

1986, 100 Stat. 4190; Pub. L. 100-676, §12, Nov. 17, 1988, 102 Stat. 4025; Pub. L. 104-303, title II, § 224(a), Oct. 12, 1996, 110 Stat. 3697; Pub. L. 110-161, div. C, title I, § 116, Dec. 26, 2007, 121 Stat. 1945.)

CODIFICATION

Section was enacted as part of the Flood Control Act of 1968, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

2007—Subsec. (a). Pub. L. 110-161, which directed the substitution of “\$7,000,000” for “\$5,000,000” in last sentence, was executed by making the substitution for “\$5,000,000” the second place it appeared, to reflect the probable intent of Congress.

1996—Subsec. (a). Pub. L. 104-303, in last sentence, substituted “\$5,000,000” for “\$3,000,000” before “or 1 percent” and “any fiscal year.” for “any fiscal year.”

1988—Subsec. (a). Pub. L. 100-676 inserted before period at end “or 1 percent of the total project cost, whichever is greater; except that the amount of actual Federal reimbursement, including reductions in contributions, for such project may not exceed \$5,000,000 in any fiscal year.”

1986—Subsec. (a). Pub. L. 99-662 substituted “\$3,000,000” for “\$1,000,000”.

§ 1962d-5b. Written agreement requirement for water resources projects

(a) Cooperation of non-Federal interest

(1) In general

After December 31, 1970, the construction of any water resources project, or an acceptable separable element thereof, by the Secretary of the Army, acting through the Chief of Engineers, or by a non-Federal interest where such interest will be reimbursed for such construction under any provision of law, shall not be commenced until each non-Federal interest has entered into a written partnership agreement with the Secretary (or, where appropriate, the district engineer for the district in which the project will be carried out) under which each party agrees to carry out its responsibilities and requirements for implementation or construction of the project or the appropriate element of the project, as the case may be; except that no such agreement shall be required if the Secretary determines that the administrative costs associated with negotiating, executing, or administering the agreement would exceed the amount of the contribution required from the non-Federal interest and are less than \$25,000.

(2) Liquidated damages

A partnership agreement described in paragraph (1) may include a provision for liquidated damages in the event of a failure of one or more parties to perform.

(3) Obligation of future appropriations

In any partnership agreement described in paragraph (1) and entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future appropriations for such performance and payment when obligating future appropriations would be inconsistent with

constitutional or statutory limitations of the State or a political subdivision of the State.

(4) Credit for in-kind contributions

(A) In general

A partnership agreement described in paragraph (1) may provide with respect to a project that the Secretary shall credit toward the non-Federal share of the cost of the project, including a project implemented without specific authorization in law, the value of in-kind contributions made by the non-Federal interest, including—

(i) the costs of planning (including data collection), design, management, mitigation, construction, and construction services that are provided by the non-Federal interest for implementation of the project;

(ii) the value of materials or services provided before execution of the partnership agreement, including efforts on constructed elements incorporated into the project; and

(iii) the value of materials and services provided after execution of the partnership agreement.

(B) Condition

The Secretary may credit an in-kind contribution under subparagraph (A) only if the Secretary determines that the material or service provided as an in-kind contribution is integral to the project.

(C) Work performed before partnership agreement

In any case in which the non-Federal interest is to receive credit under subparagraph (A)(ii) for the cost of work carried out by the non-Federal interest and such work has not been carried out as of November 8, 2007, the Secretary and the non-Federal interest shall enter into an agreement under which the non-Federal interest shall carry out such work, and only work carried out following the execution of the agreement shall be eligible for credit.

(D) Limitations

Credit authorized under this paragraph for a project—

(i) shall not exceed the non-Federal share of the cost of the project;

(ii) shall not alter any other requirement that a non-Federal interest provide lands, easements, relocations, rights-of-way, or areas for disposal of dredged material for the project;

(iii) shall not alter any requirement that a non-Federal interest pay a portion of the costs of construction of the project under sections 2211 and 2213 of title 33; and

(iv) shall not exceed the actual and reasonable costs of the materials, services, or other things provided by the non-Federal interest, as determined by the Secretary.

(E) Applicability

(i) In general

This paragraph shall apply to water resources projects authorized after November 16, 1986, including projects initiated

after November 16, 1986, without specific authorization in law.

(ii) Limitation

In any case in which a specific provision of law provides for a non-Federal interest to receive credit toward the non-Federal share of the cost of a study for, or construction or operation and maintenance of, a water resources project, the specific provision of law shall apply instead of this paragraph.

(b) Definition of non-Federal interest

The term “non-Federal interest” means—

(1) a legally constituted public body (including a federally recognized Indian tribe); or

(2) a nonprofit entity with the consent of the affected local government,

that has full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform.

(c) Enforcement; jurisdiction

Every agreement entered into pursuant to this section shall be enforceable in the appropriate district court of the United States.

