with the discretion of the departments in their determination of whether Federal-aid funds should or

⁸⁷ Logan v Matthews, 330 Mo 1213, 52 S W 2d 989 (1932)

⁸⁸ State Highway Commission v Humphreys, (Tex Civ App, 1933), 58 S W 2d 144

⁸⁹ Heathman v Singletary, (Comm of App of Texas 1929), 12 S W 2d 150, State Highway Department v Mitchell's Heirs, 142 Tenn 58, 216 S W 336 (1919)

⁹⁰ Marks v Richmond County, 165 Ga 316, 140 S E 880 (1927)

⁹¹ Bd of Comm of Harmon County v Oklahoma State Highway Department, 163 Okla 207, 23 P 2d 681 (1933)

⁹² REV CODES OF MONT 1947, §32-1609

⁹³ Bidlingmeyer v City of Deer Lodge, 128 Mont 292, 274 P 2d 821 (1954)

⁹⁴ State v Cooper, 213 La 1016, 36 So 2d 22 (1948)

⁹⁵ Harland v Chandler, 300 P 2d 412 (1956)

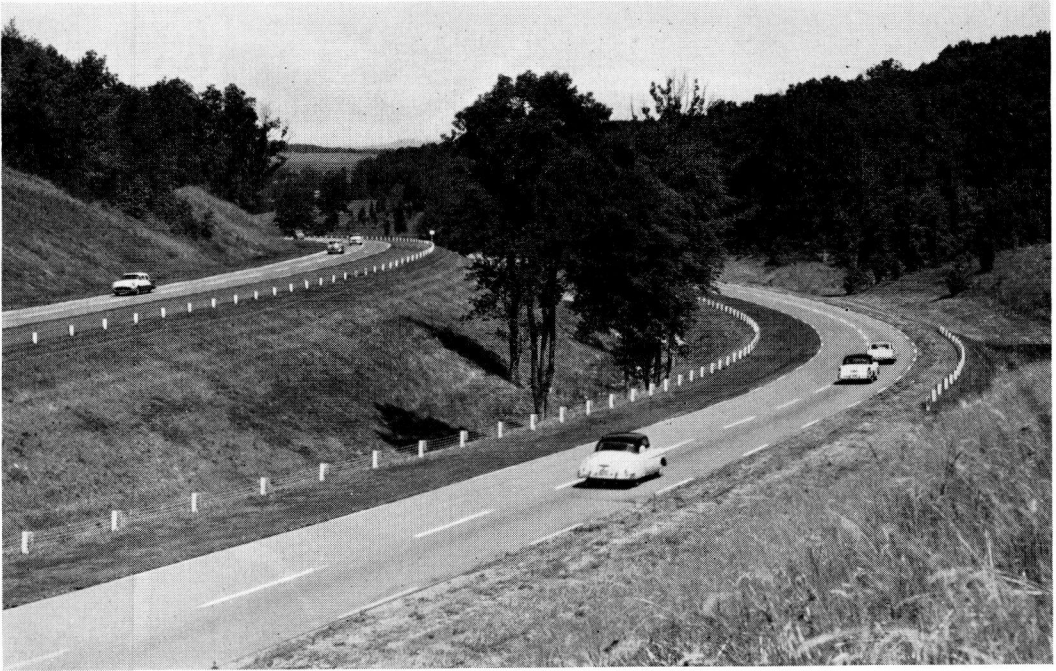


PLATE B

This section of US 240, a part of the National System of Interstate and Defense Highways, Montgomery County, Md., illustrates the effective working partnership made possible by the Federal-aid program.

should not be applied for. The Supreme Court of Alabama denied an injunction to enjoin the highway department from expending State funds on a new State highway which would bypass the city in which the complainants owned property, saying that the highway director exercises an administrative function which, when free from fraud and corruption cannot be reviewed by the courts. It was asserted in this case that the construction, being paid for entirely out of State funds without Federal aid, depleted the State's funds needed for the matching of Federal-aid apportionments. The court said, however, that the record showed that there were sufficient State funds to match Federal aid.⁹⁶

SPECIFIC AREAS OF COOPERATION

Ordinarily all of the general authority relating to highways which is conferred upon a State highway department by the State legislature would apply to Federal aid as well as other highways within the

State. It should therefore be borne in mind that the following discussion of statutory authority is based solely upon a compilation of those statutes which specifically refer to Federal-aid highways and only represents those aspects of Federal-aid construction concerning which some States have seen fit to enact specific legislation. No doubt the State highway departments of many States have adequate authority to cooperate with the Federal Government with respect to the same subjects but if that authority is contained either in a statute conferring general authority to cooperate with the Federal Government, or in a statute referring to the same subject but without specifically mentioning Federal aid it has not been included in the following discussion.

Selection and Classification of Federal-Aid Highways

Before any projects are approved in any State, such State, through its State highway department, shall select or designate a system of highways not to exceed 7 per centum of the total highway mileage of such State

⁹⁶ Prueett v. Las Vegas, Inc., 261 Ala. 557, 74 So. 2d 807 (1954).

as shown by the records of the State highway department at the time of the passage of this Act ⁹⁷

This provision established the so-called seven percent system of Federal-aid primary highways, however, subsequent amendments to the Federal law have expanded this mileage limitation

The present Federal law provides that the Federal-aid primary system in any State shall not exceed seven percent of the total highway mileage of that State exclusive of mileage within national forests, Indian or other Federal reservations and within urban areas, as shown by the records of the State highway department on November 9, 1921, and whenever any State has made provision for the completion and maintenance of 90 percent of the system, it is authorized, through its State highway department, by and with the approval of the Secretary of Commerce, to increase the mileage by an amount equal to not more than one percent of the total mileage of the State ⁹⁸ All highways or routes included in the Interstate System as finally approved are included in the Federal-aid primary system without regard to the mileage limitation ⁹⁹

State statutes relative to the selection and designation of Federal-aid primary highways appear in many different forms. In Illinois, the language of the statute authorizing the Department of Public Works and Buildings to select the increased mileage on the so-called seven percent system follows that of the Federal law very closely ¹⁰⁰ Whereas, North Carolina has a very general statute making it the duty of the State highway commission to, where possible, cooperate with the State highway commissions of other States and with the Federal Government in the correlation of roads so as to form a system of intercounty, interstate and national highways,¹⁰¹ and New Hampshire authorizes the Commissioner of Public Works and Highways to act for the State or any of its political subdivisions in conjunction with the representatives of the Federal Government in

all matters relating to the location and construction of highways to be built with Federal aid ¹⁰²

In some States, the authority to locate and designate State highways specifically includes highways constructed with Federal funds.¹⁰³ In Nebraska, the Department of Roads and Irrigation, with the written advice of the State highway commission and the consent of the Governor, is authorized to redesignate, relocate, redetermine or re-create the State highway system, in a statute which specifies various factors to be considered in taking such action ¹⁰⁴ One of these factors is the desirability of providing an integrated system to serve interstate travel, the national defense and the general welfare of the people of the State ¹⁰⁵ A North Dakota law provides that in the selection and designation of highways, due consideration shall be given to Federal-aid roads and where practical and justifiable, be included in the highway system ¹⁰⁶

Some State highway departments are specifically authorized to reroute portions of, or make changes in, the State highway system when necessary to meet Federal-aid requirements ¹⁰⁷ The Georgia State Highway Board is given the same authority to relocate rural post roads as they have for any roads on the State highway system, subject however to the approval of the proper Federal authorities,¹⁰⁸ and the Wisconsin state highway commission is directed to plan, select, lay out, add to, decrease, revise, construct, reconstruct, improve and maintain or arrange for the maintenance of all systems of Federal-aid roads ¹⁰⁹

In Colorado, Federal-aid primary roads and Federal-aid secondary roads may be added to or deleted from the State highway system according to need as determined by the State highway department, however, deletions from the Federal-aid secondary

¹⁰² N H REV STATS ANN, §239 4

¹⁰³ ARK STATS 1947, §76 522, FLA STATS 1957, §335 02, NEV REV STATS, §408 285, TENN CODE ANN §54 502, UTAH CODE ANN 1953, §27-6-1, VT STATS 1947, §4954

¹⁰⁴ REV STATS OF NEB 1943, §39-1309(2)

¹⁰⁵ *Id.*, §39-1309(2)(c)-(h)

¹⁰⁶ N D REV CODE OF 1943, §24-0402

¹⁰⁷ CODE OF ALA 1940, tit 23, §30, GEN STATS OF KAN, §68 406, LA REV STATS 1950, §48 191, N MEX STATS 1953, §55 3 12, CODE OF LAWS OF S C 1952, §33 106

¹⁰⁸ CODE OF GA ANN, §95 2216

¹⁰⁹ WIS STATS 1957, §84 01(17)

⁹⁷ Federal Highway Act of 1921, §6, 32 Stat 212

⁹⁸ 23 USC 103(h)

⁹⁹ 23 USC 103(d)

¹⁰⁰ SMITH-HURD ILL ANN STATS, ch 121, §258

¹⁰¹ GEN STATS OF N C, §136-35



PLATE C

Partial cloverleaf interchange where Virginia Route 7, a Federal-aid primary highway crosses over Shirley Highway, an Interstate System highway, is a good illustration of application of the Federal-aid principle.

system must be mutually decided upon by the Federal Government, the State and the affected county or counties.¹¹⁰

Highway aid under the Federal law is not dependent on a highway's classification within any particular system as established by a State, but rather upon the approval of the project by the Federal authorities as one entitled to such aid. Some States have, however, provided for certain correlations between the State and Federal classifications. A South Dakota provision defines the three Federal-aid systems (Interstate, Federal-aid primary and Federal-aid secondary) and provides that:

To further clarify the relation of the administrative and Federal-aid systems as defined in this Act, be it known that any of the Federal-aid systems may be coexistent with any of the administrative systems.¹¹¹

The Illinois law provides that all Federal-aid roads are included in the system of State highways and that the State primary

system be coextensive with the Federal-aid system and the secondary system be coextensive with the Federal-aid secondary system.¹¹²

In other States, various Federal-aid roads are specifically classified as State highways. The Colorado State highway system includes the Federal-aid primary roads, the Federal-aid secondary roads and the interstate system, including extensions within urban areas.¹¹³ The Florida primary road system includes (a) arterial highways which are roads designated Federal interstate highways; (b) other roads connecting urban areas and following a continuous and reasonably direct route between such areas, and municipal connecting links of such roads; and (c) other primary roads which include all Federal numbered highways not designated as arterial highways.¹¹⁴ Indiana provides that roads designated as State highways under a prior act providing

¹¹⁰ COLO. REV. STATS. 1953, §120-13-1.

¹¹¹ S.D. LAWS, 1955, ch. 106.

¹¹² SMITH-HURD ILL. ANN. STATS., ch. 121, §§292,352.

¹¹³ COLO. REV. STATS. 1953, §120-13-1.

¹¹⁴ FLA. STATS. 1957, §335.04.

for cooperation with the Federal Government in the construction of rural post roads are State highways¹¹⁵ All roads approved for Federal aid in Michigan are trunk line highways¹¹⁶ In Mississippi, highways on the Federal-aid primary system are designated as State highways¹¹⁷ Montana law specifically authorizes the State highway commission to designate as State highways public roads which are approved Federal-aid routes and eligible for Federal aid, even though they are not located entirely and continuously within the boundaries of the State provided that the portion outside the State is necessary because of natural geographical or physical conditions which make the construction of the highway within the State impossible or impracticable and that the portion outside the State does not connect with and is not a part of the State highway system of the adjoining State.¹¹⁸

Public Hearings—The Federal highway law provides that:

Any State highway department which submits plans for a Federal-aid highway project involving the bypassing 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 effects of such a location Any State highway 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 location of such highway.¹¹⁹

The Federal provision further requires that when such hearings have been held the State highway department must submit a copy of the transcript to the Secretary.¹²⁰

With reference to Interstate System projects in rural areas the Federal law requires only that persons (through or contiguous

to) whose property the highway will pass, be given the opportunity to express any objections they may have to the proposed Interstate System highway project But with reference to Federal-aid highway projects involving the bypassing or going through any city, town or village, either incorporated or unincorporated, the Federal law requires that the State highway department have or afford the opportunity to have public hearings and also that the department consider the economic effect of the proposed location.

In two States which do not have specific State statutes requiring public hearings, recent cases have arisen challenging the adequacy of public hearings which were held with reference to Federal-aid highway projects.

In an action brought in New York to set aside a public hearing by the State Department of Public Works concerning the location of a Federal-aid highway, the court said that the spirit of the Federal statute and regulations and of New York's statutory acceptance and implementation is that a fair opportunity should be given citizens to express their view on the proposed road location, and the department has no duty to make a demonstration of engineering and other studies of alternative road route possibilities under the Federal statute or under any statute or controlling State regulation.¹²¹

The Delaware case¹²² concerned hearings on the location of an Interstate System project through a municipality Municipal consent to the project was required under the Delaware law and it had been obtained from the city council The court found that the department had not acted arbitrarily or capriciously in the selection and approval of the project and the fact that the hearings were presided over by a private citizen rather than an officer of the State highway department did not violate any constitutional rights of the objecting property owner

Most State statutes¹²³ concerning public

¹¹⁵ BURNS' IND STATS ANN, §36-107

¹¹⁶ MICH STATS ANN, §9 931

¹¹⁷ MISS CODE 1942, §8021

¹¹⁸ REV CODES OF MONT 1947, §32 1623

¹¹⁹ 23 U S C 128(a)

¹²⁰ 23 U S C 128(b).

¹²¹ Binghamton Citizens v Frederick, 180 N Y S 2d 913 (1958)

¹²² Piekarski v Smith, 147 A 2d 176 (1958)

¹²³ GEN STATS OF CONN 1958, §13-113, GEN STATS OF KAN 1949, §68-406, MICH STATS ANN, §9 434; N H REV STATS

hearings and the various circumstances under which they are required, are geared to State highway classifications rather than to Federal-aid systems and are considered in detail in the Highway Research Board report on highway system classification¹²⁴

An example is found in Idaho of a detailed statute concerning the determination of highways for the State highway system and the factors to be considered along with the requirements for public hearings¹²⁵ The Idaho board of highway directors is required to consider the relative importance of each highway to cities and villages, existing business, industry and enterprises, and to development of cities and villages, natural resources, industry and agriculture and is to be guided by statistics on existing and projected traffic volumes The board must also consider the safety and convenience of highway-users, the common welfare of the people of the State, and of cities and villages within the State and the financial capacity of the State In making such determination the board must, before it can abandon, relocate, or replace by a new road any highway serving or traversing any city or village, or the area in which such city or village is located, specifically find and determine that the benefits to the State of Idaho are greater than the economic loss and damage to the city or village affected No highway serving or traversing any city or village can be abandoned, relocated, or replaced by a new road serving the area in which such city or village is located without the board first holding a public hearing in such city or village

The Texas State highway commission is authorized to lay out State highways with controlled access inside or outside incorporated cities, towns and villages, including Home Rule Cities; provided that in the case of any project involving the bypassing of or going through any county, city, town or village, the commission must afford the opportunity for not less than one public

hearing in the locality before an authorized representative of the State highway commission, at which persons interested in the development of the project shall have the opportunity for attendance, discussion and inspection of the design and schematic layout presented and filed with the local governing body at least seven days before the public hearing.¹²⁶

Acquisition of Land

Each State's statutes and procedures relative to the acquisition of land generally apply to the construction of Federal-aid highways, however, statutes specifically referring to the State or local authority which is empowered to acquire property necessary for Federal-aid construction are found in a few States

In Illinois, whenever the making of any part of a proposed improvement, or the locating of a route, or the obtaining of road building materials for Federal-aid work requires that private property be taken or damaged, the Department of Public Works and Buildings has the right to purchase the necessary land from the owner or if compensation cannot be agreed upon, to have such compensation ascertained and to acquire and pay for such property in the same manner, as near as may be, as provided for in the eminent domain law, provided however that the department is not required in any case to furnish bond¹²⁷

The Commissioner of Highways and Public Works of Tennessee or any county is authorized to acquire by eminent domain such interest and title in land as the commissioner may deem desirable or as may be necessary in order to secure Federal aid in the construction or reconstruction of any road, highway, freeway or parkway¹²⁸ The commissioner is authorized to take over and improve, as a State highway, any road selected for Federal aid and if the county authorities of the county through which such a road is designated do not act immediately upon a request of the commissioner for the procurement and furnishing

