

November 19, 2005, pursuant to section 560 of this title; section 561 of this title; the Civil Functions Appropriations Act, 1936, Public Law 75-208¹; section 1962d-5a of title 42; sections 2214, 2231, and 2232 of this title; section 426i-1 of this title; section 701b-13 of this title; and any other specific project authority, shall be limited to total credits and reimbursements for all applicable projects not to exceed \$100,000,000 in each fiscal year.

(Pub. L. 109-103, title I, §102, Nov. 19, 2005, 119 Stat. 2253.)

REFERENCES IN TEXT

The Civil Functions Appropriations Act, 1936, Public Law 75-208, referred to in text, may mean the War Department Civil Appropriation Act, 1938, act July 19, 1937, ch. 511, 50 Stat. 515, 518, which amended act June 22, 1936, ch. 688, §5, by adding the proviso classified to section 701h of this title.

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 2006, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation acts:

Pub. L. 108-447, div. C, title I, §101, Dec. 8, 2004, 118 Stat. 2941; Pub. L. 109-13, div. A, title VI, §6005, May 11, 2005, 119 Stat. 282.

Pub. L. 108-137, title I, §101, Dec. 1, 2003, 117 Stat. 1833.

Pub. L. 108-7, div. D, title I, §101, Feb. 20, 2003, 117 Stat. 138.

Pub. L. 107-66, title I, §103, Nov. 12, 2001, 115 Stat. 493.

Pub. L. 106-377, §1(a)(2) [title I, §102], Oct. 27, 2000, 114 Stat. 1441, 1441A-65.

Pub. L. 106-60, title I, §102, Sept. 29, 1999, 113 Stat. 487.

§ 2222. Use of other Federal funds

The non-Federal interest for a water resources study or project may use, and the Secretary shall accept, funds provided by a Federal agency under any other Federal program, to satisfy, in whole or in part, the non-Federal share of the cost of the study or project if the Federal agency that provides the funds determines that the funds are authorized to be used to carry out the study or project.

(Pub. L. 110-114, title II, §2007, Nov. 8, 2007, 121 Stat. 1073.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

“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.

SUBCHAPTER II—HARBOR DEVELOPMENT

§ 2231. Studies of projects by non-Federal interests

(a) Submission to Secretary

A non-Federal interest may on its own undertake a feasibility study of a proposed harbor or

inland harbor project and submit it to the Secretary. To assist non-Federal interests, the Secretary shall, as soon as practicable, promulgate guidelines for studies of harbors or inland harbors to provide sufficient information for the formulation of studies.

(b) Review by Secretary

The Secretary shall review each study submitted under subsection (a) of this section for the purpose of determining whether or not such study and the process under which such study was developed comply with Federal laws and regulations applicable to feasibility studies of navigation projects for harbors or inland harbors.

(c) Submission to Congress

Not later than 180 days after receiving any study submitted under subsection (a) of this section, the Secretary shall transmit to the Congress, in writing, the results of such review and any recommendations the Secretary may have concerning the project described in such plan and design.

(d) Credit and reimbursement

If a project for which a study has been submitted under subsection (a) of this section is authorized by any provision of Federal law enacted after the date of such submission, the Secretary shall credit toward the non-Federal share of the cost of construction of such project an amount equal to the portion of the cost of developing such study that would be the responsibility of the United States if such study were developed by the Secretary.

(Pub. L. 99-662, title II, §203, Nov. 17, 1986, 100 Stat. 4098.)

SHORT TITLE

For short title of title II of Pub. L. 99-662, enacting this subchapter, as the Harbor Development and Navigation Improvement Act of 1986, see section 215 of Pub. L. 99-662, set out as a note under section 2201 of this title.

§ 2232. Construction of projects by non-Federal interests

(a) Authority

In addition to projects undertaken pursuant to sections 201 and 202 of this title, any non-Federal interest is authorized to undertake navigational improvements in harbors or inland harbors of the United States, subject to obtaining any permits required pursuant to Federal and State laws in advance of the actual construction of such improvements.

(b) Studies and engineering

When requested by an appropriate non-Federal interest the Secretary is authorized to undertake all necessary studies and engineering for any construction to be undertaken under the terms of subsection (a) of this section, and provide technical assistance in obtaining all necessary permits, if the non-Federal interest contracts with the Secretary to furnish the United States funds for such studies and engineering during the period that they are conducted.

