

(2) areas with respect to which the need for prevention or mitigation of damage to shores and beaches is attributable to Federal navigation projects or other Federal activities.

(c) Applicability

The Secretary shall apply the policy under subsection (a) to each shore protection and beach renourishment project (including shore protection and beach renourishment projects constructed before November 8, 2007).

(Pub. L. 110-114, title II, §2018, Nov. 8, 2007, 121 Stat. 1077.)

REFERENCES IN TEXT

The Act of July 3, 1930, referred to in subsec. (a), is act July 3, 1930, ch. 847, 46 Stat. 918. For complete classification of this Act to the Code, see Tables.

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110-114, set out as a note under section 2201 of this title.

§ 426f. Reimbursements

(a) In general

The Secretary is authorized to reimburse non-Federal interests for work done by them, after initiation of the survey studies which form the basis for the project or separable element of the project, on authorized projects or separable elements which individually do not exceed \$1,000,000 in total cost: *Provided*, That the work which may have been done on the projects or separable elements is approved by the Chief of Engineers as being in accordance with the authorized projects or separable elements: *Provided further*, That such reimbursement shall be subject to appropriations applicable thereto or funds available therefor and shall not take precedence over other pending projects or separable elements of higher priority for improvements.

(b) Agreements

(1) Requirement

After authorization of reimbursement by the Secretary under this section, and before commencement of construction, of a shore protection project, the Secretary shall enter into a written agreement with the non-Federal interest with respect to the project or separable element.

(2) Terms

The agreement shall—

- (A) specify the life of the project; and
- (B) ensure that the Federal Government and the non-Federal interest will cooperate in carrying out the project or separable element.

(Aug. 13, 1946, ch. 960, §2, 60 Stat. 1056; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501; July 28, 1956, ch. 768, 70 Stat. 703; Pub. L. 87-874, title I, §103(a)(4), Oct. 23, 1962, 76 Stat. 1178; Pub. L. 104-303, title II, §227(c)(1), Oct. 12, 1996, 110 Stat. 3699.)

AMENDMENTS

1996—Pub. L. 104-303 inserted section catchline, designated existing provisions as subsec. (a), inserted heading, substituted “Secretary” for “Secretary of the

Army” and “non-Federal interests” for “local interests”, inserted “or separable element of the project” after “project”, inserted “or separable elements” after “projects” wherever appearing, and added subsec. (b).

1962—Pub. L. 87-874 substituted provisions which authorize the Secretary of the Army to reimburse local interests for work done on authorized projects which individually do not exceed \$1,000,000 in cost, and provide that such reimbursement shall be subject to applicable appropriations or available funds and not take priority over pending projects of higher priority, for provisions which authorized the Chief of Engineers to cause to be paid to the political subdivision involved the amount authorized by Congress.

1956—Act July 28, 1956, substituted “or other political subdivision involved” for “or political subdivision”.

CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted “Title 10, Armed Forces” which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of the Army and other offices and officers of Department of the Army under section 401 of this title to extent that they relate generally to location and clearances of bridges and causeways in navigable waters of United States transferred to and vested in Secretary of Transportation by Pub. L. 89-670, §6(g)(6)(A), Oct. 15, 1966, 80 Stat. 941, which created Department of Transportation. Pub. L. 97-449 amended section 401 of this title to reflect transfer made by section 6(g)(6)(A) of Pub. L. 89-670, and repealed section 6(g)(6)(A).

§ 426g. Storm and hurricane restoration and impact minimization program

(a) Construction of small shore and beach restoration and protection projects

(1) In general

The Secretary may carry out a program for the construction of small shore and beach restoration and protection projects not specifically authorized by Congress that otherwise comply with section 426e of this title if the Secretary determines that such construction is advisable.

(2) Local cooperation

The local cooperation requirement of section 426e of this title shall apply to a project under this section.

(3) Completeness

A project under this subsection—

- (A) shall be complete; and
- (B) shall not commit the United States to any additional improvement to ensure the successful operation of the project; except for participation in periodic beach nourishment in accordance with—
 - (i) section 426e of this title; and
 - (ii) the procedure for projects authorized after submission of a survey report.

(b) National shoreline erosion control development and demonstration program

(1) In general

The Secretary shall conduct under the program authorized by subsection (a) a national

shoreline erosion control development and demonstration program (referred to in this section as the “demonstration program”).

(2) Requirements

(A) In general

The demonstration program shall include provisions for—

- (i) projects consisting of planning, design, construction, and monitoring of prototype engineered and native and naturalized vegetative shoreline erosion control devices and methods;
- (ii) monitoring of the applicable prototypes;
- (iii) detailed engineering and environmental reports on the results of each project carried out under the demonstration¹ program; and
- (iv) technology transfers, as appropriate, to private property owners, State and local entities, nonprofit educational institutions, and nongovernmental organizations.