ANN. §§233 5, 233 10, GEN. STATS. OF N. C., §§136 47, 136 55, BALDWIN'S OHIO REV. CODE, §§511 01, S. D. LAWS 1957, ch 123, UTAH CODE ANN 1953, §27 2-4, VT. STATS 1947, §4980, CODE OF VA 1950, §33 17, REV. CODE OF WASH., §§36 81 070, 36 81 080, 47 52 072, 47 52 130, 47 52 160, WIS. STATS 1957, §§84 02(3), 84 025(3)

¹²⁴ Highway System Classification—An Analysis, Part 1 Highway Research Board Special Report 42

¹²⁵ IDAHO CODE, §40 121

¹²⁶ VERNON'S TEXAS CIV. STATS 1948, art 6674w-1

¹²⁷ SMITH-HURD ILL. ANN. STATS., ch 121, §§81, 263

¹²⁸ TENN. CODE ANN., §54-306



PLATE D

US 70, a Federal-aid primary highway, between Old Fort and Black Mountain, N.C.

of rights-of-way, the commissioner is expressly authorized to condemn by eminent domain all rights-of-way and road materials found necessary or advisable to be used by him.¹²⁹

For the purpose of Federal-aid highway construction, a town or road district may be authorized to furnish rights-of-way within its jurisdiction. Where the State of Illinois requires right-of-way for a Federal-aid road within a town or road district, such town or road district acting through its highway commissioner is authorized to take whatever steps may be necessary in connection with such roads and the highway commissioner is empowered to pay for such rights-of-way from any available town or road district highway funds.¹³⁰ Cities and towns in Montana are authorized to acquire rights-of-way for Federal-aid highways.¹³¹ In Oklahoma, a statement of acquisition policy provides that for the construction of all Federal-aid urban projects local units of government shall furnish all necessary rights-of-way, clear of all obstructions, without cost to the State and

shall further agree to protect the State from any liability resulting from such construction.¹³²

A California statute authorizes agreements between the State highway department and counties or cities for the acquisition of property for construction, improvement and maintenance of any Federal-aid highway, and further provides that when the department is authorized by such written agreement, it may acquire for the county or city any real property within the State, required for such highway which is not in the State system.¹³³

With specific reference to the provisions of the 1944 Act, as amended by the 1956 Act,¹³⁴ Indiana established a "Highway Rights-of-way and Construction Revolving Fund" to receive advances made by the Federal Government to enable the State highway department to make payments for acquisition of rights-of-way and for construction as it progresses. Disbursements may be made solely upon vouchers approved by the State highway department for rights-of-way which have been or are being

¹²⁹ TENN. CODE ANN., §54-510.

¹³⁰ SMITH-HURD ILL. ANN. STATS., ch. 121, §81.

¹³¹ REV. CODES OF MONT. 1947, §11-1023.

¹³² OKLA. STATS., tit. 69, §46.4(c).

¹³³ DEERING'S CALIF. CODES, Streets and Highways, §822.5.

¹³⁴ 23 U.S.C. 124.

acquired, and for construction which has been actually performed and approved by the Federal Government. The State and the State highway department are authorized to accept the provisions of the 1944 Act as amended, or any other act of Congress, or any rule, regulation, order or finding made pursuant thereto including future acts, which authorize such advancements of funds, and the department can make contracts and do such acts and make such rules, orders and findings as may be necessary to secure such advances.¹³⁵

Contracts

Certain aspects of the State highway department's duties with regard to contracts for the construction of Federal-aid highways, and various provisions of such contracts are specifically mentioned in some State statutes.

Such provisions relate to public advertisement for bids,¹³⁶ delay in the awarding of a contract,¹³⁷ stipulations in the contract with regard to forfeiture to the State when persons are employed on the project in violation of labor, wages, hours and condition of employment specifications,¹³⁸ and the inapplicability of State provisions which, if applied to contracts for the construction of

Federal-aid highways would violate Federal authority.¹³⁹

In Montana, all contracts for work on State highways where Federal or State funds are involved must, when applicable, contain the prevailing rates of wages as set by collective bargaining in effect in the areas covered by highway labor agreements.¹⁴⁰

Highway Research

Under the provisions of the Federal law, the Secretary of Commerce is authorized to deduct from all sums authorized to be appropriated so much (not to exceed 3½ percent thereof) as he may deem necessary for administering the Act and for carrying on authorized highway research.¹⁴¹ The Secretary is authorized in his discretion to engage in research on all phases of highway construction, modernization, development, design, maintenance, safety, financing, and traffic conditions, including the effect thereon of State laws, and to test, develop or assist in the testing and developing of any material, invention, patented article, or process. This authority may be carried on either independently, or in cooperation with any other branch of the Government, State agency, authority, association, institution, corporation (profit or nonprofit), or any other organization or person.¹⁴² This highway research program includes studies of economic highway geometrics, structures, and desirable weight and size standards for vehicles using the public highways and of the feasibility of uniformity in State regulations with respect to such standards.¹⁴³

With the approval of the Secretary, not

¹³⁵ BURNS' IND STATS ANN., §§36 187, 36-188

¹³⁶ Work let by the department which involves Federal and State funds shall be done through contract let by the department after advertising for sealed bids for not less than twenty days by publication of notice thereof once a week for three consecutive weeks in the official county newspaper designated by the county board of the county where the work is to be done, and in such additional newspapers as may appear necessary to the department in order to give notice of the receiving of bids. Such advertisement shall state the place where the plans and specifications of the work may be inspected and shall designate the time when the bids shall be filed and opened. REV STATS OF NEB 1943, §§39-1348, 39-1349. When the approved plans and specifications for any Federal-aid farm-to-market road project are filed with the State highway commission, it shall, if the estimated cost exceeds one thousand dollars, proceed to advertise for bids and make recommended award of contract. The recommended award shall be submitted to the board of supervisors of the county in which said project is located. Upon receiving the concurrence of the county board, the State highway commission shall take final action awarding said contract. CODE OF IOWA, 1958, §310 14.

¹³⁷ When the State highway commission has elected to accept a bid and to award a contract and has selected the bidder and finds that the contract cannot be immediately awarded, because the Bureau of Public Roads has not yet approved or for some other reason, it may authorize the highway engineer to award the contract as soon as the situation is remedied. ORE REV STATS., §366 405.

¹³⁸ The California department may insert in contract specifications for Federal-aid projects a stipulation that the contractor shall forfeit to the State \$10 for each calendar day or portion thereof for each person who is employed on the project in violation of labor, wages, hours, and conditions of employment specifications. Specifications may include all special provisions required by Federal rules and regulations whether or not they tend to increase the cost of the work. DEERING'S CALIF CODES, Sts & Hwys §827.

¹³⁹ Contracts let by the State highway commission for construction of State highways or bridges shall contain conditions that all unskilled laborers employed on such work be residents of the county or counties in which such highway or bridge is being constructed, if available, provided that if this provision shall be in violation of any regulation of the Bureau of Public Roads or other Federal authority then it may be eliminated from any contract, the contract price of which is payable in whole or in part with Federal funds. BURNS' IND STATS. ANN., §36-114. Preference given to contractors who are residents of North Dakota does not apply to Federal-aid projects. N D REV CODE OF 1943, §24-0235. Provision relating to construction contract and purchases shall not affect the dealings of the South Carolina State Highway Department with the Federal Government code of S C 1952, §33-222 4.

¹⁴⁰ REV CODES OF MONT 1947, §32-1608

¹⁴¹ 23 USC 104(a).

¹⁴² 23 USC 307(a).

¹⁴³ 23 USC 307(b).

to exceed one and one-half percent of a State's apportionment is available. for engineering and economic surveys and investigations, for the planning of future highway programs and their financing, for studies of the economic, safety and convenience of highway usage and the desirable regulation and equitable taxation thereof, and for research necessary in connection with the planning, design, construction, and maintenance of highways and highway systems, and the regulation and the taxation of their use¹⁴⁴

Many State laws contain provisions authorizing the State highway departments to cooperate with the Federal Government in research activities relative to public highways. Some such statutes are restricted to traffic studies¹⁴⁵ or weight tests¹⁴⁶. However, most of them authorize highway research in general and provide for cooperation between the State highway department and the Federal Government,¹⁴⁷ or with Federal agencies, research organizations, governmental subdivisions of the State and with other States and associations formed by them¹⁴⁸.

Following is an example of a comprehensive highway research statute:

The State Highway Commission shall be authorized to cooperate with any other state, group of states, federal agency, or nationally recognized research organization and share in the expense of setting up, maintaining and operating research projects including test roads at any place within or without the State of South Dakota for the development of facts and criteria capable of being used in the design and construction of highways, highway surfaces and highway structures, and for the establishment of an engineering basis for the enactment of adequate and equitable legislation governing the allowable loading and method of taxation, to provide information as to types and capacities of highway vehicles which are practicable to be used in highway transportation, to procure special information concerning engineering problems, costs of maintaining highways at different capacities, the necessity for increased tax-

tion to cover costs of highway capacities, and, to produce reliable information as to how to realize the most efficient and economical vehicle capacities consistent with optimum over all highway transportation¹⁴⁹

Railway-Highway Crossings

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 Federal-aid sums apportioned to the States. However, not more than fifty percent of the right-of-way and property damage costs paid from public funds on any such project may be paid from Federal-aid highway apportionments to the States, and not more than ten percent of all the sums apportioned for all Federal-aid systems for any fiscal year may be used for this purpose¹⁵⁰.

The Secretary of Commerce is authorized to classify the various types of projects involved in the elimination of hazards of railway-highway crossings and to establish for each such classification a percentage of the cost of construction deemed to represent the net benefit to the railroad for the purpose of determining the railroad's share of the cost of construction. This percentage shall in no case exceed ten percent.¹⁵¹

The following Kentucky enactment is an example of a detailed handling of the subject:

The entire construction costs of projects for the elimination of hazards of railroad-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 railroad grade crossings which may be paid for in whole or in part from State funds, including, but not limited to, the cost of preparing the plans and specifications and supervising the improvement, the acquisition of necessary property, the

¹⁴⁴ 23 U.S.C. 307(c)

¹⁴⁵ ARIZ. REV. STATS., §§28-264(7), MISS. CODE 1942, §8040

¹⁴⁶ REV. CODES OF MONT. 1947, §32-1022

¹⁴⁷ COLO. REV. STATS. 1953, §120-3-24, CODE OF LAWS OF S. C. 1952, §33-71(5)

¹⁴⁸ BURNS' IND. STATS. ANN., §36-186, SMITH-HURD ILL. ANN. STATS., ch. 120, §§425(10), 426½(13), 427, LA. REV. STATS. 1950, §48 216, OKLA. STATS. 1951, tit. 69, §30 3, CODE OF VA. 1950, §33-132

¹⁴⁹ S. D. LAWS, 1955, ch. 105. A similarly comprehensive statute is found in Nebraska REV. STATS. OF NEB. 1943, §§39-1317 to 39-1319

¹⁵⁰ 23 U.S.C. 120(d), 130(a)

¹⁵¹ 23 U.S.C. 130(b). Classifications of railway-highway projects and the contribution of railroads under each type of project were originally established under Section 5 of the 1944 Federal-Aid Highway Act; therefore some State statutes specifically refer to that Act.

construction of approaches, drainage structures, roadways and pavements, accommodations for public utilities, and damages paid to abutting property owners, shall be allocated between the railroad involved, and the governmental unit or units involved in the same ratio as the net benefits received by such railroad from the project bears to the net benefit accruing to the public using the highway, and in no case shall the net benefit to any railroad or railroads be deemed to be more than 10% of the total benefit resulting from the project. The Department of Highways shall be responsible for determining the proportion of the benefits derived by the railroad from the project, and shall fix standards for the determining of said benefits which shall be consistent with the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal-Aid Highway Act of 1944. The cost of maintenance of all structures for the elimination of railroad grade crossings, and of installations for the protection of existing grade crossings, constructed or installed under this act, shall be borne by the governmental unit or units constructing them. Before any State funds shall be expended for any project constructed under this Act, a contract shall be entered into between the railroad and the governmental unit or units involved setting forth the duties of each as to construction and maintenance of the project.¹⁵²

In Indiana, the highway commission is authorized to cooperate with the Federal Government in the construction of projects for the elimination of hazards at crossings under the Federal-Aid Highway Act of 1944 and to enter into agreements with the Federal Government and railroad companies affected for the apportionment and payment of costs as provided in that Act, notwithstanding the provisions of any other State law governing the apportionment of costs between the State and the railroad companies.¹⁵³

An Ohio statute authorizing the Director of Highways to proceed with grade separation and elimination projects on which Federal-aid highway funds are used provides that unless otherwise agreed upon, costs of the improvements to be borne by the railroad shall not be in excess of the amount or percentage set forth in an act of Congress authorizing or appropriating Federal-aid

highway funds, or other Federal funds for highway purposes, which are used to finance the cost of the improvement in whole or in part.¹⁵⁴

A 1957 California statute establishing a new formula for the apportionment of costs in Public Utility Commission grade separation cases expressly provides that it shall not be applicable where Federal funds are used. On such projects the apportionments shall be in accordance with Federal law and the rules, regulations and orders of the Federal agency administering the law where applicable.¹⁵⁵

In Maryland, the statute authorizing the State roads commission to eliminate railroad-highway crossing hazards with funds received from the United States provides that this authority shall in no way be construed as a limitation on the power or authority of the commission to require the railroad to contribute its present statutory apportionment based on the difference between the total cost of the project and the amount received from the United States Government or any agency thereof.¹⁵⁶

Many State statutes relating to the elimination of hazards at railway-highway crossings and the allocation of costs therefor do not specifically mention Federal aid and have therefore not been included in this paper. However, in addition to those statutes previously referred to, there are a few statutes relating to specific aspects of railway-highway crossing projects when Federal funds are involved. Such provisions include authority for the highway department to adopt a program for the expenditure of Federal funds available for such projects,¹⁵⁷ authority to maintain all overpasses even though constructed or reconstructed wholly or in part with Federal

¹⁵⁴ BALDWIN'S OHIO REV CODE, §5523 20 Ohio Law, in the chapter entitled "Federal Cooperation," also authorizes the Director of Highways to accept Federal allotments for or in connection with railway-highway grade separations and provides that the division of the expense, remaining after application of Federal funds to the cost, between the State or any political subdivision thereof and the railroad involved, unless otherwise agreed upon, shall be in accordance with existing laws applying to municipal, county or State highway grade separation projects, *supra*, §5531 03. This section also contains specific provision with regard to expediting such projects and authorizes political subdivisions and municipal corporations to cooperate with the Department of Highways in such undertakings.

¹⁵⁵ DEERING'S CALIF CODES, Public Utility Code, §1202 5

¹⁵⁶ ANN CODE OF MD 1957, art 89B, §74

¹⁵⁷ FLA STAT 1957, §338 21

¹⁵² KY LAWS 1958, ch 78

¹⁵³ BURNS' IND STAT 1958, §36 183



PLATE E

US 13, a Federal-aid primary highway, in Norfolk, Va. Note the effective use of landscaping along the borders and in the median.

funds;¹⁵⁸ and specific authority to construct grade separations at intersections of any interstate highways with public highways and railroads.¹⁵⁹ In Pennsylvania the department may assume and pay all or any part of the property damages for land or building thereon that is taken, injured or destroyed in the elimination of a grade crossing, or in the alteration or abolition of an existing overhead or undergrade crossing on a State highway route within a town or borough where the costs of construction are to be paid by the Federal Government.¹⁶⁰

The question of the nature of the relationship between the States and the Federal Government in Federal-aid construction and the role of each has been discussed in cases concerning projects for the elimination of hazards of railway-highway crossings.

