

§ 701b-10. Revolving fund; establishment; availability; reimbursement; transfer of funds; limitation

There is established a revolving fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of the plant and equipment of the Corps of Engineers used in civil works functions, including acquisition of plant and equipment, maintenance, repair, and purchase, operation, and maintenance of not to exceed four aircraft at any one time, temporary financing of services finally chargeable to appropriations for civil works functions, and the furnishing of facilities and services for military functions of the Department of the Army and other Government agencies and private persons, as authorized by law, \$100; and in addition, the Secretary of the Army is authorized to provide capital for the fund by capitalizing the present inventories, plant and equipment of the civil works functions of the Corps of Engineers. The fund shall be credited with reimbursements or advances for the cost of equipment, facilities, and services furnished, at rates which shall include charges for overhead and related expenses, depreciation of plant and equipment, and accrued leave: *Provided*, That on July 1, 1953, (1) the fund shall assume the assets, liabilities, and obligations of the Plant accounts, as carried on the records of the Corps of Engineers as of June 30, 1953, under the appropriations for "Maintenance and improvement of existing river and harbor works", "Flood control, general", and "Flood control, Mississippi River and tributaries", and (2) there shall be transferred from said appropriations to the fund amounts equivalent to the unexpended cash balances of the Plant accounts on June 30, 1953: *Provided further*, That the total capital of said fund shall not exceed \$140,000,000.

(July 27, 1953, ch. 245, §101, 67 Stat. 199.)

CODIFICATION

Section is also set out as section 576 of this title.

Section was formerly classified to section 190b of Title 10 prior to the general revision and enactment of Title 10, Armed Forces, by act Aug. 10, 1956, ch. 1041, 70A Stat. 1.

RETENTION OF THREE OPERATIONAL AIRCRAFT; NOTICE OF INTENDED USE OUTSIDE UNITED STATES

For provision relating to retention, use, and disposal of three operational aircraft by Chief of Engineers, see section 101(d) [title I, §110] of Pub. L. 100-202, set out as a note under section 576 of this title.

§ 701b-11. Flood protection projects

(a) General considerations; nonstructural alternatives

In the survey, planning, or design by any Federal agency of any project involving flood protection, consideration shall be given to nonstructural alternatives to prevent or reduce flood damages including, but not limited to, floodproofing of structures; flood plain regulation; acquisition of flood plain lands for recreational, fish and wildlife, and other public purposes; and relocation with a view toward formulating the most economically, socially, and environmentally acceptable means of reducing or preventing flood damages.

(b) Non-Federal participation through non-structural alternatives; limitation

Where a nonstructural alternative is recommended, non-Federal participation shall be comparable to the value of lands, easements, and rights-of-way which would have been required of non-Federal interests under section 701c of this title, for structural protection measures, but in no event shall exceed 20 per centum of the project costs.

(Pub. L. 93-251, title I, §73, Mar. 7, 1974, 88 Stat. 32.)

NONSTRUCTURAL FLOOD CONTROL POLICY

Pub. L. 104-303, title II, §202(d), Oct. 12, 1996, 110 Stat. 3675, provided that:

"(1) REVIEW.—The Secretary shall conduct a review of policies, procedures, and techniques relating to the evaluation and development of flood control measures with a view toward identifying impediments that may exist to justifying nonstructural flood control measures as alternatives to structural measures.

"(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Oct. 12, 1996], the Secretary shall transmit to Congress a report on the findings of the review conducted under this subsection, together with any recommendations for modifying existing law to remove any impediments identified under such review."

§ 701b-12. Floodplain management requirements

(a) Compliance with floodplain management and insurance programs

Before construction of any project for local flood protection, or any project for hurricane or storm damage reduction, that involves Federal assistance from the Secretary, the non-Federal interest shall agree to participate in and comply with applicable Federal floodplain management and flood insurance programs.

(b) Floodplain management plans

Within 1 year after the date of signing a project cooperation agreement for construction of a project to which subsection (a) of this section applies, the non-Federal interest shall prepare a floodplain management plan designed to reduce the impacts of future flood events in the project area. Such plan shall be implemented by the non-Federal interest not later than 1 year after completion of construction of the project.

(c) Guidelines

(1) In general

The Secretary shall develop guidelines for preparation of floodplain management plans by non-Federal interests under subsection (b) of this section.

(2) Required elements

The guidelines developed under paragraph (1) shall—

(A) address potential measures, practices, and policies to be undertaken by non-Federal interests to to¹ reduce loss of life, injuries, damages to property and facilities, public expenditures, and other adverse impacts associated with flooding and to preserve and enhance natural floodplain values; and

(B) address those measures to be undertaken by non-Federal interests to preserve

¹ So in original.

the level of flood protection provided by a project to which subsection (a) of this section applies.