(d) Nonperformance of terms of agreement by non-Federal interest; notice; reasonable opportunity for performance; performance by Chief of Engineers

After commencement of construction of a project, the Chief of Engineers may undertake performance of those items of cooperation necessary to the functioning of the project for its purposes, if he has first notified the non-Federal interest of its failure to perform the terms of its agreement and has given such interest a reasonable time after such notification to so perform.

(e) Delegation of authority

Not later than June 30, 2008, the Secretary shall issue policies and guidelines for partnership agreements that delegate to the district engineers, at a minimum—

(1) the authority to approve any policy in a partnership agreement that has appeared in an agreement previously approved by the Secretary;

(2) the authority to approve any policy in a partnership agreement the specific terms of which are dictated by law or by a final feasibility study, final environmental impact statement, or other final decision document for a water resources project;

(3) the authority to approve any partnership agreement that complies with the policies and guidelines issued by the Secretary; and

(4) the authority to sign any partnership agreement for any water resources project unless, within 30 days of the date of authorization of the project, the Secretary notifies the district engineer in which the project will be carried out that the Secretary wishes to retain the prerogative to sign the partnership agreement for that project.

(f) Report to Congress

Not later than 2 years after November 8, 2007, and every year thereafter, the Secretary shall submit to Congress a report detailing the following:

(1) The number of partnership agreements signed by district engineers and the number of partnership agreements signed by the Secretary.

(2) For any partnership agreement signed by the Secretary, an explanation of why delegation to the district engineer was not appropriate.

(g) Public availability

Not later than 120 days after November 8, 2007, the Chief of Engineers shall—

(1) ensure that each district engineer has made available to the public, including on the Internet, all partnership agreements entered into under this section within the preceding 10 years and all partnership agreements for water resources projects currently being carried out in that district; and

(2) make each partnership agreement entered into after November 8, 2007, available to the public, including on the Internet, not later than 7 days after the date on which such agreement is entered into.

(h) Effective date

This section shall not apply to any project the construction of which was commenced before January 1, 1972, or to the assurances for future demands required by the Water Supply Act of 1958, as amended [43 U.S.C. 390b].

(Pub. L. 91-611, title II, §221, Dec. 31, 1970, 84 Stat. 1831; Pub. L. 92-222, §4, Dec. 23, 1971, 85 Stat. 799; Pub. L. 99-662, title IX, §912(a), Nov. 17, 1986, 100 Stat. 4189; Pub. L. 104-106, div. A, title X, §1064(d), Feb. 10, 1996, 110 Stat. 445; Pub. L. 104-303, title II, §220, Oct. 12, 1996, 110 Stat. 3696; Pub. L. 106-541, title II, §201, Dec. 11, 2000, 114 Stat. 2587; Pub. L. 110-114, title II, §2003(a)-(c), Nov. 8, 2007, 121 Stat. 1067, 1069.)

REFERENCES IN TEXT

The Water Supply Act of 1958, as amended, referred to in subsec. (h), is Pub. L. 85-500, title III, §301, July 3, 1958, 72 Stat. 319, as amended, which is classified to section 390b of Title 43, Public Lands.

CODIFICATION

Section was enacted as part of the Flood Control Act of 1970, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

2007—Pub. L. 110-114, §2003(a)(1), inserted section catchline.

Subsec. (a). Pub. L. 110-114, §2003(a)(2), added subsec. (a) and struck out former subsec. (a), which read as follows: “After December 31, 1970, the construction of any water resources project, or an acceptable separable element thereof, by the Secretary of the Army, acting through the Chief of Engineers, or by a non-Federal interest where such interest will be reimbursed for such construction under the provisions of section 1962d-5a of this title or under any other provision of law, shall not be commenced until each non-Federal interest has entered into a written agreement with the Secretary of the Army to furnish its required cooperation for the project or the appropriate element of the project, as the case may be; except that no such agreement shall be required if the Secretary determines that the administrative costs associated with negotiating, executing, or administering the agreement would exceed the amount of the contribution required from the non-Federal interest and are less than \$25,000. In any such

agreement entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future appropriations for such performance and payment when obligating future appropriations would be inconsistent with constitutional or statutory limitations of the State or a political subdivision of the State.”

Subsec. (b). Pub. L. 110-114, §2003(b), inserted heading and amended text generally. Prior to amendment, text read as follows: “A non-Federal interest shall be a legally constituted public body with full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform.”

Subsecs. (e) to (h). Pub. L. 110-114, §2003(c), added subsecs. (e) to (g) and redesignated former subsec. (e) as (h).

2000—Subsec. (a). Pub. L. 106-541 in last sentence, struck out “State legislative” after “obligate future”, substituted “constitutional” for “State constitutional”, and inserted “of the State or a political subdivision of the State” before period at end.