In a 1937 case upholding a contract between the State, city and railroad, for the elimination of railroad crossings with Federal funds, the Court of Appeals of Ohio found that the State had in no way im-

paired its sovereignty by agreeing to the conditions attached to the grant of Federal funds.¹⁶¹

With reference to a 1921 Tennessee statute which imposed upon railroads one-half of the cost of all grade separation projects, the United States Supreme Court held that the State Supreme Court had erred in refusing to consider whether the effect of the Federal-aid highway program and changed economic and transportation conditions would, in 1934, render the statutory imposition arbitrary and unreasonable and therefore unconstitutional as to the special facts in this case.¹⁶²

Federal regulations apply only to Federal-aid projects. In a 1954 Missouri case,¹⁶³ a railroad claimed that the State public utility commission's order requiring the railroad to bear 50 percent of the installation cost and all of the maintenance cost of signalling equipment at hazardous cross-

¹⁶¹ *Warm v. City of Cincinnati*, 57 Ohio App. 43, 11 N.E.2d 281 (1937), involving a grant under the 1935 Federal Emergency Relief Appropriation Act, as amended (15 USCA, §728), which provided that wages and hours of labor be controlled by the President of the United States and that Federal officers inspect the work.

¹⁶² *Nashville, Chattanooga and St. Louis Railway v. Walters*, 294 U.S. 405 (1935).

¹⁶³ *State v. Public Service Commission*, 273 S.W.2d 334 (1954).

¹⁵⁸ CODE OF GA. ANN., §95-1909.

¹⁵⁹ WIS. STATS. 1957, §84.29.

¹⁶⁰ PURDON'S PA. STATS. ANN., tit. 36, §670-307.

ings, was unreasonable and unlawful, and attempted to fortify its position by pointing out that if the State highway commission had elected to apply for Federal aid for the project, no more than 10 percent of the cost could be apportioned to the railroad. The Missouri court rejected the argument and following a much earlier case¹⁶⁴ said that the railroad has no concern with where and how the State will spend funds allocated to it by the Federal Government.

State public utility commissions have broad power to allocate and assess costs in railway-highway crossing improvement or elimination projects and a State highway department's objection to a public utility commission's order, on the ground that the allocation of costs was arbitrarily based on the fact that Federal funds were to be used on the projects, was denied by the Pennsylvania court which held that the allocations were within the commission's general power and that the court could not as a matter of law say that the commission did not consider all factors or that it gave undue weight to the proposed use of Federal funds¹⁶⁵. The court said that in apportioning costs the commission is not limited to any fixed rule but should take all factors into consideration.

COUNTY AND LOCAL COOPERATION

The amount and type of authority conferred upon counties and other political subdivisions of any given State with reference to Federal-aid highways, is dependent upon the governmental structure and the status of Federal-aid highways in the highway classification system of the State.

State statutes concerning local subdivisions and Federal-aid highways refer in many instances to the Federal-aid secondary highway system, however, some States have enacted statutes giving general authority to counties, cities and other political subdivisions to enter into contracts through or with the State highway depart-

ment to enable them to participate in the benefits to be secured from Federal-aid funds for road and street purposes¹⁶⁶. Some State highway departments are specifically authorized to negotiate and enter into contracts with the Federal Government and to take the necessary steps to secure such benefits for the counties, cities or political subdivisions¹⁶⁷.

In Michigan, the governing body of a city or village and the State highway commission may enter into contracts to effectuate joint participation in the cost of opening, widening and improving, including construction and reconstruction, of State trunk line highways and when such a project involves Federal highway funds, the portion of the cost to be paid by the city or village is the percentage of participation required by law at the time the contract was entered into applied to the net cost of the project after deducting the Federal contribution.¹⁶⁸

Statutes in various States authorize the State highway department to construct and improve Federal-aid highways which are not on the State highway system provided: the county or municipality having jurisdiction shall by written agreement with the commission, reassume jurisdiction upon completion of construction or improvement work and agree to maintain it thereafter;¹⁶⁹ the county furnishes the right-of-way and agrees to pay its share of the cost as determined by the department and to pay the cost of all subsequent maintenance work;¹⁷⁰ that State funds on such roads are limited to cost of construction and engineering, overhead and other costs on which the

¹⁶⁶ COLO REV STATS 1953, §120-13-16, BURNS' IND STATS ANN. §181, GEN STATS OF KAN 1949, §68-402b, ANN CODE OF MD 1957, art. 89B, §76, MINN STATS 1957, §161.03, subd 26, N D REV CODE OF 1943, §24-0518. The county court of each county in Oregon is authorized to cooperate with the State and the United States in the improvement of any public road within the county ORE REV STATS, §368-805. In South Carolina such authority is specifically conferred upon the Orangeburg County Highway Commission CODE OF LAWS OF S C 1952, §33-1841.

¹⁶⁷ FLA STATS 1957, §339-12, BURNS' IND STATS ANN., §86-2912, GEN STATS OF KAN 1949, §68-402b, ANN CODE OF MD 1957, art. 89B, §76; REV STATS OF NEB 1943, §39-1306, N H REV STATS ANN., §239-4. In Colorado, whenever any county or group of counties undertake the construction of any highway project involving Federal funds, it is the duty of the department of highways to inspect at such times as it considers necessary for the purpose of determining that such project is being built to the prescribed standard COLO REV STATS, §120-13-22. Similar provisions are found with respect to city, city and county or incorporated towns in Colorado *Supra*, §120-13-33.

¹⁶⁸ MICH STATS ANN., §9-1097(1d).

¹⁶⁹ BURNS' IND STATS ANN., §36-181.

¹⁶⁴ Chicago, Rock Island and Pacific Railway Co v Public Service Commission, 315 Mo 1108, 287 S W 617 (1926).

¹⁶⁵ Department of Highways v Pennsylvania Public Utility Commission, 179 Pa Super 376, 116 A 2d 855 (1955). The court pointed out that this case did not raise the question whether the Commission was bound to consider the use of Federal funds nor whether the commission is bound by any alleged restrictions where Federal funds are used.

¹⁷⁰ CODE OF LAWS OF S C 1952, §§33-76 to 33-78, WYO COMP STATS 1945, §48-109.

application of Federal funds is prohibited or impractical¹⁷¹

Cities, towns and certain counties in Virginia are authorized to comply with present and future Federal-Aid Road Acts and to enter into contracts with the United States with reference to the survey, construction, improvement and maintenance of roads, streets and highways under their control. They are also specifically authorized to cooperate with the State highway commission in connection with any such Federal-aid project and by appropriate agreement to authorize the commission to act on their behalf in any dealings necessary with the United States and to carry out such survey, construction, improvement or maintenance work on such projects either with or without participation therein by the city, town or county. Whenever the commission is so authorized by any city, town or county, it may do all things contemplated and provided for by present or future Federal-Aid Road Acts and the agreements made with such city, town or county¹⁷²

Specific authority granted to municipalities to participate in Federal-aid road construction is found in some States. Cities and towns in Rhode Island may propose the construction or reconstruction of streets and highways within their municipal boundaries, as Federal-aid projects and when the director of public works approves he will have the appropriate forms prepared for the Bureau of Public Roads¹⁷³. In Montana, the governing bodies of cities and towns may enter into agreements jointly or independently with the State highway commission and Federal agencies.¹⁷⁴ Any municipality in North Dakota may participate in the financing, planning, construction and acquisition of right-of-way of a Federal-aid highway which is routed through such municipality, in the same manner and to the same extent as a county is permitted to contribute.¹⁷⁵

In Illinois, when the State alters or widens an existing road, or lays out a new

road in any town or road district in connection with the construction of Federal-aid roads and requires right-of-way for that purpose, the town or road district, acting through its highway commissioner is authorized to take whatever steps may be necessary to aid the State¹⁷⁶

The director of highways in Ohio is authorized, upon request and approval of the legislative authority of a city or village, to maintain, establish, construct and improve State highways within such city or village. However, if such highway is a Federal-aid primary or interstate highway, he is also authorized to request such consent from the legislative authority of the city and if it is refused or not received within a specified time, he can proceed with such improvement after complying with statutory notice requirements, with or without such consent.¹⁷⁷

The Florida State highway commission is specifically authorized to maintain control and supervision of designated municipal connecting links and feeder roads and to enter into contracts with cities and the Federal Government for that purpose.¹⁷⁸ The Kentucky department of highways may enter into contracts with cities and the Federal Government in order to maintain and repair designated city streets¹⁷⁹. Authority to lay out or alter ways other than State highways in a city or town, provided Federal aid may be secured toward the damages and provided the city or town officials consent, is conferred upon the Massachusetts department of public works¹⁸⁰. In order to conform to Federal-aid requirements the Indiana State highway department is authorized to improve State highways on city or town streets, to the width required by the Federal Government,¹⁸¹ and in Kansas, the county engineer and board of county commissioners, in conjunction with the governing body of the city, are authorized to change the route of a road or street connecting county and township high-

¹⁷¹ VERNON'S TEX CIV STATS 1948, art 6674d-1

¹⁷² CODE OF VA 1950, §33-131

¹⁷³ GEN LAWS OF R I 1956, §§24-4 1 to 24-4-8

¹⁷⁴ REV CODES OF MONT 1947, §11-1023

¹⁷⁵ N D REV CODE OF 1943, §§24-0404, 24-0405

¹⁷⁶ SMITH-HURD ILL ANN STATS, ch 121, §81

¹⁷⁷ BALDWIN'S OHIO REV CODE, §5521 01

¹⁷⁸ FLA STATS 1957, §335 05

¹⁷⁹ KY REV STATS, §§177 042, 177 043

¹⁸⁰ ANN LAWS OF MASS, ch 81, §29A

¹⁸¹ BURNS' IND STATS ANN, §§36-129, 36 2921

ways at the city limits, in order to conform to Federal-aid requirements¹⁸²

Federal-Aid Secondary Roads

The difficulties encountered in attempting to find a pattern in the State statutory provisions relating to Federal-aid highways are compounded in an attempt to extract those provisions relating specifically to Federal-aid secondary highways. In addition to all of the statutory provisions which necessarily apply to Federal-aid construction without specifically using the words "Federal-aid," any State's method of accomplishing Federal-aid secondary highway construction is largely dependent upon the governmental structure of the particular State and the financial resources of the counties and other political subdivisions, as well as the method of highway classification within the State.

The present Federal-aid secondary system has evolved through a series of changes in the Federal statutes since the provisions for secondary or inter-county highways in the Federal-Aid Highway Act of 1921,¹⁸³ and statutes enacted from time to time in the various States reflect the language of the Federal statutes¹⁸⁴ as of the time the State law was enacted. The name Federal-aid secondary highway system first appeared in the Federal-Aid Highway Act of 1950.¹⁸⁵

In addition to those statutes enacted by the States for the purpose of providing matching funds for Federal-aid secondary highway construction, some States specifically authorize cooperation between the State highway department and counties or other political subdivisions in order to secure the benefits of Federal aid for secondary highways.¹⁸⁶ The Federal law requires that the Federal-aid secondary system be selected by the State highway departments and the appropriate local road

officials in cooperation with each other subject to the approval of the Secretary of Commerce.¹⁸⁷ Many States have enacted statutes specifically authorizing the State highway department to cooperate with counties or other local road officials in the selection of Federal-aid secondary highways.¹⁸⁸ Municipal officers in Maine are authorized to cooperate with the State highway commission and the Bureau of Public Roads in the designation and construction of such parts of any Federal-aid secondary roads that are or will be within their respective jurisdictions.¹⁸⁹

In Colorado, the establishment of a secondary road unit suitably organized to discharge the duties required in conformity with the 1950 Federal-Aid Highway Act, and any other subsequent act of Congress, is authorized in order to get the benefit of Federal aid for secondary roads.¹⁹⁰ In other States, special divisions have been created within the State highway department and given jurisdiction over rural road systems.¹⁹¹

An important factor in the type of legislation a particular State needs for Federal-aid secondary highway construction, is the highway classification of the State. The responsibility for the construction of Federal-aid secondary highways rests ultimately upon the State highway departments.¹⁹² However, in most States the highway classification systems are such that Federal-aid secondary highways may be

¹⁸² 23 U.S.C. 103(c)

¹⁸³ ARIZ. REV. STAT., §18 157D, DEERING'S CALIF. CODES, STS & HWYS CODE, §2211, SMITH HURD ILL. ANN. STAT., ch. 120, §425(8), ch. 121, §§301a, 352, BURNS' IND. STAT. ANN., §36-2920, GEN. STAT. OF KAN. 1949, §68-1703, MISS. CODE 1942, §§8328-07, 8328 08, N.Y. CONSOL. LAWS SERVICE, Highway Law, §84, N.D. REV. CODE OF 1943, §§24-0105, 24 0516, N.D. CODE OF 1939, §§28 0226, 28 0227, TENN. CODE ANN., §54-608, WIS. STAT. 1957, §83 026

¹⁸⁴ REV. STAT. OF ME. 1954, ch. 23, §18

¹⁸⁵ COLO. REV. STAT. 1953, §120 13-5

¹⁸⁶ Alabama—bureau of county aid established as part of State highway department. CODE OF ALA. 1940, tit. 23, §§78(1) to 78(18). Georgia created the Rural Post Roads Division of the State Highway Department in 1937. CODE OF GA. ANN., §§95-2201 to 95-2223. Tennessee authorized the commissioner of highways and public works to create a rural roads division within the department. TENN. CODE ANN., §§54-607 to 54 613

¹⁸⁷ DEERING'S CALIF. CODES, STS & HWYS CODE, §2209, CODE OF GA. ANN., §95 2203, BURNS' IND. STAT. ANN., §36-2920, MICH. STAT. ANN., §§9 831 to 9 836, MISS. CODE 1942, §§8035-10, 8328, REV. STAT. OF NEB. 1943, §39-1306, NEV. REV. STAT., §408 255, N.H. REV. STAT. ANN., §239 4, N.Y. CONSOL. LAWS SERVICE, Highway Law, §84, N.D. REV. CODE OF 1943, §24-0401, BALDWIN'S OHIO REV. CODE, §5531 02, OKLA. STAT. 1951, tit. 68, §669 3, tit. 69, §44, PURDON'S PA. STAT. ANN., tit. 36, §670 1005, CODE OF LAWS OF S.C. 1952, §33 164, TENN. CODE ANN., §§54 611, 54-612, VERNON'S TEX. CIV. STAT. 1948, art. 6674d 1, UTAH CODE ANN. 1953, §27 8-5, WIS. STAT. 1957, §§84 03(1), 84 010 (21), WYO. COMP. STAT. 1945, §18-109

¹⁸² GEN. STAT. OF KAN. 1949, §68 506b

¹⁸³ 42 Stat. 212

¹⁸⁴ Particularly with reference to the 1921, 1944 and 1950 Acts

¹⁸⁵ 64 Stat. 785, §1b

¹⁸⁶ DEERING'S CALIF. CODES, STS & HWYS CODE, §2210, CODE OF GA. ANN., §95-2220, IDAHO CODE, §40 120(14), BURNS' IND. STAT. ANN., §36-181, CODE OF IOWA 1958, §310 2, MISS. CODE 1942, §§8328 09, OKLA. STAT. 1957, tit. 68, §669 3, tit. 69, §44, UTAH CODE ANN. 1953, §27 8-6, WIS. STAT. 1957, §§83 026, 84 01(17)



PLATE F

A Federal-aid secondary highway at Jefferson, Md. Even roads of intermediate design are assisted by the Federal-aid mechanism.

constructed on either the State system or the county system. Therefore, authority with regard to Federal-aid secondary highways which are not on the State highway system is sometimes specifically conferred upon the State highway department.¹⁹³ Statutes providing for State and county cooperation on Federal-aid secondary highways sometimes specify that any such participation on the part of the State highway department on a highway which is not on the State highway system shall not change the status of such highway to that of a State highway.¹⁹⁴

Comprehensive statutes specifically providing for Federal-aid secondary highways are found in States where the legislatures, recognizing that within their States county roads were in greater need of improvement

than State highways, enacted legislation requiring that at least a specified percentage of the funds available for Federal-aid secondary highways be expended for the improvement of county highways insofar as permissible under Federal laws, rules and regulations.¹⁹⁵ Other States have enacted statutes establishing rural road systems on which all Federal-aid secondary funds are to be expended.¹⁹⁶

Responsibility for the maintenance of Federal-aid secondary highways may be placed directly upon the State highway commission;¹⁹⁷ however, it is more frequently placed upon the political subdivision which has jurisdiction over such road at the time maintenance is required,¹⁹⁸

¹⁹³ IDAHO CODE, §§40-120(10), 40-120(14); BURNS' IND. STATS. ANN., §§36-181, 36-2920, 36-2921; N.Y. CONSOL. LAWS SERVICE, Highway Law, §80; N.D. REV. CODE OF 1943, §24-0403; CODE OF LAWS OF S.C. 1952, §§33-76, 33-77, 33-164.