(3) Limitation on statutory construction

Nothing in this subsection shall be construed to confer any regulatory authority upon the Secretary or the Administrator of the Federal Emergency Management Agency.

(d) Technical support

The Secretary may provide technical support to a non-Federal interest for a project to which subsection (a) of this section applies for the development and implementation of plans prepared under subsection (b) of this section.

(Pub. L. 99-662, title IV, § 402, Nov. 17, 1986, 100 Stat. 4133; Pub. L. 100-676, § 14, Nov. 17, 1988, 102 Stat. 4026; Pub. L. 104-303, title II, § 202(c)(1), Oct. 12, 1996, 110 Stat. 3674; Pub. L. 106-541, title II, § 209(a), (c), Dec. 11, 2000, 114 Stat. 2591; Pub. L. 109-295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

AMENDMENTS

2000—Subsec. (b). Pub. L. 106-541, § 209(c), substituted “Floodplain” for “Flood plain” in heading and “floodplain” for “flood plain” in first sentence.

Subsec. (c). Pub. L. 106-541, § 209(a), in first sentence substituted “The” for “Within 6 months after October 12, 1996, the”, designated second sentence as par. (2), inserted heading, substituted “The guidelines developed under paragraph (1) shall—” for “Such guidelines shall”, designated remainder of sentence as subpar. (A), inserted “to be undertaken by non-Federal interests to” after “policies”, added subpar. (B), and redesignated former par. (2) as (3).

1996—Pub. L. 104-303 substituted “Floodplain management requirements” for “Compliance with flood plain management and insurance programs” in section catchline and amended text generally. Prior to amendment, text read as follows: “Before construction of any project for local flood protection or any project for hurricane or storm damage reduction, the non-Federal interests shall agree to participate in and comply with applicable Federal flood plain management and flood insurance programs.”

1988—Pub. L. 100-676 inserted “or any project for hurricane or storm damage reduction” after “local flood protection”.

CHANGE OF NAME

“Administrator of the Federal Emergency Management Agency” substituted for “Director of the Federal Emergency Management Agency” in subsec. (c)(3) on authority of section 612(c) of Pub. L. 109-295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109-295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109-295, set out as a note under section 313 of Title 6.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-541, title II, § 209(b), Dec. 11, 2000, 114 Stat. 2591, provided that: “The amendments made by subsection (a) [amending this section] shall apply to any project or separable element of a project with respect to which the Secretary [of the Army] and the non-Federal interest have not entered a project cooperation agreement on or before the date of enactment of this Act [Dec. 11, 2000].”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-303, title II, § 202(c)(2), Oct. 12, 1996, 110 Stat. 3675, provided that: “The amendment made by

paragraph (1) [amending this section] shall apply to any project or separable element thereof with respect to which the Secretary and the non-Federal interest have not entered into a project cooperation agreement on or before the date of the enactment of this Act [Oct. 12, 1996].”

REFERENCE TO PROJECT COOPERATION AGREEMENT
DEEMED REFERENCE TO PROJECT PARTNERSHIP AGREEMENT

Reference to “project cooperation agreement” deemed to be reference to “project partnership agreement”, see section 2003(f)(2) of Pub. L. 110-114, set out as a note under section 1962d-5b of Title 42, The Public Health and Welfare.

§ 701b-13. Construction of flood control projects by non-Federal interests

(a) Authority

Non-Federal interests are authorized to undertake flood control projects in the United States, subject to obtaining any permits required pursuant to Federal and State laws in advance of actual construction.

(b) Studies and design activities

(1) By non-Federal interests

A non-Federal interest may prepare, for review and approval by the Secretary, the necessary studies and design documents for any construction to be undertaken pursuant to subsection (a) of this section.

(2) By Secretary

Upon request of an appropriate non-Federal interest, the Secretary may undertake all necessary studies and design activities for any construction to be undertaken pursuant to subsection (a) of this section and provide technical assistance in obtaining all necessary permits for such construction if the non-Federal interest contracts with the Secretary to provide to the United States funds for the studies and design activities during the period in which the studies and design activities will be conducted.

(c) Completion of studies and design activities

In the case of any study or design documents for a flood control project that were initiated before October 12, 1996, the Secretary may complete and transmit to the appropriate non-Federal interests the study or design documents or, upon the request of such non-Federal interests, terminate the study or design activities and transmit the partially completed study or design documents to such non-Federal interests for completion. Studies and design documents subject to this subsection shall be completed without regard to the requirements of subsection (b) of this section.

(d) Authority to carry out improvement

(1) In general

(A) Studies and design activities under subsection (b)

(i) In general

A non-Federal interest may carry out construction for which studies and design documents are prepared under subsection (b) of this section only if the Secretary approves the project for construction.