1996—Subsec. (a). Pub. L. 104-303, in first sentence, inserted before period at end “; except that no such agreement shall be required if the Secretary determines that the administrative costs associated with negotiating, executing, or administering the agreement would exceed the amount of the contribution required from the non-Federal interest and are less than \$25,000”.

Subsecs. (e), (f). Pub. L. 104-106 redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows: “The Secretary of the Army, acting through the Chief of Engineers, shall maintain a continuing inventory of agreements and the status of their performance, and shall report thereon annually to the Congress.”

1986—Subsec. (a). Pub. L. 99-662 inserted “, or an acceptable separable element thereof”, “or the appropriate element of the project, as the case may be”, and “In any such agreement entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future State legislative appropriations for such performance and payment when obligating future appropriations would be inconsistent with State constitutional or statutory limitations.”

1971—Subsec. (f). Pub. L. 92-222 made provisions of section inapplicable to the assurances for future demands required by the Water Supply Act of 1958, as amended.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-114, title II, §2003(e), Nov. 8, 2007, 121 Stat. 1070, provided that: “The amendments made by subsections (a), (b), and (d) [amending this section and provisions set out as a note under this section] only apply to partnership agreements entered into after the date of enactment of this Act [Nov. 8, 2007]; except that, at the request of a non-Federal interest for a project, the district engineer for the district in which the project is located may amend a project partnership agreement entered into on or before such date and under which construction on the project has not been initiated as of such date of enactment for the purpose of incorporating such amendments.”

PARTNERSHIP AND COOPERATION AGREEMENTS; REFERENCES

Pub. L. 110-114, title II, §2003(f), Nov. 8, 2007, 121 Stat. 1070, provided that:

“(1) IN GENERAL.—A goal of agreements entered into under section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b) shall be to further partnership and cooperation, and the agreements shall be referred to as ‘partnership agreements’.

“(2) REFERENCES TO COOPERATION AGREEMENTS.—Any reference in a law, regulation, document, or other paper of the United States to a ‘cooperation agreement’ or ‘project cooperation agreement’ shall be deemed to be a reference to a ‘partnership agreement’ or a ‘project partnership agreement’, respectively.

“(3) REFERENCES TO PARTNERSHIP AGREEMENTS.—Any reference to a ‘partnership agreement’ or ‘project partnership agreement’ in this Act [see Short Title of 2007 Amendment note set out under section 2201 of Title 33, Navigation and Navigable Waters] (other than this section) shall be deemed to be a reference to a ‘cooperation agreement’ or a ‘project cooperation agreement’, respectively.”

COMPLIANCE WITH COOPERATION REQUIREMENTS FOR NON-FEDERAL INTERESTS IN WATER RESOURCES PROJECTS

Pub. L. 99-662, title IX, §912(b), Nov. 17, 1986, 100 Stat. 4190, as amended by Pub. L. 110-114, title II, §2003(d), Nov. 8, 2007, 121 Stat. 1070, provided that:

“(1) The Secretary may require compliance with any requirements pertaining to cooperation by non-Federal interests in carrying out any water resources project authorized before, on, or after the date of enactment of this Act [Nov. 17, 1986].

“(2) Whenever on the basis of any information available to the Secretary, the Secretary finds that any non-Federal interest is not providing cooperation required under subsection (a) [amending this section], the Secretary may issue an order requiring such non-Federal interest to provide such cooperation.

“(3) Non-Federal interests shall be liable for interest on any payments required pursuant to section 221 of the Flood Control Act of 1970 [this section] that may fall delinquent. The interest rate to be charged on any such delinquent payment shall be at a rate, to be determined by the Secretary of the Treasury, equal to 150 percent of the average bond equivalent rate of the thirteen-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional three-month period if the period of delinquency exceeds three months.

“(4) The Secretary may request the Attorney General to bring a civil action for appropriate relief, including permanent or temporary injunction, for payment of damages or, for any violation of an order issued under this section, to recover any cost incurred by the Secretary in undertaking performance of any item of cooperation under section 221(d) of the Flood Control Act of 1970 [subsec. (d) of this section], or to collect interest for which a non-Federal interest is liable under paragraph (3). Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides, or is doing business, and such court shall have jurisdiction to restrain such violation, to require compliance, to require payment of any damages, and to require payment of any costs incurred by the Secretary in undertaking performance of any such item.

“(5) The Secretary is authorized to determine that no funds appropriated for operation and maintenance, including operation and maintenance of the project for flood control, Mississippi River and Tributaries, are to be used for the particular benefit of projects within the jurisdiction of any non-Federal interest when such non-Federal interest is in arrears for more than twenty-four months in the payment of charges due under an agreement entered into with the United States pursuant to section 221 of the Flood Control Act of 1970 (Public Law 91-611) [this section].”

§ 1962d-5c. Non-Federal public bodies, installation construction payments

(a) Annual installments during period of construction in absence of other provision for extended repayment

In connection with any water resource development project, heretofore, herein, or hereafter