¹⁹⁴ DEERING'S CALIF. CODES, Sts. & Hwys. Code, §2207; MISS. CODE 1942, §8328.09; N.Y. CONSOL. LAWS SERVICE, Highway Law, §81; S.D. CODE OF 1939, §§28.0230-0231.

¹⁹⁵ See declarations of intent, DEERING'S CALIF. CODES, Sts. & Hwys. Code, §2201, and MISS. CODE 1942, §§8035(10), 8328. In Ohio, the director of highways shall not request the Federal Government to reduce the percentage of Federal aid apportioned to the State for Federal-aid secondary or feeder roads. BALDWIN'S OHIO REV. CODE, §5531.02.

¹⁹⁶ IOWA CODE 1958, §§310.1 to 310.36; TENN. CODE ANN., §§54-607 to 54-613.

¹⁹⁷ REV. STATS. OF ME. 1954, ch. 23, §§69, 73.

¹⁹⁸ CODE OF GA. ANN., §95-2218; BURNS' IND. STATS. ANN., §36-181; S.D. CODE OF 1939, §§28.0229, 28.0312.



PLATE G

Rebuilding of a forest highway (part of US 45) in the Upper Peninsula constituted one of the most difficult road building jobs ever undertaken in Michigan. The work was financed with 50 percent Federal-aid funds.

and maintenance agreements are authorized between the local highway officials and the State highway department.¹⁹⁹

Statutes providing for the maintenance of Federal-aid secondary highways are sometimes keyed to the provisions of the Federal legislation and the State highway department is authorized to maintain such highways when the governmental agency or political subdivision having jurisdiction of a Federal-aid secondary highway fails to maintain it.²⁰⁰ Some of these statutes further provide that the funds necessary to perform such maintenance be withheld from a fund which the State holds to the credit of the particular political subdivision which failed to maintain the highway.²⁰¹

Forest Roads

Federal appropriations for forest roads, defined as roads wholly or partly within or adjacent to and serving the national forests, are divided into two classes: (1) forest highways, which include forest roads which are of primary importance to the States, counties or communities within, adjoining, or adjacent to the national forests, and (2) forest development roads and trails which are those forest roads or trails of primary importance for the protection, administration and utilization of the national forests, or where necessary for the use and development of the resources upon which communities within or adjacent to national forests are dependent.²⁰²

The Secretary of Commerce is authorized to enter into construction contracts and such other contracts with a State or civil subdivision thereof as he deems advisable for the construction or maintenance of forest highways.²⁰³ Cooperation of the

¹⁹⁹ SMITH-HURD ILL. ANN. STATS., ch. 121, §301a; BURNS' IND. STATS. ANN., §§36-2920, 36-2921; MICH. STATS. ANN., §9835; REV. CODE OF WASH., §36.75.250.

²⁰⁰ ARK. STATS. 1947, §§76-416 to 76-420, 76-508; DEERING'S CALIF. CODES, Sts. & Hwys. Code, §823.5; Code of Iowa 1958, §310.29; TENN. CODE ANN., §54-613; REV. CODE OF WASH., §36.75.250.

²⁰¹ ARK. STATS. 1947, §417; CODE OF IOWA 1958, §310.29; TENN. CODE ANN., §54.613; REV. CODE OF WASH., §36.75.250. Illinois authorizes the withholding of approval of further Federal-aid secondary projects in such county until such highway has been restored. SMITH-HURD ILL. ANN. STATS., ch. 121, §301a.

²⁰² 23 U.S.C. 101(a).

²⁰³ 23 U.S.C. 204(a).

States, counties, or other local subdivisions may be accepted but shall not be required by the Secretary.²⁰⁴

The Federal-aid provisions for forest highways are unique in that they authorize the Federal Government to contract directly with subdivisions of the States, rather than going through the State highway departments²⁰⁵ Some States have, therefore, enacted statutes specifically authorizing counties to enter into cooperative agreements with the United States for the construction and maintenance of forest highways

Such State provisions authorize county

highway officials to enter into cooperative agreements with the United States for the construction and maintenance of forest roads and trails within their counties, pursuant to the Federal-aid highway acts, upon such terms as may be agreed upon by the county and the United States.²⁰⁶

In Michigan, the State highway department is authorized to take charge of the construction of roads within United States forests provided the United States will reimburse to the extent of fifty percent Counties may participate in financing such roads and are obliged to maintain them as county roads unless such road is designated a trunk line highway.²⁰⁷

²⁰⁴ 23 USC 204(b)

²⁰⁵ In Wyoming, forest roads constructed under the Federal aid acts are specifically excluded from the State highway superintendent's authority over highways WYO COMP STATS 1945, §§48-102, 48-108

²⁰⁶ DEERING'S CALIF CODES, Sts & Hwys, §§1670-1672, N MEX STATS 1953, §§55-3-19, 55-3 20, UTAH CODE ANN 1953, §27-5-4

²⁰⁷ MICH STATS ANN, §§9 851 to 9 854

NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

The extent of any particular State's legal ability to participate in the mammoth task of constructing 41,000 miles of controlled-access highways on the National System of Interstate and Defense Highways cannot, of course, be measured by those statutes which specifically refer to the Interstate System. However, a number of States have enacted statutes with specific reference to the Interstate System and the acceptance of Federal aid for its construction.

GENERAL AUTHORITY

In a few States the legislatures have enacted comprehensive statutes in order to express their intention to participate in the accelerated Federal-aid program for the completion of the National System of Interstate and Defense Highways, and to specifically confer sufficient authority upon their State highway departments to assure the accomplishment of that purpose.²⁰⁸

Such an intention is clearly indicated in the Wisconsin legislation, in which the State legislature assents:

to acts of the United States congress heretofore and hereafter enacted, authorizing development of the national system of interstate highways located wholly or partly within the state of Wisconsin to the full extent that it is necessary or desirable to secure any benefits under such acts and to authorize the appropriate state boards, commissions, departments, and all governing bodies of counties, cities, towns and villages, and especially the state highway commission, to co-operate in the planning, development and construction of the national system of interstate highways that may be proposed for development in Wisconsin, with any agency or department of the government of the United States in which is vested the necessary authority to construct or otherwise develop or aid in the development of such system. Whenever authority

shall exist for the planning and development of a national system of interstate highways of which any portion shall be located in this state, it shall be the duty of the highway commission to make such investigations and studies in co-operation with the appropriate federal agency, and such state boards, commissions, departments and municipalities as shall have interest in such system development, to the extent that shall be desirable and necessary to provide that the state shall secure all advantages that may accrue through such interstate system development and that the interest of municipalities along such system shall be conserved.²⁰⁹

Aside from the comprehensive statutes covering the Interstate System, the specific controlled-access legislation, and Federal-aid statutes which would apply to the Interstate System, some States have statutes relating to specific aspects of the development of the Interstate System.

Such statutes provide for the exclusion of highways on the Interstate System from State mileage limitations,²¹⁰ authorize the State highway department to assume full control and to pay the costs of construction, reconstruction and maintenance of all Interstate System highways in the State,²¹¹ to acquire by purchase, gift or condemnation all rights-of-way necessary for the Interstate System,²¹² or to furnish all rights-of-way and use Federal-aid funds for construction on the Interstate System in all locations except that in cities and towns having over 5,000 population, the city or town must furnish the necessary funds to match the Federal-aid funds.²¹³

ROUTES

The origin of the present National System of Interstate and Defense Highways was in the Federal-Aid Highway Act of 1944, which provided for the designation of

a National System of Interstate Highways so located as to connect by routes, as direct as practicable, the principal metro-

²⁰⁸ The New York statute designating the interstate routes contains detailed authority granted the superintendent of public works with regard to projects on the Interstate System, as does the South Dakota statute designating control areas of the Interstate System. N. Y. CONSOL. LAWS SERVICE, Highway Law, §340 b, S. D. LAWS 1955, ch. 104. Statutes designed to grant sufficient power, control and jurisdiction over Interstate highways to enable the State highway departments to fully comply with the provisions of the Federal-Aid Acts are found in Virginia and Wisconsin. CODE OF VA 1950, §§83-86 1 to 33-30 9, WIS. STATS. 1957, §84 20.

²⁰⁹ WIS. STATS. 1957, §84 29(1).

²¹⁰ REV. STATS. OF NEB. 1943, §1310.

²¹¹ N. H. REV. STATS. ANN., §281 2.

²¹² VERNON'S TEX. CIV. STATS., art. 6673c-1.

²¹³ OKLA. STATS., tit. 69, §46 4.

politan areas, cities, and industrial centers, to serve the national defense. The routes of the National System of Interstate Highways shall be selected by joint action of the State highway departments of each State and the adjoining States, as provided by the Federal Highway Act of 1921, for the selection of the Federal-aid system. All highways or routes included in the National System of Interstate Highways as finally approved, if not already included in the Federal-aid highway system, shall be added to said system without regard to any mileage limitation.²¹⁴

The State highway departments of Florida,²¹⁵ Indiana,²¹⁶ and New Hampshire²¹⁷ are authorized to select, in cooperation with the State highway department of adjoining States, routes of the National System of Interstate Highways, in accordance with the Federal-Aid Highway Act. The State Highway Commissioner of New Jersey may designate as freeways, routes approved by the Bureau of Public Roads as a part of the Interstate System.²¹⁸

In New York, the Interstate highway routes and connections are designated and generally described by statute.²¹⁹ These Interstate routes are to be constructed or improved according to such design and types as determined by the Superintendent of Public Works, subject to the provisions of Federal aid therefor.²²⁰

In South Dakota, an act authorizing the highway commission to cooperate with the Federal Government in laying out and constructing the Interstate System designates in its title certain "control areas." The act defines a control area as "a metropolitan area, city or industrial center, defense installation, a topographic feature such as a mountain pass, a favorable river crossing, a hub road which would result in material traffic increment on the Interstate route, a section of completed expressway, or a place on the common boundary of two states agreed to by the states concerned."²²¹ The highway commission is authorized, in cooperation with the United States and ad-

jacent States to establish control areas and control points between the control areas set forth in the act.

The Illinois Department of Public Works is directed, to the extent it finds practicable, suitable and feasible, to use existing highways of the primary system and previously designated freeways in the location of highways on the Interstate System.²²²

CONTROLLED ACCESS

An outstanding feature of the Interstate System is the controlled-access design of the system. The 1944 Federal-Aid Highway Act provided that the Commissioner of Public Roads could not, as a condition of a project, "require any State to acquire title to, or control of, any marginal land along the proposed highway in addition to that reasonably necessary for road surfaces, median strips, gutters, ditches, and side slopes and sufficient width to provide service roads for adjacent property to permit safe access at controlled locations in order to expedite traffic, promote safety, and minimize roadside parking."²²³ The 1956 Federal-Aid Highway Act added the provision that the State highway department agree that the State will not add any points of access to, or exit from, a project on the Interstate System in addition to those approved by the Secretary of Commerce in the plans for such project, without the prior approval of the Secretary.²²⁴

The entire controlled-access law in each State has been analyzed elsewhere²²⁵ and will therefore not be examined here. The following discussion will be confined to those controlled-access laws which expressly refer to the Interstate System.

Three States, which had no other controlled-access provisions, have enacted statutes specifically authorizing the construction of controlled-access highways on the

²¹⁴ SMITH HERD ILL. ANN. STAT., ch. 121, §257. In locating and constructing such a highway, local needs to the extent practicable, suitable and feasible shall be given equal consideration with the needs of interstate commerce so that such road will not unduly discommode or interfere with local traffic or will not destroy reasonable access to schools, churches, markets, trade or community centers. *Supra*, §259.

²¹⁵ 58 Stat. 838, §2 (1944).

²¹⁶ 23 U.S.C. §111.

²¹⁷ *Expressway Law—An Analysis*, Highway Research Board, Special Report No. 26 (1956).

²¹⁸ 58 Stat. 838, §2 (1944).

²¹⁹ 23 U.S.C. §111.

²²⁰ *Expressway Law—An Analysis*, Highway Research Board, Special Report No. 26 (1956).

²²¹ *Expressway Law—An Analysis*, Highway Research Board, Special Report No. 26 (1956).

²²² *Expressway Law—An Analysis*, Highway Research Board, Special Report No. 26 (1956).

²²³ *Expressway Law—An Analysis*, Highway Research Board, Special Report No. 26 (1956).

²²⁴ *Expressway Law—An Analysis*, Highway Research Board, Special Report No. 26 (1956).

²²⁵ *Expressway Law—An Analysis*, Highway Research Board, Special Report No. 26 (1956).

²¹⁴ 58 Stat. 838, §7 (1944). See 23 U.S.C. 103(d) for current law.

²¹⁵ FLA. STAT. 1957, §335.03.

²¹⁶ BURNS' IND. STAT. ANN., §36.182.

²¹⁷ N.H. REV. STAT. ANN., §239.6.

²¹⁸ N.J.S.A., §27.7A.10.

²¹⁹ N.Y. CONSOL. LAWS SERVICE, Highway Law, §340 a.

²²⁰ *Supra*, §340-b.

²²¹ R.D. LAWS 1955, ch. 104.



PLATE H

Two-level section on Massachusetts Route 128, at Stoneham, is on the Interstate System.

Interstate System.²²⁶ Of those States which have controlled-access legislation applicable to their entire highway system, 23 have provisions specifically authorizing cooperation with the Federal Government in the construction of controlled-access highways.²²⁷ Such provisions generally authorize the State highway authority and the governing bodies of cities, counties, and towns to enter into agreements with each other or with the Federal Government respecting the financing, planning, establishment, improvement, maintenance, use, regulation or vacation of controlled-access highways in their respective jurisdictions. The controlled-access law enacted in South Carolina in 1956 provides that the State highway department may designate, establish, abandon, improve, construct, maintain

and regulate controlled-access facilities as a part of the State Highway Primary System, National System of Interstate Highways, and Federal-Aid Primary System, whenever the Department determines that traffic conditions, present or future, justify such controlled-access facilities.²²⁸

A New York statute designating Interstate routes provides that they be constructed or improved according to such designs and types as determined by the superintendent of public works, subject to Federal-aid provisions, and authorizes the superintendent of public works to classify any part of an Interstate highway as a controlled-access highway. The statute sets forth certain controlled-access design features and further provides:

After the establishment of any interstate highway no additional points of access to, or exit from, the project shall be made without prior approval by the superintendent of public works and the federal bureau of public roads.²²⁹

The importance of the Interstate System and the necessity of building limited-access highways in order to participate in

²²⁶ Alabama, H. B. 148 (1956); REV. CODES OF MONT. 1947, §§32-2001 to 32-2010; VT. LAWS 1955, No. 270.

²²⁷ ARK. STATS. 1947, §76-2208; DEL. CODE ANN., tit. 17, §§173, 177; FLA. STATS. 1957, §§388.05; CODE OF GA. ANN., §1702a; BURNS' IND. STATS. ANN., §§36-3101, 36-3108; CODE OF IOWA, 1958, §306A.7; GEN. STATS. OF KAN. 1949, §§68-1902, 68-1904; KY. REV. STATS., §§177.230, 177.280; LA. REV. STATS. 1950, §§48-301, 48-305; MICH. STATS. ANN., §§9.1094(2), 9.1094(10); MINN. STATS. 1957, §160.702, subd. 1; MISS. CODE 1942, §§8039.03, 8039.08; N.MEX. LAWS OF 1957, ch. 234, §8; GEN. STATS. OF N.C. §136-89.54; N.D. REV. CODE OF 1943, §§24-0130, 24-0134; OKLA. STATS. 1951, tit. 69, §§11.3, 11.5; ORE. REV. STATS., §374.080; S.D. LAWS 1953, ch. 155, §8; TENN. CODE ANN., §§54-2002, 54-2006; UTAH CODE ANN. 1959, §§27-9-2, 27-9-6; REV. CODE OF WASH., §§47.52.020, 47.52.090; W.VA. CODE OF 1955, §1474(26); WIS. STATS. 1957, §§4.25(9); WYO. COMP. STATS. 1945, §§48-348, 48-352.

²²⁸ CODE OF LAWS OF S.C. 1952, §33-352.