(c) Completion of studies

The Secretary is authorized to complete and transmit to the appropriate non-Federal inter-

¹ See References in Text note below.

est any study for improvements to harbors or inland harbors of the United States which were initiated prior to November 17, 1986, or, upon the request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest. The Secretary is further authorized to complete and transmit to the appropriate non-Federal interest any study for improvement to harbors or inland harbors of the United States that is initiated pursuant to section 577 of this title or, upon request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest. Studies under this subsection shall be completed without regard to the requirements of subsection (b) of this section.

(d) Authority to carry out improvement

Any non-Federal interest which has requested and received from the Secretary pursuant to subsection (b) or (c) of this section, the completed study and engineering for an improvement to a harbor or an inland harbor, or separable element thereof, for the purpose of constructing such improvement and for which improvement a final environmental impact statement has been filed, shall be authorized to carry out the terms of the plan for such improvement. Any plan of improvement proposed to be implemented in accordance with this subsection shall be deemed to satisfy the requirements for obtaining the appropriate permits required under the Secretary's authority and such permits shall be granted subject to the non-Federal interest's acceptance of the terms and conditions of such permits: Provided, That the Secretary determines that the applicable regulatory criteria and procedures have been satisfied. The Secretary shall monitor any project for which permits are granted under this subsection in order to ensure that such project is constructed (and, in those cases where such activities will not be the responsibility of the Secretary, operated and maintained) in accordance with the terms and conditions of such permits.

(e) Reimbursement

(1) General rule

Subject to the enactment of appropriation Acts, the Secretary is authorized to reimburse any non-Federal interest an amount equal to the estimate of Federal share, without interest, of the cost of any authorized harbor or inland harbor improvement, or separable element thereof, including any small navigation project approved pursuant to section 577 of this title, constructed under the terms of this section if—

(A) after authorization of the project (or, in the case of a small navigation project, after completion of a favorable project report by the Corps of Engineers) and before initiation of construction of the project or separable element—

(i) the Secretary approves the plans of construction of such project by such non-Federal interest, and

(ii) such non-Federal interest enters into an agreement to pay the non-Federal share, if any, of the cost of operation and maintenance of such project; and

(B) the Secretary finds before approval of the plans of construction of the project that the project, or separable element, is economically justified and environmentally acceptable.

(2) Matters to be considered in reviewing plans

In reviewing such plans, the Secretary shall consider budgetary and programmatic priorities, potential impacts on the cost of dredging projects nationwide, and other factors that the Secretary deems appropriate.

(3) Monitoring

The Secretary shall regularly monitor and audit any project for a harbor or inland harbor constructed under this subsection by a non-Federal interest in order to ensure that such construction is in compliance with the plans approved by the Secretary, and that costs are reasonable. No reimbursement shall be made unless and until the Secretary has certified that the work for which reimbursement is requested has been performed in accordance with applicable permits and the approved plans.

(f) Operation and maintenance

Whenever a non-Federal interest constructs improvements to any harbor or inland harbor, the Secretary shall be responsible for maintenance in accordance with section 2211(b) of this title if—

(1) the Secretary determines, before construction, that the improvements, or separable elements thereof, are economically justified, environmentally acceptable, and consistent with the purposes of this subchapter;

(2) the Secretary certifies that the project is constructed in accordance with applicable permits and the appropriate engineering and design standards; and

(3) the Secretary does not find that the project, or separable element thereof, is no longer economically justified or environmentally acceptable.

(g) Demonstration of non-Federal interests acting as agent of Secretary

For the purpose of demonstrating the potential advantages and efficiencies of non-Federal management of projects, the Secretary may approve as many as two proposals pursuant to which the non-Federal interests will undertake part or all of a harbor project authorized by Congress as the agent of the Secretary by utilizing its own personnel or by procuring outside services, so long as the cost of doing so will not exceed the cost of the Secretary undertaking the project.

(Pub. L. 99-662, title II, §204, Nov. 17, 1986, 100 Stat. 4099; Pub. L. 101-640, title III, §303, Nov. 28, 1990, 104 Stat. 4634.)

REFERENCES IN TEXT

Sections 201 and 202 of this title, referred to in subsec. (a), are sections 201 and 202 of title II of Pub. L. 99-662, Nov. 17, 1986, 100 Stat. 4089, 4091, which are not classified to the Code.

This subchapter, referred to in subsec. (f)(1), was in the original "this title" which, in addition to this subchapter, consisted of sections 201 and 202 of Pub. L. 99-662, which are not classified to the Code.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101-640, §303(a), inserted after first sentence “The Secretary is further authorized to complete and transmit to the appropriate non-Federal interest any study for improvement to harbors or inland harbors of the United States that is initiated pursuant to section 577 of this title or, upon request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest.”

Subsec. (e). Pub. L. 101-640, §303(b)(1), redesignated subsec. (e), relating to operation and maintenance, as (f).