(B) Determination of feasibility

A project under the demonstration program shall not be carried out until the Secretary determines that the project is feasible.

(C) Emphasis

A project under the demonstration program shall emphasize, to the maximum extent practicable—

- (i) the development and demonstration of innovative technologies;
- (ii) efficient designs to prevent erosion at a shoreline site, taking into account the lifecycle cost of the design, including cleanup, maintenance, and amortization;
- (iii) new and enhanced shore protection project design and project formulation tools the purposes of which are to improve the physical performance, and lower the lifecycle costs, of the projects;
- (iv) natural designs, including the use of native and naturalized vegetation or temporary structures that minimize permanent structural alterations to the shoreline;
- (v) the avoidance of negative impacts to adjacent shorefront communities;
- (vi) in areas with substantial residential or commercial interests located adjacent to the shoreline, designs that do not impair the aesthetic appeal of the interests;
- (vii) the potential for long-term protection afforded by the technology; and
- (viii) recommendations developed from evaluations of the program established under the Shoreline Erosion Control Demonstration Act of 1974 (42 U.S.C. 1962-5 note),² including—
 - (I) adequate consideration of the subgrade;
 - (II) proper filtration;
 - (III) durable components;
 - (IV) adequate connection between units; and

- (V) consideration of additional relevant information.

(D) Sites

(i) In general

Each project under the demonstration program may be carried out at—

- (I) a privately owned site with substantial public access; or
- (II) a publicly owned site on open coast or in tidal waters.

(ii) Selection

The Secretary shall develop criteria for the selection of sites for projects under the demonstration program, including criteria based on—

- (I) a variety of geographic and climatic conditions;
- (II) the size of the population that is dependent on the beaches for recreation or the protection of private property or public infrastructure;
- (III) the rate of erosion;
- (IV) significant natural resources or habitats and environmentally sensitive areas; and
- (V) significant threatened historic structures or landmarks.

(3) Consultation

The Secretary shall carry out the demonstration program in consultation with—

- (A) the Secretary of Agriculture, particularly with respect to native and naturalized vegetative means of preventing and controlling shoreline erosion;
- (B) Federal, State, and local agencies;
- (C) private organizations;
- (D) the Coastal Engineering Research Center established by section 426-1 of this title; and
- (E) applicable university research facilities.

(4) Completion of demonstration

After carrying out the initial construction and evaluation of the performance and cost of a project under the demonstration program, the Secretary may—

- (A) amend, at the request of a non-Federal interest of the project, the partnership agreement for a federally authorized shore protection project in existence on the date on which initial construction of the project under the demonstration program is complete to incorporate the project constructed under the demonstration program as a feature of the shore protection project, with the future cost sharing of the project constructed under the demonstration program to be determined by the project purposes of the shore protection project; or
- (B) transfer all interest in and responsibility for the completed project constructed under the demonstration program to a non-Federal interest or another Federal agency.

(5) Agreements

The Secretary may enter into a partnership agreement with the non-Federal interest or a cooperative agreement with the head of an-

¹ So in original. Probably should be “demonstration”.

² See References in Text note below.

other Federal agency under the demonstration program—

(A) to share the costs of construction, operation, maintenance, and monitoring of a project under the demonstration program;

(B) to share the costs of removing the project, or element of the project if the Secretary determines that the project or element of the project is detrimental to public or private property, public infrastructure, or public safety; or

(C) to specify ownership of the completed project if the Secretary determines that the completed project will not be part of a Corps of Engineers project.

(6) Report

Not later than December 31, 2008, and every 3 years thereafter, the Secretary shall prepare and submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report describing—

(A) the activities carried out and accomplishments made under the demonstration program since the previous report under this paragraph; and

(B) any recommendations of the Secretary relating to the program.

(c) Authorization of appropriations

(1) In general

Subject to paragraph (2), the Secretary may expend, from any appropriations made available to the Secretary for the purpose of carrying out civil works, not more than \$30,000,000 during any fiscal year to pay the Federal share of the costs of construction of small shore and beach restoration and protection projects or small projects under this section.

(2) Limitation

The total amount expended for a project under this section shall—

(A) be sufficient to pay the cost of Federal participation in the project (including periodic nourishment as provided for under section 426e of this title), as determined by the Secretary; and

(B) be not more than \$5,000,000.