²²⁹ N.Y. CONSOL. LAWS SERVICE, Highway Law, §340-b(1).

the program was discussed by the Supreme Court of North Carolina in the case of *Hedrick v. Graham*,²³⁰ which arose prior to that State's adoption of a specific limited-access statute. Citing a statute which provides that:

the said State Highway and Public Works Commission shall have such powers as are necessary to comply fully with the provisions of the present or future federal-aid grants.²³¹

The court said it was a fair inference from the allegations of the complaint, that the reconstruction of the highway in question was being done in compliance with the requirements of the project to meet the standards and requirements of the 1956 Federal-Aid Highway Act, in order to incorporate it into the National System of Interstate and Defense Highways. It must be noted, however, that the court did not rest its decision solely upon the powers given the commission in connection with the building of Federal-aid highways, but went on

to discuss the commission's statutory authority to acquire property. The court said that:

The power and authority vested in the State Highway and Public Works Commission, by virtue of the statutes enacted by the General Assembly, 'to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State highway system,' to condemn private property 'as it may deem necessary and suitable for road construction,' 'to make rules, regulations and ordinances for the use of, and to police traffic on the State highways,' and to have 'such powers as are necessary to comply fully with the provisions of the present or future federal aid grants,' are expressed in language broad and extensive and general enough and the object so general and prospective in operation as to authorize the commission to exercise the power of eminent domain to condemn or severely curtail an abutting landowner's right of access to a State public highway adjacent to his property for the construction or reconstruction, maintenance and repair, of a limited-access highway upon the payment of just compensation, and we so hold.

²³⁰ *Hedrick v. Graham*, 245 N C 249, 96 S E 2d 129 (1957)

²³¹ GEN STATS OF N C, §136-18(12)

PUBLIC UTILITY RELOCATION

Federal funds may be used to reimburse a State, in the same proportion as Federal funds are expended on a project, when that State pays the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas, provided that payment to the utility does not violate the law of the State or violate a legal contract between the utility and the State. Such reimbursement can be made only after evidence satisfactory to the Secretary has been presented to him substantiating the fact that the State has paid such costs from its own funds with respect to Federal-aid highway projects for which Federal funds are obligated subsequent to April 16, 1958, for work including relocation of utility facilities.²³²

Prior to the enactment of the 1956 Federal-Aid Highway Act, the Federal regulations provided that where utility facilities occupying a public right-of-way had to be moved, adjusted or changed because of the construction of a Federal-aid project, the State highway department was to make a formal finding as to the extent to which the utility was required to change its facilities at its own expense, or was relieved of that obligation by law or otherwise, and Federal reimbursement was limited to the regular Federal pro rata share of the cost of such work actually paid by the State or its subdivisions.²³³

At the time of the enactment of the 1956 Federal-Aid Highway Act, only a few States had statutory provisions for the payment of utility relocation costs by the State and those were applicable only in certain limited situations.²³⁴ The status of

the utility relocation laws in the States prior to the 1956 Federal Act was discussed in a 1955 study of the Highway Research Board.²³⁵

Since 1956, bills concerning the payment of utility relocation costs have been introduced into the legislatures of nearly every State. The law on this subject is unsettled in many States. During the period 1956 to 1958, such statutes were enacted in sixteen States, and some have been challenged as unconstitutional. In 1958, cases concerning the validity of utility facility reimbursement statutes were adjudicated in four States. The Minnesota and Texas statutes have been upheld.²³⁶ The Tennessee and New Mexico Supreme Courts found their respective statutes unconstitutional.²³⁷

Of the statutes currently in effect, some restrict payment of utility relocation costs by the State to the costs necessitated by projects on the Interstate System²³⁸ and others specifically refer to projects on the Federal-aid primary and secondary systems as well as on the Interstate System.²³⁹ In Connecticut, the State will pay an equitable share of the cost, less specified deductions, of relocating or removing public service facilities from trunk line highways or any highways which the highway commission has the duty to maintain,²⁴⁰ and the State

it is a privately owned utility which does not have a contractual obligation to relocate. *DEERING'S CALIF. CODES, Stg & Hwys Code, §§702, 703.* New York authorizes the use of State highway funds where State highway construction, reconstruction or maintenance require the removal, replacement, and reconstruction of municipally owned water mains, sewer pipes and other facilities maintained for public use. *CONSO. LAWS SERVICE, Highway Law, §10(24).*

²³² *Relocation of Public Utilities Due to Highway Improvement—An Analysis of Legal Aspects*, Highway Research Board, Special Report No. 21.

²³³ *Minneapolis Gas Co v Zimmerman*, 91 N.W.2d 642 (1958) re *MINN. STATS. ANN., §§161.131 to 161.135*, *State v City of Dallas*, 319 S.W.2d 767 (1958) (appeal pending) re *VERNON'S TEX. CIV. STATS., art. 6674w 4*.

²³⁴ *State Highway Commission v Southern Union Gas Co*, 332 P.2d 1007 (1958) re *N.MEX. STATS. 1953, §§57-18*, *State v Southern Bell Telephone Co*, 319 S.W.2d 90 (1958) re *TEX. CODE ANN., §§54-543 to 54-545*.

²³⁵ *DEL. CODE ANN., tit. 17, §132*, *FLA. STATS. 1957, §§38.19*, *SMITH HURD ILL. ANN. STATS., ch. 121, §305.2*, *REV. STATS. OF ME. 1954, ch. 23, §23 A*, *MINN. STATS. 1957, §161.134*, *REV. STATS. OF NEB. 1943, §§30-1304.02*, *N.D. 1957 LAWS, ch. 195*, *OKLA. STATS., tit. 69, §46.4(a)(b)*, *VERNON'S TEX. CIV. STATS., art. 6674w 4*, *CODE OF VA. 1950, §§33-36.9* with reference to cities and towns only.

²³⁶ *IDAHO CODE, §40-120(27)*, *MASH ACTS, 1956, ch. 718*, *REV. CODES OF MONT. 1947, §32-1625*, *UTAH CODE ANN. 1953, §27-2.7(21)*.

²³⁷ *GEN. STATS. OF CONN. 1958, §13.124*. Such equitable share, in the case of any limited access highway is the en-

²³² 23 USC §123

²³³ Bureau of Public Roads, General Administrative Memorandum No. 300, May 1, 1946.

²³⁴ For example New Jersey authorizes the State to pay relocation costs when the commissioner determines it is necessary that utilities be relocated within or removed from a freeway or parkway. *N.J.S.A., §27.7A-7*. California will pay removal and relocation costs when a utility located within the right of way of any freeway is required to move entirely outside the freeway right of way, but not if it is required to move to another point within the freeway unless such freeway was not a State highway when the utility was originally installed and it is a publicly owned utility or if

of Washington will pay where a city or town is required to relocate municipally-owned overhead facilities within its corporate limits as a result of the construction of a limited-access facility²⁴¹

Many provisions of these statutes are similar in that they authorize the State highway department to make reasonable provision for the installation, construction, maintenance, repair and relocations of facilities²⁴² in, on, along, over, across, through or under any project on the specified Federal-aid system, including extensions thereof within urban areas, and provide that whenever the department determines that it is necessary that any such facilities on such systems should be relocated, the utility owning or operating such facilities shall relocate the same. Idaho and Montana specifically provide for notice and opportunity for hearing²⁴³

Statutes providing that the State "shall" pay relocation costs are found in Delaware, Florida, Idaho, Maine, Minnesota, Montana (where payment is limited to 75 percent of all costs of relocation, including acquisition of new right-of-way, dismantling and removal), Nebraska, North Dakota, Oklahoma, Texas, Utah and Virginia²⁴⁴. In Illinois and Massachusetts, the department "may" pay such costs²⁴⁵

In many of these State statutes, the terms "utility" and "cost of relocation" are used or defined as they are in the Federal Act, *i.e.*, "utility" includes publicly, privately and cooperatively owned utilities,²⁴⁶ "cost

of relocation" includes the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility²⁴⁷. "Interstate System" as used in these statutes includes any highway which now is or shall hereafter be a part of the National System of Interstate and Defense Highways as provided in the Federal-Aid Highway Act of 1956 and any act supplemental thereto or amendatory thereof²⁴⁸

Some of these statutes, in addition to referring to the payment of relocation costs on Federal-aid projects only, provide specifically that they apply only in cases where proportionate reimbursement of such cost may be obtained by the State from the United States²⁴⁹

Provisions are contained in some of these statutes wherein the State legislature declares that the cost of relocating utility facilities in connection with any project on the specified Federal-aid system or systems is a cost of highway construction²⁵⁰

Whether the cost of utility relocation can be a cost of highway construction is important in the determination of whether the payment of utility facility relocation costs by a State would violate the State's restric-

²⁴⁷ DEL. CODE ANN., tit. 17, §132, FLA. STATS. 1957, §338 19, IDAHO CODE, §40 120(27), SMITH-HURD ILL. ANN. STATS., ch. 121, §305 2, REV. STATS. OF ME. 1954, ch. 23, §23-A, MASS. ACTS. 1956, ch. 718, REV. CODES OF MONT. 1947, §32-1625, REV. STATS. OF NEB. 1943, §30 1304 02, N. D. 1957 LAWS, ch. 195, VERNON'S TEX. CIV. STATS., art. 6674w-4, UTAH CODE ANN. 1953, §27 2-7(21), CODE OF VA. 1950, §33-36 9 with reference to cities and towns only

²⁴⁸ IDAHO CODE, §40-120(27); SMITH-HURD ILL. ANN. STATS., ch. 121, §305 2, REV. CODES OF MONT. 1947, §32 1625, UTAH CODE ANN. 1953, §27 2-7(21)

²⁴⁹ DEL. CODE ANN., tit. 17, §132, MINN. STATS. 1957, §161-134, OKLA. STATS., tit. 69, §46 4(a)(b), VERNON'S TEX. CIV. STATS., art. 6674w-4, UTAH CODE ANN. 1953, §27 2-7(21), CODE OF VA. 1950, §33-36 9 with reference to projects on Interstate System for which the contracts are signed prior to June 30, 1959, and at no time during the fiscal year 1957-58 or the fiscal year 1958-59 shall the amount paid from the general fund operating capital for the purposes of this act exceed the amount of 90% federal funds to be available for Interstate projects under the 1956 Federal-Aid Highway Act to match a State appropriation of \$43,000. REV. STATS. OF ME., 1954, ch. 23, §23A, as amended by H.B. No 1143-XX (1958)

²⁵⁰ REV. CODES OF MONT. 1947, §32 1625, UTAH CODE ANN. 1953, §27-2-7(21), CODE OF VA. §33 36 9. Illinois provides that such cost "may" be deemed to be one of the costs of construction. SMITH-HURD ILL. ANN. STATS., ch. 121, §305 2. North Dakota provides that the cost shall be ascertained and paid by the State out of State highway funds as a part of the cost of such Federally aided project. NORTH DAKOTA 1957 LAWS, ch. 195. Idaho provides that the cost of such relocation shall be part of the cost of the acquisition of rights-of-way, easements and other rights for and the construction, maintenance, repair, improvement and development of the public highway in the Federal-aid systems and shall be paid by the State out of State highway funds. IDAHO CODE, §40 120(27)

ture cost, less specified deductions, and in the case of any other trunk line highway or highway which it is the duty of the commissioner to maintain, is such portion or all of the entire cost, less the specified deductions, as may be fair and just under all the circumstances, but not less than 50 percent of such cost after the specified deductions

²⁴¹ REV. CODE OF WASH., §47 52 090

²⁴² In Idaho, Montana and Virginia, facilities include tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances. IDAHO CODE, §40-120 (27), REV. CODES OF MONT. 1947, §32-1625, CODE OF VA., §33 36 9. The Utah statute refers to facilities, drainage and irrigation systems. UTAH CODE ANN. 1953, §27 2-7(21)

²⁴³ IDAHO CODE, §40-120(27), REV. CODES OF MONT. 1947, §32 1625

²⁴⁴ DEL. CODE ANN., tit. 17, §132, FLA. STATS. 1957, §338 19, IDAHO CODE, §40 120(27), REV. STATS. OF ME. 1954, ch. 23, §23 A, MINN. STATS. 1957, §161-134, REV. CODES OF MONT. 1947, §32 1625, REV. STATS. OF NEB. 1943, §30-1304 02, N. D. 1957 LAWS, ch. 195, OKLA. STATS., tit. 69, §46 4(a)(b), VERNON'S TEX. CIV. STATS., art. 6674w-4, UTAH CODE ANN. 1953, §27-2-7(21), CODE OF VA. 1950, §33-36 9 with reference to cities and towns only

²⁴⁵ SMITH-HURD ILL. ANN. STATS., ch. 121, §305 2, MASS. ACTS. 1956, ch. 718

²⁴⁶ FLA. STATS. 1957, §338 19, IDAHO CODE, §40 120(27), SMITH-HURD ILL. ANN. STATS., ch. 121, §305 2, MASS. ACTS. 1956, ch. 718, MINN. STATS. 1957, §161 134, UTAH CODE ANN. 1953, §27-2-7(21)

tion against using highway funds for non-highway purposes. In each State, the determination has to be made on the basis of that State's constitutional provision and the view which the State's courts have taken as to what constitutes a highway purpose.

In Maine²⁵¹ and New Hampshire,²⁵² where the State legislatures requested opinions from their respective State supreme courts, concerning the validity of proposed legislation authorizing payment of utility relocation costs by the State out of highway funds, both courts citing the common law rule that utilities are obliged to relocate at their own expense their facilities located in public highways when requested to facilitate highway improvements, said that the State may change that rule if it chooses.²⁵³ The purpose of such expenditures is public in nature and the extent and conditions under which the State may meet such costs are for the legislature to determine. However, these two courts differed on the question of whether such utility relocation costs are costs of highway construction. In Maine, the court said that the expenditure if made from sources enumerated in the State constitution as restricted to highway purposes would violate the constitution but that there is no constitutional prohibition against the expenditure for such purposes of funds derived from other sources.²⁵⁴

The New Hampshire Supreme Court distinguished the opinion in Maine, saying that in New Hampshire they have always taken a broader view of what constitutes a highway purpose under the State constitution, and that the relocation of utility facilities is part of the cost of highway improvements, therefore, the legislature, if it chooses to do so, may validly declare that the relocation of utility facilities is part of the cost of highway relocation and recon-

struction and shall be paid out of highway funds.

Another question arises in those States which have constitutional provisions prohibiting the State from making a gift or loan in aid of any individual, association, corporation or municipality.²⁵⁵ A statute authorized the Georgia State highway department to, in its discretion, advance all or any part of the cost of relocation, removal, or reconstruction of utility facilities belonging to municipalities, counties, or other political subdivisions (where such facilities were placed under permit issued by the department and such permit required that the expense of such relocation is chargeable to such a subdivision) provided that it appeared to the satisfaction of the department that such subdivision could not feasibly finance such relocation from other sources, and that the department be reimbursed by the subdivision within a mutually agreed period, not to exceed fifteen years. The Supreme Court of Georgia held this Act unconstitutional on the ground that public funds could not be used for the purpose of engaging in the money-lending business as that is not one of the purposes for which the State is authorized to raise money. The court discussed utility relocation and said that utility facilities serve no useful or desirable purpose in the construction and maintenance of the highway itself and further pointed out that the permit issued by the department provided for relocation without cost to the department.²⁵⁶

The Minnesota and Texas utility relocation reimbursement statutes²⁵⁷ have been upheld²⁵⁸ as being for a valid public purpose and not in violation of State constitutional prohibitions against gratuities in aid of private undertakings. However, the State supreme courts of New Mexico and Tennessee have declared their respective utility relocation reimbursement statutes²⁵⁹ un-

²⁵¹ Opinion of the Justices, 132 A 2d 440 (1957)

²⁵² Opinion of the Justices, 132 A 2d 613 (1957), re proposed Senate Bill No 129 (1957)

²⁵³ Without express authority from the legislature the State cannot pay to a utility the costs or damage for relocating installations in public ways *Brunswick & Topsham Water District v Hinman Co.* 136 A 2d 722 (1957)

²⁵⁴ Following the opinion of its State supreme court, the Maine legislature enacted a statute authorizing the payment of utility relocation costs but provided an appropriation from the general funds for matching the Federal funds and specified that the reimbursable costs, limited to 90 per cent, shall be paid from the general funds operating capital REV STATS OF ME 1954, ch 28, §23A

²⁵⁵ In *Southern Bell Telephone and Telegraph Co v Commonwealth of Kentucky*, 266 S W 2d 308 (1954), the court said that to construe a utility franchise so as to require the State to pay for relocation would make the franchise violate such a constitutional provision

²⁵⁶ *Mulkey v Quillan*, 213 Ga 507, 100 S E 2d 268 (1957)

²⁵⁷ MINN STATS ANN, §§161 131 to 161 135, VERNON'S TEX CIV STATS, art 6674w 1

²⁵⁸ *Minneapolis Gas Co v Zimmerman*, (Minn.), 91 N W 2d 642 (1958), *State v City of Dallas*, (Tex Ct of App.), 319 S W 2d 767 (1958) (appeal pending)

²⁵⁹ N MEX STATS 1953, §§5-7-18, TENN CODE ANN §§54-543 to 54-545

constitutional as violations of the State constitutional prohibitions against the donation of State funds in aid of private corporations because the primary purpose was to benefit the utilities and not the public ²⁶⁰

Federal reimbursement for the cost of relocation of utility facilities is contingent upon the validity of such payment to a utility under State law and also in light of contracts between the utility and the State.