Subsec. (e)(1). Pub. L. 101-640, §303(b)(2), (3), in introductory provisions inserted “including any small navigation project approved pursuant to section 577 of this title,” after “or separable element thereof,” and in subpar. (A) inserted “(or, in the case of a small navigation project, after completion of a favorable project report by the Corps of Engineers)” after “authorization of the project”.

Subsec. (f). Pub. L. 101-640, §303(b)(1), redesignated subsec. (e), relating to operation and maintenance, as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 101-640, §303(b)(1), redesignated subsec. (f) as (g).

DEMONSTRATION OF CONSTRUCTION OF FEDERAL
PROJECT BY NON-FEDERAL INTERESTS

Pub. L. 101-640, title IV, §404, Nov. 28, 1990, 104 Stat. 4646, provided that:

“(a) IN GENERAL.—For purposes of demonstrating the safety benefits and economic efficiencies which would accrue as a consequence of non-Federal management of harbor improvement projects, the Secretary shall enter into agreements with 2 non-Federal interests pursuant to which the non-Federal interests will undertake part or all of a harbor project authorized by law, by utilizing their own personnel or by procuring outside services, if the cost of doing so will not exceed the cost of the Secretary undertaking the project. If proposals for such agreements meet the criteria of section 204 of the Water Resources Development Act of 1986 [33 U.S.C. 2232], the agreements shall be entered into not later than 1 year after the date of the enactment of this Act [Nov. 28, 1990].

“(b) LIMITATION.—At least 1 project carried out pursuant to this section shall pertain to improvements to a major ship channel which carries a substantial volume of both passenger and cargo traffic.

“(c) REPORT.—The Secretary shall transmit to Congress a report regarding the safety benefits and economic efficiencies accrued from entering into agreements with non-Federal interests under this section.”

§ 2233. Coordination and scheduling of Federal, State, and local actions

(a) Notice of intent

The Secretary, on request from an appropriate non-Federal interest in the form of a written notice of intent to construct a navigation project for a harbor or inland harbor under section 2232 of this title or this section, shall initiate procedures to establish a schedule for consolidating Federal, State, and local agency environmental assessments, project reviews, and issuance of all permits for the construction of the project, including associated access channels, berthing areas, and onshore port-related facilities, before the initiation of construction. The non-Federal interest shall submit, with the notice of intent, studies and documentation, including environmental reviews, that may be required by Federal law for decisionmaking on the proposed project. A State shall not be required to participate in carrying out this section.

(b) Procedural requirements

Within 15 days after receipt of notice under subsection (a) of this section, the Secretary shall publish such notice in the Federal Register. The Secretary also shall provide written notification of the receipt of a notice under subsection (a) of this section to all State and local agencies that may be required to issue permits for the construction of the project or related activities. The Secretary shall solicit the cooperation of those agencies and request their entry into a memorandum of agreement described in subsection (c) of this section. Within 30 days after publication of the notice in the Federal Register, State and local agencies that intend to enter into the memorandum of agreement shall notify the Secretary of their intent in writing.

(c) Scheduling agreement

Within 90 days after receipt of notice under subsection (a) of this section, the Secretary of the Interior, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and any State or local agencies that have notified the Secretary under subsection (b) of this section shall enter into an agreement with the Secretary establishing a schedule of decisionmaking for approval of the project and permits associated with it and with related activities. Such schedule may not exceed two and one-half years from the date of the agreement.

(d) Contents of agreement

The agreement entered into under subsection (c) of this section, to the extent practicable, shall consolidate hearing and comment periods, procedures for data collection and report preparation, and the environmental review and permitting processes associated with the project and related activities. The agreement shall detail, to the extent possible, the non-Federal interest's responsibilities for data development and information that may be necessary to process each permit, including a schedule when the information and data will be provided to the appropriate Federal, State, or local agency.

(e) Preliminary decision

The agreement shall include a date by which the Secretary, taking into consideration the views of all affected Federal agencies, shall provide to the non-Federal interest in writing a preliminary determination whether the project and Federal permits associated with it are reasonably likely to receive approval.

(f) Revision of agreement

The Secretary may revise the agreement once to extend the schedule to allow the non-Federal interest the minimum amount of additional time necessary to revise its original application to meet the objections of a Federal, State, or local agency which is a party to the agreement.

(g) Progress reports

Six months before the final date of the schedule, the Secretary shall provide to Congress a written progress report for each navigation project for a harbor or inland harbor subject to this section. The Secretary shall transmit the report to the Committee on Public Works and Transportation of the House of Representatives