(Aug. 13, 1946, ch. 960, § 3, 60 Stat. 1056; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501; July 28, 1956, ch. 768, 70 Stat. 703; Pub. L. 87-874, title I, § 103(a)(4), Oct. 23, 1962, 76 Stat. 1178; Pub. L. 89-298, title III, § 310(b), Oct. 27, 1965, 79 Stat. 1095; Pub. L. 91-611, title I, § 112(b), Dec. 31, 1970, 84 Stat. 1821; Pub. L. 99-662, title IX, § 915(e), Nov. 17, 1986, 100 Stat. 4191; Pub. L. 104-303, title II, § 227(e)(2)(C), Oct. 12, 1996, 110 Stat. 3703; Pub. L. 106-53, title II, § 226, Aug. 17, 1999, 113 Stat. 298; Pub. L. 110-114, title II, § 2038(a), Nov. 8, 2007, 121 Stat. 1097.)

REFERENCES IN TEXT

The Shoreline Erosion Control Demonstration Act of 1974, referred to in subsec. (b)(2)(C)(viii), is Pub. L. 93-251, title I, § 54, Mar. 7, 1974, 88 Stat. 26, formerly set out as a note under section 1962d-5 of Title 42, The Public Health and Welfare.

AMENDMENTS

2007—Pub. L. 110-114 amended section generally. Prior to amendment, section related to authorization of

small shore and beach restoration and protection projects not specifically authorized by Congress.

1999—Pub. L. 106-53 substituted “\$3,000,000” for “\$2,000,000”.

1996—Pub. L. 104-303 substituted “Secretary” for “Secretary of the Army”.

1986—Pub. L. 99-662 substituted “\$30,000,000” for “\$25,000,000” and “\$2,000,000” for “\$1,000,000”.

1970—Pub. L. 91-611 increased authorized annual allotment for Federal share of project construction costs from \$10,000,000 to \$25,000,000 and the limitation on allotment for any single project from \$500,000 to \$1,000,000.

1965—Pub. L. 89-298 increased authorized annual allotment for Federal share of project construction costs from \$3,000,000 to \$10,000,000 and the limitation on allotment for any single project from \$400,000 to \$500,000.

1962—Pub. L. 87-874 substituted provisions which authorize the Secretary of the Army to undertake small shore and beach projects not specifically authorized by Congress, which otherwise comply with section 426e of this title, and to allot from any civil works appropriations hereafter made, an amount not to exceed \$3,000,000 for the Federal share of such projects in any one fiscal year, provide that no such single project shall be allotted more than \$400,000, including periodic nourishment, that provisions of local cooperation shall apply, and that the work shall be complete and not commit the United States to any additional improvement except for periodic beach nourishment, and as may result from procedure applying to projects authorized after submission of survey reports, for provisions which permitted the Chief of Engineers to make advance payments, not exceeding the United States pro rata part of the value of the labor and materials actually put in, and to undertake construction of restoration and protective works under sections 426e to 426h of this title upon the request of, and contribution of funds by, the interested political subdivision.

1956—Act July 28, 1956, substituted “restoration and protective works under sections 426e to 426h of this title” for “improvement and protective works”.

CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted “Title 10, Armed Forces” which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 915(i) of Pub. L. 99-662 provided that: “The amendments made by this section [amending this section and sections 426i, 577, 603a, 701g, 701r, and 701s of this title] shall not apply to any project under contract for construction on the date of enactment of this Act [Nov. 17, 1986].”

EFFECTIVE DATE OF 1970 AMENDMENT

Section 112(c) of Pub. L. 91-611 provided that: “The amendments made by this section [amending this section and section 577 of this title] shall not apply to any project under contract for construction on the date of enactment of this Act [Dec. 31, 1970].”

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of the Army and other offices and officers of Department of the Army under section 401 of this title to extent that they relate generally to location and clearances of bridges and causeways in navigable waters of United States transferred to and vested in Secretary of Transportation by Pub. L. 89-670, § 6(g)(6)(A), Oct. 15, 1966, 80 Stat. 941, which created Department of Transportation. Pub. L. 97-449 amended section 401 of this title to re-

flect transfer made by section 6(g)(6)(A) of Pub. L. 89-670, and repealed section 6(g)(6)(A).

§ 426g-1. State and regional plans

The Secretary may—

(1) cooperate with any State in the preparation of a comprehensive State or regional plan for the conservation of coastal resources located within the boundaries of the State;

(2) encourage State participation in the implementation of the plan; and

(3) submit to Congress reports and recommendations with respect to appropriate Federal participation in carrying out the plan.

(Aug. 13, 1946, ch. 960, §4, as added Pub. L. 104-303, title II, §227(d)(2), Oct. 12, 1996, 110 Stat. 3700.)

PRIOR PROVISIONS

A prior section 4 of act Aug. 13, 1946, was renumbered section 5 of that act, and was classified to section 426h of this title prior to repeal by Pub. L. 104-303.