Statutes including provisions prohibiting such payment if it would violate a legal contract between the utility and the State are found in Nebraska and North Dakota ²⁶¹ whereas Texas provides for reimbursement to the utility from the State highway fund notwithstanding anything to the contrary in any other provision of law or in any permit or agreement or franchise issued or entered into by any department, commis-

sion or political subdivision of the State. ²⁶²

Accepting as a general proposition that a State legislature can, if it so chooses, change the common law rule that a utility must relocate at its own expense facilities located within a highway right-of-way when such relocation is necessary for highway construction, it still remains for each State to determine whether such legislation would violate the particular constitutional provisions of that State, especially those with reference to the restriction against the use of highway funds for non-highway uses and the prohibition against the State making a gift or loan to a corporation. In addition to questions concerning the validity of such statutes, a great deal of litigation may arise where there are contracts, between States and public utilities, the wording of which might be subject to varying interpretations, thereby clouding the issue of whether the State can validly pay for such utility relocation costs

²⁶⁰ State Highway Commission v Southern Union Gas Co., 332 P 2d 1007 (1958), State v Southern Bell Tel Co, 319 S W 2d 90 (1958)

²⁶¹ REV STATS OF NEB 1943, §39-1304 02, N D LAWS 1957, ch 195 Nebraska also refers to contracts between the utility and a county, city or village of the State

²⁶² VERNON'S TEX CIV STATS, art 6674w-4

APPENDIX A

SUMMARY OF STATUTES BY STATE

ALABAMA

Code of Alabama, 1940

Assent to 1916 Act and all subsequent amendments and specifically to 1944 Act Pledge to provide equal matching funds and to maintain Federal-aid roads (tit 23, §§32, 33)

State highway department to enter contracts and agreements with United States and to do all other things necessary to carry out the cooperation contemplated and provided for by the 1916 Act and all amendments thereto and specifically to do all things necessary to secure the full benefits of the 1944 Act, to make changes or additions to system of State roads to conform to Federal-aid requirements and to construct and maintain them with State aid; to enter into contracts including agreements with cities and towns and Federal agencies for purpose of maintenance and repair of municipal connecting links (tit. 23, §§30, 32, 32(1))

The bureau of county aid, a division of the department, was created by the 1943 Farm to Market Road Act to aid in the construction of county roads by the counties and to provide for county participation in the Federal-aid road program starting in 1944 (tit 23, §§78(1) to 78(18))

Department authorized to control access on highways selected by department and Bureau of Public Roads to be included in National System of Interstate Highways (tit. 23, §141)

ALASKA

Alaska Compiled Laws Annotated, 1949

Assent to 1916 Act Territorial board of road commissioners is authorized to make all contracts and do all things necessary to cooperate with the United States Government in the construction of highways under the 1916 Act and all Acts amendatory or supplementary thereto, or any other Act of

Congress that may hereafter be enacted, and including the 1956 Act (§14A-2-12)

Any municipality, through its governing body, may participate in the financing, planning, construction, acquisition of right-of-way and maintenance of Federal-aid highways routed through such municipality, in such manner and proportion as the board may determine is reasonable and proper. (§14A-2-13)

ARIZONA

Arizona Revised Statutes

State highway commission to pass upon Federal-aid projects submitted by State engineer and authorize him to enter into contracts with the United States for the cooperative construction and maintenance of Federal-aid highways (§18-106(4))

Board of supervisors of counties can enter agreements for acquiring rights-of-way, construction, reconstruction or maintenance of highways, with United States County highway commission may enter into contracts with the United States (§§11-251 (28), 18-238D)

Traffic engineer to furnish speed checks, origin and destination studies, traffic volume studies and other technical engineering information on request of United States. (§28-264(7))

County may request highway department to include intercounty highways in Federal-aid secondary system, and to make agreements for such construction by the department with Federal funds (§18-157D)

ARKANSAS

Arkansas Statutes 1947

Assent to 1916 Act and all acts amendatory thereof or supplemental thereto Pledge to maintain Federal-aid roads State highway commission authorized to select and designate a proper system of State highways for expenditure of Federal-aid ap-

portionments, and to modify, or revise said designations as required by Federal authorities. (§76-522)

Cooperation with Federal Government authorized with respect to controlled-access highways (§76-2208)

State highway commission to perform enumerated duties and to enter into all necessary contracts with Federal authorities in order to secure the full cooperation of the United States and the benefit of all Federal-aid highway allotments; to comply fully with present and future Federal-aid acts and to do all other things necessary and proper to carry out fully the cooperation contemplated and provided for by present or future acts of Congress for construction, improvement and maintenance of roads in rural or urban areas (§§76-201 5, 76-522)

When it becomes necessary, the highway department is permitted to expend highway maintenance funds for maintenance and repair of Federal-aid roads not on the State highway system (§76-508)

Commission can withhold county aid funds if political subdivision violates an agreement to maintain a Federal-aid project. (§§76-416 to 76-420)

CALIFORNIA

Deering's California Codes, Streets and Highways Code Annotated

Assent to all Federal-aid highway statutes enacted as of 1955. (§820)

Department of public works to submit project statements, to make agreements with counties or cities for acquisition of property for Federal-aid construction and then may acquire for county or city real property required for highway not on State highway system; may insert specifications necessary to meet Federal regulation, in project contracts Provision for maintenance of highways not on State highway system; for advancements by the State of amount of Federal funds obligated; and to authorize acceptance and expenditure of advancements of Federal-aid funds (§§820-827)

Public utility relocation costs paid by State if utility required to move entirely outside freeway right-of-way in certain circumstances (§§702-703)

County may make cooperative agreements regarding forest roads with United States pursuant to Federal-aid acts (§§1670-1672)

Provision for expenditure of Federal-aid secondary funds for improvement of county highways. (§§2201-2214)

Deering's California Codes, Public Utilities Code

Apportionment of cost of railway-highway crossings on Federal-aid projects shall comply with Federal regulations and State statutory apportionment formula does not apply (§1202.5)

COLORADO

Colorado Revised Statutes, 1953

Subject to agreements with Federal Government, chief engineer has control of supervision of construction, letting of contracts, and preparation and approval of plans Agreements limited to expenditure within current budget plus advances from Federal Government and private investors To cooperate with the Federal Government in undertaking any experiments or collecting of data that has to do with public highways Federal-aid roads may be added or deleted from the State highway system but deletions from Federal-aid secondary system must be mutually decided upon by Federal Government, State and county or counties affected (§§120-3-23, 120-3-24, 120-13-1)

Department to establish secondary road unit in order to get Federal-aid secondary funds (§120-13-5)

Department has duty to inspect county highway and municipal street projects on which Federal funds are used, to determine that they meet the prescribed standards. (§§120-13-22, 120-13-33)

CONNECTICUT

General Statutes of Connecticut, 1958

Having assented to 1916 Act, highway commissioner is authorized to set aside sufficient funds to enable State to carry out provisions of said act. (§13-141)

Hartford Bridge Authority authorized to accept Federal grants and comply with terms thereof (§13-215)

Relocation of public utilities on State trunk highways—where commissioner has duty to maintain, State will pay entire cost if on limited-access highway (§13-124)

DELAWARE

Delaware Code Annotated

Provision establishing accounting procedures for all grants of money made by the Federal Government specifies that special accounts may be set up by the State Treasurer if necessary to comply with Federal requirements. (tit 29, §2712)

Department may cooperate with Federal agencies on controlled-access highways. (tit. 17, §§173, 177)

State highway department authorized to receive Federal aid and to comply with the terms of Federal grants for the Delaware Memorial Bridge (tit. 17, §325)

Public utility relocation cost paid by State only when relocation necessitated by project where the State is to be reimbursed by at least 90 percent from Federal funds (tit 17, §132)

FLORIDA

Florida Statutes 1957

Assent to all acts including future acts, providing for Federal aid for the construction of highways and other related projects (§339.05)

State road department to make application for advancement of Federal funds and do all things necessary to cooperate with United States under Federal-aid acts; to set aside funds sufficient to properly amortize any amount advanced under Federal acts; to control Federal-aid allotments and road building equipment. Any department

of the State, county, or special road and bridge district can aid the State road department in financing State roads in its territory and the department may propose and obtain the designation of such roads as Federal-aid projects Federal-aid roads are classified as State highways Department may enter contracts with Federal agencies re municipal connecting links and feeder roads (§§ 335 02, 335.04, 335 05, 339.05, 339 06)

Any department of the State, county or special road and bridge district can aid the State road department in financing State roads in its territory and the department may propose and obtain the designation of such roads and bridges to be constructed as Federal-aid projects (§339 12)

State road department in cooperation with railroad companies adopt program for elimination of railway-highway crossings with Federal funds (§338 21)

State highway board to select routes of Interstate System and make necessary special rules and regulations to assure expeditious planning and construction and to take full advantage of 1956 Act and amendments Agreements with Federal Government authorized with respect to controlled-access facilities (§§335 03, 338 05)

Utility is required to move at own expense unless on Interstate System and eligible for reimbursement in which case State will pay utility relocation costs (§338 19)

GEORGIA

Code of Georgia Annotated

Assent to 1916 Act and department to discharge duties arising under any amendments to 1916 Act or other acts allotting Federal funds for public roads in the State. Federal-aid primary and urban funds are to be matched with equal State funds. (§§95-1502, 95-1609)

State highway department with Bureau of Public Roads to prepare long-range biennial programs under Federal-aid urban, primary and secondary classifications. (§95-1615)

State highway department to take the necessary steps to secure the full benefit of

the Federal-aid program and to meet any contingencies not specifically provided for. In case of conflict Federal law governs. (§95-1618)

Responsibility for maintenance of railway-highway overpasses and underpasses set out in statute. (§95-1909)

Rural post roads division of State highway department to handle construction and maintenance of farm-to-market roads and rural post roads. Supervision of farm-to-market road construction and maintenance to be on such cooperative basis as the State highway department may prescribe in order to obtain Federal, State, county and municipal funds available therefor. Department authorized to receive and expend Federal funds. State highway board authorized to relocate rural post roads. Statute provides for apportionment of Federal funds to counties, matching Federal funds; State-county contracts for construction and maintenance; and if any provision of this law conflicts with any Federal rules, regulations or requirement the Federal law shall prevail (§§ 95-2201 to 95-2223)

IDAHO

Idaho Code

Assent to all existing and future Federal-aid highway acts. (§40-2401)

Department of public works to enter contracts and agreements with United States re survey, construction and maintenance of Federal-aid roads, including county roads and city and village streets, and is authorized to submit such scheme or program of construction and maintenance as may be required, and to do all other things necessary to carry out cooperation contemplated by Federal-aid acts. (§40-2402)

Matching funds pledged for construction and maintenance of Federal-aid roads and to evidence good faith department, in name of State, is authorized to enter agreements with United States under rules and regulations approved by the United States or any agency. (§40-2403)

Board of highway directors to regulate utility facilities on Federal-aid primary and secondary systems and Interstate System

including urban extensions. Relocation costs are part of cost of acquisition of rights-of-way, easements and other rights, to be paid out of State highway fund (§40-120(27))

Board of highway directors to cooperate with, receive and expend aid and donations from Federal Government for any State highway or any project on Federal-aid primary or secondary systems or on Interstate System including urban extensions, when authorized by Act of Congress or Federal rule or regulations, upon roads and bridges not upon State highway system (§40-120(10))

Board also authorized to cooperate with the Federal Government, counties, highway districts, good roads districts, and municipalities for the construction, improvement and maintenance of secondary or feeder roads not on the State highway system (§40-120(14))

ILLINOIS

Smith-Hurd Illinois Annotated Statutes

Assent to 1916 Act as heretofore or hereafter amended and all Acts supplemental thereto (ch 121, §257)

Department of public works is authorized: to enter into agreements with the United States for selection, construction and maintenance of Federal-aid roads, to submit projects and to do all things necessary to fully carry out and make effective the cooperation contemplated and provided for by Federal-Aid Road Act; to let contracts, to construct such work and to purchase and supply labor, tools, machines, supplies and material; to acquire property for Federal-aid roads, and to provide for maintenance. (ch. 121, §§259 to 264)

The department, in selecting highways to be added to the 7 percent system, with Federal approval, shall, so far as is practicable and consistent with the Acts of Congress, distribute said projects equitably and fairly among the different sections of the State and among the several counties. (ch. 121, §258)

Department to use to extent practicable existing highways of the primary system

and existing highways which have been designated as freeways for Interstate System and to extent practicable in locating and constructing Interstate highways, local needs, shall be given equal consideration with the needs of interstate commerce. (ch. 121, §257)

Federal-aid highways included in State highway system State primary system co-extensive with Federal-aid system and State secondary system coextensive with Federal-aid secondary system (ch 121, §§292, 352)

Department may pay utility relocation costs as part of cost of construction when necessary on Interstate System. (ch 121, §305 2)

Department in cooperation with county boards and Bureau of Public Roads to select and designate Federal-aid secondary system of not more than 25,000 miles, to consist of highways not included in the Federal-aid highway system After construction, department is authorized to maintain or with approval of Bureau of Public Roads may have county maintain road or street within such county If county neglects maintenance department with consent of Bureau of Public Roads shall withhold approval of further Federal-aid secondary projects in such county until such highway has been restored (ch 121, §301a)

Counties may use motor fuel taxes for investigation of highway needs In cooperation with the United States municipalities have similar authority Department may use motor fuel taxes for investigation of needs, in cooperation with the United States with relation to military and naval access roads (ch 120, §§425(8), 425(10), 426 $\frac{1}{2}$ (13), 427)

Towns and road districts authorized to take whatever steps may be necessary to enable it to aid the State in construction of Federal-aid roads (ch. 121, §81)

INDIANA

Burns' Indiana Statutes Annotated

Assent to 1916 Act, amendments and supplements Department authorized to cooperate under 1944 Federal-aid high-

way act State highway commission authorized to enter contracts with United States re rural post roads and to cooperate with the United States under any Federal law in any manner necessary to secure future apportionments State highway commission authorized to enter agreements with United States to supervise highway work when necessary to receive Federal funds for the State or any county State and State highway department authorized to accept provisions of Federal laws to cooperate with Federal Government and to receive benefits for the department, the State or its citizens, and the States The department or any political subdivision of the State is authorized to do any and all acts, enter into contracts and to make any rule, regulation, order or finding that may be necessary to cooperate with the Federal Government, or to effectuate the purposes of the Federal law (§§36-127, 36-180, 36-2912, 36-2953)

The State highway commission authorized to cooperate with other States and Federal Government in research relating to highways (§36-186)

Highway rights-of-way and construction revolving fund established for Federal funds and State highway department authorized to accept advance funds for acquisition of right-of-way and construction. (§§36-187, 36-188)

Contract requirement may be eliminated if it would violate Federal-aid provisions (§36-114)

State highway commission authorized to cooperate with Federal Government in projects for elimination of railway-highway crossings and to enter into agreements with railroads and the Federal Government for apportionment and payment of costs notwithstanding State apportionment laws (§36-183)

Counties and municipalities authorized to enter into agreements with State highway commission in selection, construction, or maintenance of principal, secondary and feeder roads as provided by 1944 Act and State highway commission authorized to construct or improve such highways not within the system under its control as may

be selected by Federal Government as necessary to the national defense under 1944 Act. (§36-181)

State highway commission authorized to accept grants for construction and improvement of secondary and feeder roads and to accept terms thereof. Before improving such road not on State system commission must procure consent of county or municipality together with agreement to maintain as required by the Federal Government. (§36-2920)

Commission authorized to improve, construct and maintain streets and highways in cities and towns which are on the Federal-aid system. (§36-2921)

State highway commission to cooperate in selection of Interstate System. State and local authorities may cooperate with Federal Government re limited access facilities and enter agreements with respect thereto. (§§36-182, 36-3103, 36-3108)

IOWA

Code of Iowa 1958

State highway commission authorized to comply with Federal statutes, rules and regulations, and to cooperate in the expenditure of Federal funds for streets and highways, to enter into arrangements or contracts with and required by the United States in order to secure the full cooperation of the United States and the benefits of all present and future Federal allotments in aid of highway construction, reconstruction, improvement or maintenance. State's good faith pledged to provide equal matching funds and to maintain Federal-aid roads (§§307 7, 313 1)

Counties authorized to enter into agreement with Federal or State authorities in order to secure the full cooperation of the United States and of the State and the benefit of all present and future Federal or State allotments in aid of secondary road construction, reconstruction or improvement County to maintain farm-to-market roads in a manner satisfactory to the Federal authorities and to the State highway commission. If county fails to do so after notice, State highway commission to do so

and charge the cost against county's allotment, to be reimbursed from county's secondary roads maintenance fund before commission approves any more farm-to-market projects in that county. (§§310 1 to 310 36)

Cities, towns and highway authorities authorized to enter agreements with Federal Government regarding financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled-access facilities or other public ways. (§306A 7)

KANSAS

General Statutes of Kansas 1949

Assent to 1916 Act and all subsequent Federal-aid acts, Federal highway acts, Federal-aid highways acts and the 1956 Act and all acts amendatory thereof or supplemental thereto (§68-401)

State highway commission authorized to enter contracts and agreements necessary to cooperate with the Bureau of Public Roads, Federal departments or agencies and to do all acts required of a State highway department to obtain all benefits (§68-402)

Counties, cities and political subdivisions authorized to enter contracts through or with the State highway commission in order to participate in Federal-aid benefits, commission authorized to take steps necessary to secure such benefits (§68-402b)

Commission may make rerouting of State highways if required for Federal-aid funds, and to cooperate with local authorities in selection of Federal-aid secondary roads. (§68-406)

State, county or city highway authorities authorized to cooperate with Federal authority re controlled-access facilities, and to make all necessary agreements with Federal Government for elimination of intersections at grade. (§§68-1902, 68-1904)

KENTUCKY

Kentucky Revised Statutes

Department of highways authorized to contract with Federal Government re survey, construction and maintenance of Federal-aid roads, department authorized to do

all things necessary to carry out cooperation contemplated; department may set apart, out of State Road Fund, sum necessary to carry out such work (§176 240)

Cost of construction of primary roads borne entirely by State or by State and Federal Government and maintained by State. (§177 030)

Department may enter contracts with cities and with Federal agencies re maintenance of designated city streets. (§§177 - 042, 177.043)

Highway authorities of State, counties, cities, towns and villages, authorized to cooperate with Federal Government for the construction and maintenance of controlled-access highways (§§177 230, 177.- 280)

LOUISIANA

Louisiana Revised Statutes 1950

Department of highways authorized to enter into agreements with Federal Government to extent that Federal Government or its agency is authorized by Federal statutes to enter into such agreements and with the same limitations. (§48:212)

Location of all highways in primary, secondary and farm-to-market systems established by statute, may be altered and amended by board of highways to extent necessary to meet Federal-aid requirements (§48:191)

Department authorized to participate with U.S Public Roads Administration for development and propagation of information concerning highways (§48:216)

Highway authorities of the State, parishes and municipalities may cooperate and enter into agreements with Federal Government re controlled-access facilities. (§§48:301, 48 305)

MAINE

Revised Statutes of Maine 1954

Assent to 1916 Act, amendments and supplements. State highway commission authorized to accept Federal funds, make contracts and do all things necessary to cooperate with the United States (ch. 23, §15)

Municipal officers authorized to cooperate with commission and Bureau of Public Roads in designation and construction of Federal-aid secondary roads within towns Secondary projects on State highways and State aid roads maintained by commission. (ch 23, §18)

State highway commission to maintain Federal-aid secondary projects. (ch 23, §§69, 73)

Utility reimbursement authorized on Interstate System projects to extent of reimbursable costs (ch 23, §23A)

MARYLAND

Annotated Code of Maryland 1957

Assent to 1916 Act authorizes State roads commission to enter into contracts and agreements with the United States relating to rural post roads, to submit such schemes or program of construction and maintenance and to do all other things necessary to carry out the cooperation contemplated The good faith of the State is pledged to provide equal matching funds and to maintain such roads (art. 89B, §73)

Assent to "Federal acts" (enumerated as 1916, 1921 and 1944) as from time to time amended or supplemented together with subsequent Acts of Congress of like character and together with rules and regulations lawfully promulgated in connection with any such acts State roads commission on its own behalf or on behalf of any county or other subdivision and the counties and subdivisions are expressly authorized and empowered to do any and all things necessary or desirable to comply with the terms, conditions and provisions and to obtain the benefit of the Federal acts. (art. 89B, §76)

State roads commission authorized to accept Federal funds for its use or for use of political subdivisions and to allocate and apportion such funds and to act as agent of any political subdivision in dealing with the Federal Government and to undertake all contracts, plans, specifications and estimates and supervise construction work, and labor done pursuant to the Federal acts. (art 89B, §76)

Commission authorized to build and improve roads and bridges including projects for elimination of highway hazards at highway-railroad crossings and generally to construct, improve and maintain the highway system of the State with Federal funds. When Federal funds are used to eliminate highway hazards, the commission is authorized to do so, as agreed upon by the commission and the railroad or railway company, however, this is not a limitation on the power or authority of the commission to require the railroad to contribute its statutory apportionment based on the difference between the total cost and the amount of Federal funds. (art 89B, §74)

MASSACHUSETTS

Annotated Laws of Massachusetts

Department of public works may make contracts and agreements and do all other things necessary to cooperate with the United States in the construction and maintenance of highways under the 1916 Act as amended and supplemented; submit such plans, estimates and programs for the improvement of highways as meet the requirement under the Act, and may make agreements or contracts required to secure Federal aid under 1916 Act and all other acts in amendment thereof, or in addition thereto. Department may maintain Federal-aid roads (ch. 81, §30)

Department may lay out Federal-aid highways (which are not State highways) in any city or town provided city or town consents thereto. (ch. 81, §29A)

Department is permitted to reimburse utility relocation costs on Federal-aid projects. (Acts of 1956, ch 718)

MICHIGAN

Michigan Statutes Annotated

Assent to 1916 Act. State pledges faith to provide sufficient funds to pay its portion of the cost of constructing and maintaining Federal-aid roads. State highway commission authorized to make surveys, prepare plans and specifications and take charge of building and maintaining Federal-

aid roads in accordance with the 1916 Act and rules and regulations made thereunder and such amendments as may be made. Commission authorized to enter into contracts and agreements with the United States regarding construction and maintenance of rural post roads, to submit scheme or program of construction and maintenance and do all other things necessary to carry out the cooperation contemplated. All Federal-aid projects are trunk line highways (§§9 831 to 9 836, 9 931)

Department authorized to make surveys, prepare plans and specifications and take charge of construction of non-trunk roads in United States forests within the State, provided that before proceeding with any such work, it enter into contract with the United States and said contract provides that Michigan be reimbursed to extent of 50 percent of total cost. Counties share of cost to be agreed on by United States, State highway commissioner and board of county road commissioners. Maintenance to be direct obligation of county and road a part of the county road system unless established as trunk line highway (§§9 851 to 9 854)

State highway commissioner, boards of county road commissioners, and cities and villages authorized to cooperate with Federal agencies regarding limited-access highways. Governmental units which are parties to contract for construction of limited-access highways are authorized to pledge Federal-aid funds received or to be received for such project (§§9.1094(2), 9.1094(10))

MINNESOTA

Minnesota Statutes 1957

Commissioner of highways authorized to cooperate and enter into agreements with the United States, to comply with Federal laws and rules and regulations and to accept Federal aid for highways on behalf of the State or any governmental subdivision (§161 03, subd. 25 to 29)

Highway authorities authorized to cooperate with Federal Government in construction and maintenance of controlled-access highways (§160 702, subd. 1)

State will reimburse for relocation of utility facilities on Interstate System projects in amount not to exceed Federal reimbursement (§161 134)

MISSISSIPPI

Mississippi Code 1942

State highway commission authorized to make contracts and execute such instruments containing such reasonable and necessary appropriate terms, provisions and conditions as in its absolute discretion it may deem necessary, proper or advisable, for obtaining financial assistance from the United States (§8038(s))

State highway system includes all highways that are a part of the Federal-aid primary highway system of the State (§8021)

State highway commission to cooperate with public roads administration in taking traffic census and making traffic studies (§8040)

Highway commission authorized to cooperate with Federal Government for controlled-access highways. (§§8039-03, 8039-08)

State-county cooperation authorized for Federal-aid roads Federal-aid secondary funds divided between State highway system projects and State-aid road system projects (§§8328-01 to 8328-19)

MISSOURI

Missouri Revised Statutes 1949

Assent to Act of Congress entitled "An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes" (§226 190)

State highway commission directed to comply with the provisions of any Act of Congress providing for the distribution and expenditure of Federal-aid highway funds and to comply with any of the rules or conditions made under the provisions of Federal law in order to secure the funds allotted to Missouri Commission is authorized to pay the State's proportion of the cost. (§226 150)

Commission has supervision of highways constructed, improved and maintained in whole or in part by the aid of Federal funds so far as consistent with the Act of Congress relating thereto (§226 130)

MONTANA

Revised Codes of Montana 1947

State highway commission empowered to formulate rules and regulations necessary to comply with the provisions of the 1916 Act and all other acts granting aid for public highways, and to obtain for the State the full benefit of such acts. Commission is authorized, in conjunction with the board of county commissioners, to designate such public roads as shall be classed as State highways and subject to improvement under the provisions of said Federal-aid road act The commission is authorized to designate such public roads subject to improvement under the 1916 Act and all other acts granting aid for public highways even though not located entirely within the boundaries of the State under specified conditions, and to do all things necessary or required to carry out cooperation with regard to such roads (§§32-1606, 32-1623, 32-1624)

Assent to 1916 Act State highway commission authorized to enter into contracts and agreements with United States relative to the construction or maintenance of highways and to do all other things necessary or required to carry out fully the cooperation contemplated by the 1916 Act (§32-1609)

State highway commission authorized to enter agreements with Federal Government and others to study, analyze, or test effect of weights on highway construction (§32-1622)

State will pay 75 percent of cost of relocating utility facilities when necessary on Federal-Aid Primary System, Federal-Aid Secondary System, or on Interstate System, including extensions thereof within urban areas (§32-1625)

State policy declared to be to facilitate flow of traffic and promote public safety by controlling access to highways on the Interstate System (§§32-2001 to 32-2010)

NEBRASKA

Revised Statutes of Nebraska 1943

Assent to all Federal-aid highway acts and continuing assent to subsequent acts for the same or similar purposes. (§§39-1304, 39-1304 01)

Department of Roads and Irrigation authorized to make contracts and do all things necessary to cooperate with the United States in matters relating to State highway system or any road or street of any political or governmental subdivision for which Federal funds are secured (§39-1305)

Political or governmental subdivisions and public corporations of the State authorized to enter into contracts through or with the department to enable them to participate in all the benefits to be secured from Federal-aid funds. Department to take all steps necessary in order to secure such benefits (§39-1306)

Department authorized to cooperate with the Bureau of Public Roads, Federal agencies and others and to enter into agreements with other States to carry on research and test projects pertaining to road purposes (§§39-1317 to 39-1319)

Mileage limitation on State highway system excludes Interstate System mileage built with more than 50 percent Federal funds. (§39-1310)

State will pay public utility relocation costs for projects on the Interstate System only (§39-1304 02)

NEVADA

Nevada Revised Statutes

Assent to 1916 and 1921 Acts and accepts as a continuing obligation all amendatory and supplementary acts (§408 245)

State highway department authorized to enter into contracts and agreements with the United States, submit programs and do all other things necessary to carry out Federal-aid programs. State pledges matching funds and to carry out maintenance Same authority specified with respect to secondary and feeder roads Department too may receive any Federal funds available for preparation of surveys, maps and traffic

studies and to construct and maintain roadside parks (§§408 250, 408 255, 408 275)

Federal-aid roads are State highways, and when Federal funds are used for national forest roads, board may expend highway funds on State highways built by Federal Government (§408 285)

Department may supplement State system with new routes into or in vicinity of municipalities and metropolitan areas with approval of county commissioners and city council of incorporated city directly affected, or may change existing routes in accordance with studies consummated under §9 of the 1941 Defense Highway Act (§408 290)

NEW HAMPSHIRE

New Hampshire Revised Statutes Annotated

Assent to 1916 Act and all acts amendatory thereof and supplementary thereto State department of public works and highways authorized to make necessary surveys and estimates to carry out provisions of Federal acts State pledges faith to make adequate provision to meet all obligations incident to the acceptance of Federal aid (§§239:1, 239 2, 239.3)

Department of public works and highways to assume full control and pay costs of construction, reconstruction and maintenance of all highways on the Interstate System. (§231 2)

Commission authorized to act for State or any of its political subdivisions in conjunction with representatives of Federal Government in matters relating to location and construction of Federal-aid highways and to take such action as may be necessary to secure to the State the aid and benefits of the 1916 Act and all amendments (§239.4)

Commissioner authorized to make initial selection of interstate routes and to take joint action with highway departments of adjoining States to select routes (§239.6)

NEW JERSEY

New Jersey Statutes Annotated

State highway commissioner may apply to and contract with the United States for

aid in road work and with counties and other State subdivisions for doing such work, and he may undertake to receive and apply Federal-aid funds to any work he has authority to do (§§27:8-1 to 27:8-6)

Commissioner authorized to designate as freeways, routes in the State approved by the Bureau of Public Roads as part of the Interstate System (§27.7A-10)

State will pay utility relocation costs on freeways and parkways (§27:7A-7)

NEW MEXICO

New Mexico Statutes, 1953

Assent to 1916 Act and all acts amendatory thereof and supplementary thereto, to the 1921 Act and all acts amendatory thereof and supplementary thereto (§55-2-25)

State highway commission authorized to enter into contracts and agreements with the United States relating to construction and maintenance of rural post roads, to submit such scheme or program of construction and maintenance as may be required and to do all other things necessary fully to carry out the cooperation contemplated and provided by said acts. State pledges good faith to make available funds sufficient to equal the sum apportioned to the State by the United States during each of the five years for which Federal funds are appropriated by the said acts, and to maintain the roads and to make adequate provision for carrying out such maintenance. (§55-2-25)

Commission authorized to enter into cooperative agreements with municipalities and counties of the State, adjoining States or U.S. Government for construction or improvement of public highways, for the division of expense or for acquisition of rights-of-way therefor or for materials for construction or improvement thereof, provided the State highway commission bear all costs of acquisition of rights-of-way for Federal-aid interstate roads both rural and urban. (§55-2-20)

No change of location of any portion of a State highway or road construction with Federal or State aid shall be made without

approval of State highway commission. (§55-3-12)

Boards of county commissioners authorized to enter into cooperative agreements with Secretary of Agriculture for survey, construction and maintenance of roads and trails within their counties as provided in §8 of 1916 Act. Construction may either be let by contract to the lowest and best bidder or may be done under such supervision and control as may be agreed to by the Secretary of Agriculture and board of county commissioners (§§55-3-19, 55-3-20)

Highway authorities of State, city, county, town or village authorized to cooperate with the United States for controlled-access facilities (§55-10-8)

State will reimburse for cost of utility facility relocation necessary on Federal-aid primary or secondary systems or on Interstate System when the proportionate part of such cost is reimbursable from Federal funds as provided by the 1956 Act. (§55-7-18)

NEW YORK

New York Consolidated Laws Service, Highway Law

Superintendent of public works authorized to use Federal-aid funds in the construction and reconstruction of State highways; village streets, town highways and county roads whether or not on the route of an unimproved State highway, bridges and culverts on State highways; and the preparation of preliminary surveys, plans, specifications and estimates of costs therefor. (§80)