§ 426h. Repealed. Pub. L. 110-114, title II, § 2038(b), Nov. 8, 2007, 121 Stat. 1100

Section, act Aug. 13, 1946, ch. 960, §5, as added Pub. L. 104-303, title II, §227(e)(1), Oct. 12, 1996, 110 Stat. 3700; amended Pub. L. 106-53, title V, §581, Aug. 17, 1999, 113 Stat. 375; Pub. L. 109-234, title II, §2305, June 15, 2006, 120 Stat. 456; Pub. L. 110-161, div. C, title I, §113, Dec. 26, 2007, 121 Stat. 1944, related to national shoreline erosion control development and demonstration program.

A prior section 426h, acts Aug. 13, 1946, ch. 960, §5, formerly §4, 60 Stat. 1057; July 28, 1956, ch. 768, 70 Stat. 703; renumbered §5, Oct. 12, 1996, Pub. L. 104-303, title II, §227(d)(1), 110 Stat. 3700, defined the word “shores” as used in sections 426e to 426h of this title, prior to repeal by Pub. L. 104-303, title II, §227(e)(1), Oct. 12, 1996, 110 Stat. 3700.

§ 426h-1. Definitions

In sections 426e to 426h-1 of this title, the following definitions apply:

(1) Erosion control program

The term “erosion control program” means the national shoreline erosion control development and demonstration program established under this section.

(2) Secretary

The term “Secretary” means the Secretary of the Army.

(3) Separable element

The term “separable element” has the meaning provided by section 2213(f) of this title.

(4) Shore

The term “shore” includes each shoreline of the Atlantic and Pacific Oceans, the Gulf of Mexico, the Great Lakes, and lakes, estuaries, and bays directly connected therewith.

(5) Shore protection project

The term “shore protection project” includes a project for beach nourishment, including the replacement of sand.

(Aug. 13, 1946, ch. 960, §6, as added Pub. L. 104-303, title II, §227(e)(1), Oct. 12, 1996, 110 Stat. 3702.)

§ 426i. Shore damage prevention or mitigation

(a) In general

The Secretary of the Army is authorized to investigate, study, plan, and implement structural and nonstructural measures for the prevention or mitigation of shore damages attributable to Federal navigation works and shore damage attributable to the Atlantic Intracoastal Waterway and the Gulf Intracoastal Waterway, if a non-Federal public body agrees to operate and maintain such measures, and, in the case of interests in real property acquired in conjunction with nonstructural measures, to operate and maintain the property for public purposes in accordance with regulations prescribed by the Secretary.

(b) Cost sharing

The costs of implementing measures under this section shall be cost-shared in the same proportion as the cost-sharing provisions applicable to the project causing the shore damage.

(c) Requirement for specific authorization

No such project shall be initiated without specific authorization by Congress if the Federal first cost exceeds \$5,000,000.

(d) Coordination

The Secretary shall—

(1) coordinate the implementation of the measures under this section with other Federal and non-Federal shore protection projects in the same geographic area; and

(2) to the extent practicable, combine mitigation projects with other shore protection projects in the same area into a comprehensive regional project.

(Pub. L. 90-483, title I, §111, Aug. 13, 1968, 82 Stat. 735; Pub. L. 99-662, title IX, §§915(f), 940, Nov. 17, 1986, 100 Stat. 4191, 4199; Pub. L. 106-53, title II, §214, Aug. 17, 1999, 113 Stat. 291.)

AMENDMENTS

1999—Pub. L. 106-53 designated first sentence as subsec. (a), inserted heading, and inserted “and shore damage attributable to the Atlantic Intracoastal Waterway and the Gulf Intracoastal Waterway” after “navigation works”, designated second sentence as subsec. (b) and inserted heading, and designated third sentence as subsec. (c), inserted heading, and substituted “\$5,000,000” for “\$2,000,000”, and added subsec. (d).

1986—Pub. L. 99-662, §940, amended section generally. Prior to amendment, section read as follows: “The Secretary of the Army, acting through the Chief of Engineers, is authorized to investigate, study, and construct projects for the prevention or mitigation of shore damages attributable to Federal navigation works. The cost of installing, operating, and maintaining such projects shall be borne entirely by the United States. No such project shall be constructed without specific authorization by Congress if the estimated first cost exceeds \$2,000,000.”

Pub. L. 99-662, §915(f), substituted “\$2,000,000” for “\$1,000,000”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 915(f) of Pub. L. 99-662 not applicable to any project under contract for construction on Nov. 17, 1986, see section 915(i) of Pub. L. 99-662, set out as a note under section 426g of this title.