On request of county, superintendent of public works may include in any project on the Federal principal secondary and feeder road system, any work on roads located within such county that is or shall form a continuation or extension of such secondary and feeder roads (§84)

Provisions of Federal-aid highway acts assented to and good faith of State pledged to make such provision from time to time as may be necessary to provide its share of the cost of such work. Superintendent of

public works authorized to perform improvements with Federal aid and to comply with the Federal-aid highway acts and the rules and regulations promulgated thereunder. (§85)

Interstate highways designated by statute to be constructed or improved according to such design and type as determined by the superintendent of public works, subject to Federal-aid provisions. Superintendent is authorized to use Federal-aid funds, or so much thereof as he may determine to accept for such highways (§§340a, 340b)

NORTH CAROLINA

General Statutes of North Carolina

State highway commission has such powers as are necessary to comply fully with the provisions of the present and future Federal-aid acts. Commission authorized to enter into contracts and agreements with the United States regarding survey, construction, improvement and maintenance of roads under present or future congressional enactments to submit such scheme or program of construction or improvement and maintenance as may be required and to do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future acts of Congress for the construction or improvement and maintenance of rural post roads. State pledged its good faith to provide matching funds and to maintain Federal-aid roads. (§136-18(12))

State highway commission has duty, where possible, to cooperate with other States and the Federal Government in correlation of roads so as to form a system of intercounty, interstate, and national highways. (§136-35)

State highway commission authorized to designate, establish, abandon, improve, construct, maintain and regulate controlled-access facilities as a part of the State Highway System, National System of Interstate Highways, and Federal-Aid Primary System. Commission is authorized to enter into agreements with the Federal Government relating to controlled-access highways (§§136-89 50, 136-89 54)

NORTH DAKOTA

North Dakota Revised Code of 1943

Assent to 1916 Act, commissioner authorized to make all contracts and do all things necessary to cooperate with the United States in road construction under any future act of Congress, and may cooperate on roads and streets, which are not on the State highway system as well as on the State system (§§24-0401, 24-0403)

Federal-aid highways to be included in highway system of the State where practicable and justifiable (§24-0402)

Municipalities may participate in the financing, planning, construction and acquisition of Federal-aid highways (§§24-0404, 24-0405)

Highway authorities of State, counties and municipalities authorized to cooperate with Federal Government regarding controlled-access highways. (§§24-0130, 24-0134)

State will pay utility relocation costs on Interstate System as part of cost of Federal-aid project (1957 Laws, ch. 195)

OHIO

Baldwin's Ohio Revised Code

Assent to 1916 Act and all acts amendatory and supplemental and other acts providing funds for the same or similar purposes (§5531.02)

Department of highways may enter contracts and agreements with the United States regarding construction and maintenance of rural post roads and submit programs and do all other things necessary to carry out the cooperation contemplated by Federal acts. State pledges good faith to furnish funds sufficient for any biennium to enable State or political subdivisions to comply with Federal requirements, and to provide for maintenance. All funds to be expended on State highways and extensions through municipal corporations except where Federal appropriations provide a fixed percent to be expended upon secondary roads (§5531 02)

Director of highways authorized to accept Federal allotments for separation of

grades of public highway and a railroad by construction of bridge, underpass, or highway, or railroad relocation, or for alteration, relocation, reconstruction, change, or repair of bridge or underpass carrying public highway over or under railroad or for protection of grade crossings Division of expense between State or political subdivision and railroad, unless otherwise agreed upon, to be in accordance with existing laws applying to municipal, county, or State highway grade separation projects, but limited to such part of the expense as remains after the application of Federal funds (§5531 03)

Procedure set out enabling director of highways to improve Federal-aid primary and Interstate highways within municipalities when they are in urgent need of repair. (§5521 01)

OKLAHOMA

Oklahoma Statutes, 1951

State highway director is to supervise Federal-aid highway construction so far as such supervision is consistent with acts of Congress Department authorized to cooperate with Federal Government. (tit 69, §§20 7, 20 8)

On the Interstate System, Federal-aid funds may be used for acquisition of rights-of-way and if available to be used to pay utility relocation costs, State and local governing bodies authorized to cooperate with Federal Government in construction and maintaining of limited-access highways (tit 69, §§11 3, 46 4)

State highway department to secure cooperation of counties and Federal Government and may enter into contract with the United States, to secure Federal aid for secondary and feeder roads (tit 69, §44)

Department to cooperate with Federal Government in highway research (tit 69, §30 3)

OREGON

Oregon Revised Statutes

Assent to 1916 Act and acts supplementary thereto and accepts provisions and benefits of any act of Congress for con-

struction, improvement or maintenance of public roads or highways in the State State pledges matching funds and authorizes commission to enter into contracts and agreements with the United States to submit program of construction, improvement or maintenance as required and to do all other things necessary to carry out the cooperation contemplated by the acts of Congress (§§366 705 to 366 730)

State highway commission authorized to enter into cooperative agreements with the Federal Government regarding controlled-access highways (§374 080)

The county court of each county may cooperate with the State, the United States or any department thereof in the improvement of any public road within the county (§368 805)

PENNSYLVANIA

Purdon's Pennsylvania Statutes Annotated

Assent to 1916 Act with all its provisions and conditions State pledges to make adequate provisions to meet Federal apportionment and properly to maintain the roads Department of highways authorized to enter into all necessary contracts and agreements for the purpose of carrying into effect the provisions of the 1916 Act, and to do all other things necessary and proper in order to obtain the benefits of the 1916 Act and its supplements and amendments, or any other act of Congress providing Federal aid for highway purposes Department is authorized to accept Federal grants of funds for construction of public highways and related projects (tit 36, §§2641, 670-1004, 670-1005)

Department, in its discretion, may assume and pay all or any part of the property damage for land or buildings where costs of construction in the elimination of a grade crossing on a State highway route within a town or borough are to be paid by the Federal Government (tit 36, §670-307)

RHODE ISLAND

General Laws of Rhode Island, 1956

Department of public works is authorized to cooperate with the Federal Government

in connection with the construction, reconstruction, maintenance and repair of roads and bridges (§§37-5-2, 42-13-2)

Provisions of "State Roads" chapter shall not be construed to prevent the State from receiving Federal aid for roads (§24-8-31)

Cities and towns may propose Federal-aid projects and when the director of public works approves, he will forward the necessary forms to the Bureau of Public Roads. Cities and towns to contribute to matching funds (§§24-4-1 to 24-4-8)

SOUTH CAROLINA

Code of Laws of South Carolina, 1952

Assent to 1916 Act and acts amendatory thereof and any other act providing Federal aid for the construction of highways and other related projects. State pledges its good faith to provide sufficient funds to meet Federal requirements so as to acquire the benefits (§33-2)

Department to cooperate and enter into contracts with U.S. Bureau of Public Roads and do any and all things necessary to carry out the provisions of the Federal act and amendments, and may cooperate in research connected with Federal-aid construction. Department may construct Federal-aid secondary or feeder highways and for this purpose may participate in the cost of construction of roads which are not on the State highway system. (§§33-76 to 33-78, 33-71(5), 33-164)

Department may designate, establish, abandon, improve, construct, maintain and regulate controlled-access facilities as a part of the State Highway Primary System, National System of Interstate Highways and Federal-Aid Primary System (§33-352)

The Orangeburg County highway commission may cooperate with the State highway department to participate in Federal aid (33-1841)

SOUTH DAKOTA

South Dakota Code of 1939

Assent to the 1916 Act and in order further to facilitate the cooperation of the

State with such Act and for other purposes, the State highway commission is perpetuated. State highway commission to maintain and keep in repair all highways constructed or improved by the commission and paid for in whole or in part by State or Federal aid (§§28 0201, 28 0211)

Commission authorized to participate and assist in construction of secondary or feeder roads, to cooperate with Public Roads in their selection, to submit projects, etc (§§28 0225 to 28 0231)

Commission authorized to cooperate with Federal agencies in highway research (1955 Laws, ch 105)

Highway authorities of State, city, county, town, or village authorized to enter into agreements with Federal Government respecting controlled-access facilities or other public ways in their respective jurisdictions to facilitate purpose of controlled-access law (1953 Laws, ch 155, §8)

Commission in cooperation with Bureau of Public Roads to locate and construct the South Dakota sections of the Interstate System (1955 Laws, ch 104)

TENNESSEE

Tennessee Code Annotated

Assents to provisions of any act of Congress providing Federal aid for road construction. Commissioner of highways and public works authorized to make any and all necessary and proper arrangements, contracts, and agreements to receive Federal aid for highways. State pledges to make available funds sufficient to equal Federal apportionment and to maintain Federal-aid roads. Commission authorized to acquire by eminent domain such interest or title in land as he may deem desirable or necessary in order to secure Federal aid, and he may alter the course or otherwise improve any road selected, adopted or accepted for Federal or State aid and take over and improve it as a State highway (§§54-301 to 306, 54-502, 54-504, 54-510)

Commissioner authorized and directed to create within the department a rural roads division to supervise State system of rural roads. Department to match Federal-aid

secondary funds as allocated to counties. (§§54-607 to 54-613)

Highway authorities of State, counties, cities and towns authorized to cooperate and enter into agreements with Federal Government regarding controlled-access highways (§§54-2002, 54-2006)

State will pay utility relocation costs on Interstate System as a cost of construction, but on primary and secondary system, commissioner will determine whether payment by the utility would cause undue hardship and if so State will pay reimbursement from State and Federal-aid funds in amount commissioner deems appropriate (§§54-543 to 545)

TEXAS

Vernon's Texas Civil Statutes, 1948

State highway department has exclusive and direct control of Federal-aid improvement of State highways, and of highways not on the State system (arts 6674d, 6674d-1)

Highway department authorized and directed to acquire by purchase, gift or condemnation all right-of-way necessary for the National System of Interstate and Defense Highways. (art 6673e-1)

State will pay cost of utility relocation on Interstate system provided such relocation is eligible for Federal participation. Reimbursement from State highway fund to utility owning facility is authorized notwithstanding any other provision of law or in any permit or agreement or franchise issued or entered into by the department, commission or political subdivision of the State (art. 6674w-4)

UTAH

Utah Code Annotated, 1953

Assents to the 1916 Act and acts amendatory thereof and supplemental thereto State road commission authorized to enter into all contracts and agreements with the United States relating to survey, construction and maintenance of roads, to submit scheme or program as may be required and to do all other things necessary fully to carry out the

cooperation contemplated Good faith of State pledged to provide matching funds and make adequate provision for carrying out such maintenance Commission to select Federal-aid projects (§§27-5-1, 27-5-2)

Counties authorized to enter into agreements with Federal Government regarding forest roads (§27-5-4)

Federal-aid projects approved by State road commission are designated State roads (§27-6-1)

Highway authorities of State, counties, cities and towns authorized to cooperate and contract with Federal Government in construction and maintenance of limited-access highways (§§27-9-2, 27-9-6)

Utility facility relocation reimbursement authorized where Federal reimbursement may be obtained (§27-2-7)

VERMONT

Vermont Statutes Annotated

Assent to the 1916 Act and amendments thereto and the highway board is authorized to take such action as may be necessary to secure the benefits of Federal aid The board may comply with the rules and regulations prescribed by the Bureau of Public Roads and may use highway funds for matching and for surveys, plans, specifications, estimates and assistance necessary to carry out Federal-aid provisions Board may designate highways to be improved with Federal aid Municipalities may cooperate with highway board in Federal-aid construction Board to construct, maintain and control State-aid highways included in the Federal-aid system (§§4954, 5004 to 5007)

Board with approval of governor may cooperate with Federal Government in construction and maintenance of limited-access highways (1955 Public Acts, No. 270)

VIRGINIA

Code of Virginia, 1950

Assents to the 1916 Act and Commissioner may do any and all things necessary to carry out the provisions of such act. (§33-130)

State highway commission authorized to comply fully with present or future Federal-aid acts, to enter into all contracts or agreements with the United States, to submit such scheme or program for construction or maintenance as may be required and to do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future acts of Congress for construction, improvement and maintenance of rural post roads. Certain cities, towns and counties are also so authorized. State highway commission may cooperate with Public Roads in highway research (§§33-12(5), 33-131, 33-132)

State highway department given control and jurisdiction over Interstate System (§§33-36 1 to 33-36 9)

State will pay utility relocation costs on Interstate System within cities or towns (§33-36 9)

WASHINGTON

Revised Code of Washington

Assent to the 1916 Act and all acts, grants and appropriations amendatory and supplementary thereto and affecting the State Director to administer Federal grants and enter into such agreements with the United States as are desirable or necessary to secure Federal aid for any section of a State highway, county road, or city or town street. Pledges funds sufficient to equal Federal sums apportioned to the State (§§47 08 020, 47 08 050, 47 08 060, 47 08 -070)

Highway authorities of State, counties, and incorporated cities and towns authorized to cooperate and enter into agreements with the Federal Government in construction and maintenance of limited-access facilities. (§§47 52 020, 47 52 090)

State will pay utility relocation costs where a city or town is required to relocate overhead facilities on limited-access highways within its corporate limits (§47 52.-090)

State may perform maintenance on county roads if county fails to do so in violation of agreement with the Federal Government (§36 75 250)

WEST VIRGINIA

West Virginia Code of 1955

Assent to 1916 Act and to any similar provisions that may be made by any subsequent act of Congress making appropriation for the survey, construction, and maintenance of rural post roads. State road commission authorized to enter into contracts and agreements with United States to submit such scheme or program of construction and maintenance as may be required and to do all other things necessary to carry out the cooperation contemplated. State pledges its good faith to make available funds sufficient to equal Federal apportionments, and to maintain Federal-aid roads (§§1455, 1448(8), (28))

Commissioner authorized to enter into agreements with Federal Government regarding controlled-access facilities (§1474 (26))

WISCONSIN

Wisconsin Statutes, 1957

Assent to the 1916 Act and all acts amendatory thereof and supplementary thereto. The State declares its purpose and intent to assent to all Federal highway acts and to make provisions to insure receipt of present and future highway aid allotments and to insure that such highways and related facilities as may be eligible to be improved or constructed under such acts may be improved, constructed and maintained in accordance therewith. Pledges funds to carry out construction and maintenance (§84 015)

State highway commission is directed to plan, select, lay out, add to, decrease, revise, construct, reconstruct, improve and maintain or arrange for the maintenance of all systems of Federal-aid roads (§84 01 (17))

State highway commission authorized to enter into contracts and agreements with the United States under Federal-aid highway acts, to submit such scheme or program of construction and maintenance as may be required and to do all other things necessary fully to carry out the cooperation

contemplated and provided for, to plan, select, lay out, add to, decrease, revise, construct, reconstruct, improve and maintain the Interstate system, Federal-aid system, system of secondary and feeder roads, Federal-aid grade crossing projects, Federal and forest highway systems under Federal-aid highway acts and to receive all funds to match or supplement Federal-aid funds and expend such funds in accordance with the requirements of the acts or of the State and cooperate with Federal authorities and subdivisions of the State (§84 015)

State assents to present and future congressional acts authorizing the development of the National System of Interstate Highways and authorizes the State highway commission and appropriate State boards, commissions, departments and the governing bodies of counties, cities, towns and villages to cooperate with the United States Commission authorized to establish routes as State trunk highways, to change existing highways and utilities, and to lay out new highways for Interstate system, to construct grade separations at intersections of Interstate highways with other public highways and railroads and under agreement with county or municipality to relocate and close highways at or near intersection with any Interstate highway and to cooperate with the Federal Government under controlled-access law (§§84 25(9), 84.29)

County highway committee to cooperate with State highway commission in selection of secondary roads under Federal acts. (§83 026)

WYOMING

Wyoming Compiled Statutes, 1945

Assents to 1916 Act together with all acts and legislation amendatory thereto or supplementary thereto or which shall grant or authorize aid for public roads or highways State highway commission authorized to enter into all contracts and agreements with the United States, to submit such scheme or program of construction and maintenance as may be required and to do all other things necessary fully to carry out the cooperation contemplated Good faith of the State is pledged to make available funds sufficient to equal Federal apportionments and to make adequate provisions for carrying out maintenance Cooperative agreements to be entered into only by the commission but may be for construction or improvement of either a State highway or a county road (§48-109)

Highway authorities of State, counties, cities, towns, and villages authorized to cooperate and enter into agreements with the United States regarding limited-access facilities (§§48-348, 48-352)

APPENDIX B

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