

“(3) make any recommendations that the Comptroller General considers appropriate regarding the compliance of those non-Federal interests with the requirements of this section.”

### § 2237. Information for national security

Any non-Federal interest shall provide the United States the information necessary for military readiness planning and harbor, inland harbor, and national security, including information necessary to obtain national security clearances for individuals employed in critical harbor and inland harbor positions.

(Pub. L. 99-662, title II, §209, Nov. 17, 1986, 100 Stat. 4106.)

### § 2238. Authorization of appropriations

#### (a) Trust fund

There are authorized to be appropriated out of the Harbor Maintenance Trust Fund, established by section 9505 of title 26, for each fiscal year such sums as may be necessary to pay—

(1) 100 percent of the eligible operations and maintenance costs of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation for such fiscal year; and

(2) up to 100 percent of the eligible operations and maintenance costs assigned to commercial navigation of all harbors and inland harbors within the United States.

#### (b) General fund

There are authorized to be appropriated out of the general fund of the Treasury of the United States for each fiscal year such sums as may be necessary to pay the balance of all eligible operations and maintenance costs not provided by payments from the Harbor Maintenance Trust Fund under this section.

#### (c) Operation and maintenance of harbor projects

##### (1) In general

To the maximum extent practicable, the Secretary shall make expenditures to pay for operation and maintenance costs of the harbors and inland harbors referred to in subsection (a)(2), including expenditures of funds appropriated from the Harbor Maintenance Trust Fund, based on an equitable allocation of funds among all such harbors and inland harbors.

##### (2) Criteria

###### (A) In general

In determining an equitable allocation of funds under paragraph (1), the Secretary shall—

(i) consider the information obtained in the assessment conducted under subsection (e);

(ii) consider the national and regional significance of harbor operations and maintenance; and

(iii) as appropriate, consider national security and military readiness needs.

###### (B) Limitation

The Secretary shall not allocate funds under paragraph (1) based solely on the tonnage transiting through a harbor.

#### (3) Emerging harbor projects

Notwithstanding any other provision of this subsection, in making expenditures under paragraph (1) for each of fiscal years 2015 through 2022, the Secretary shall allocate for operation and maintenance costs of emerging harbor projects an amount that is not less than 10 percent of the funds made available under this section for fiscal year 2012 to pay the costs described in subsection (a)(2).

#### (4) Management of Great Lakes Navigation System

To sustain effective and efficient operation and maintenance of the Great Lakes Navigation System, including any navigation feature in the Great Lakes that is a Federal responsibility with respect to operation and maintenance, the Secretary shall manage all of the individually authorized projects in the Great Lakes Navigation System as components of a single, comprehensive system, recognizing the interdependence of the projects.

#### (d) Prioritization

##### (1) Priority

###### (A) In general

For each of fiscal years 2015 through 2024, if priority funds are available, the Secretary shall use the priority funds as follows:

(i) 90 percent of the priority funds shall be used for high- and moderate-use harbor projects.

(ii) 10 percent of the priority funds shall be used for emerging harbor projects.

###### (B) Additional considerations

For each of fiscal years 2015 through 2024, of the priority funds available, the Secretary shall use—

(i) not less than 5 percent of such funds for underserved harbor projects; and

(ii) not less than 10 percent of such funds for projects that are located within the Great Lakes Navigation System.

###### (C) Underserved harbors

In determining which underserved harbor projects shall receive funds under this paragraph, the Secretary shall consider—

(i) the total quantity of commerce supported by the water body on which the project is located; and

(ii) the minimum width and depth that—

(I) would be necessary at the underserved harbor project to provide sufficient clearance for fully loaded commercial vessels using the underserved harbor project to maneuver safely; and

(II) does not exceed the constructed width and depth of the authorized navigation project.

##### (2) Expanded uses

###### (A) Definition of eligible harbor or inland harbor defined

In this paragraph, the term “eligible harbor or inland harbor” means a harbor or inland harbor at which the total amount of harbor maintenance taxes collected in the immediately preceding 3 fiscal years exceeds

the value of the work carried out for the harbor or inland harbor using amounts from the Harbor Maintenance Trust Fund during those 3 fiscal years.

**(B) Use of expanded uses funds**

**(i) Fiscal years 2015 through 2024**

For each of fiscal years 2015 through 2024, of the priority funds available, the Secretary shall use not less than 10 percent of such funds for expanded uses carried out at an eligible harbor or inland harbor.

**(ii) Subsequent fiscal years**

For fiscal year 2025 and each fiscal year thereafter, the Secretary shall use not less than 10 percent of the priority funds available for expanded uses carried out at an eligible harbor or inland harbor.

**(C) Prioritization**

In allocating funds under this paragraph, the Secretary shall give priority to projects at eligible harbors or inland harbors for which the difference, calculated in dollars, is greatest between—

- (i) the total amount of funding made available for projects at that eligible harbor or inland harbor from the Harbor Maintenance Trust Fund in the immediately preceding 3 fiscal years; and
- (ii) the total amount of harbor maintenance taxes collected at that harbor or inland harbor in the immediately preceding 3 fiscal years.

**(3) Remaining funds**

**(A) In general**

For each of fiscal years 2015 through 2024, if after fully funding all projects eligible for funding under paragraphs (1)(B) and (2)(B)(i), priority funds made available under those paragraphs remain unobligated, the Secretary shall use those remaining funds to pay for operation and maintenance costs of any harbor or inland harbor referred to in subsection (a)(2) based on an equitable allocation of those funds among the harbors and inland harbors.

**(B) Criteria**

In determining an equitable allocation of funds under subparagraph (A), the Secretary shall—

- (i) use the criteria specified in subsection (c)(2)(A); and
- (ii) make amounts available in accordance with the requirements of paragraph (1)(A).

**(4) Emergency expenditures**

Nothing in this subsection prohibits the Secretary from making an expenditure to pay for the operation and maintenance costs of a specific harbor or inland harbor, including the transfer of funding from the operation and maintenance of a separate project, if—

- (A) the Secretary determines that the action is necessary to address the navigation needs of a harbor or inland harbor where safe navigation has been severely restricted due to an unforeseen event; and

(B) the Secretary provides within 90 days of the action notice and information on the need for the action to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives.

**(e) Assessment of harbors and inland harbors**

**(1) In general**

Not later than 270 days after June 10, 2014, and biennially thereafter, the Secretary shall assess the operation and maintenance needs and uses of the harbors and inland harbors referred to in subsection (a)(2).

**(2) Assessment of harbor needs and activities**

**(A) Total operation and maintenance needs of harbors**

In carrying out paragraph (1), the Secretary shall identify—

- (i) the total future costs required to achieve and maintain the constructed width and depth for the harbors and inland harbors referred to in subsection (a)(2); and
- (ii) the total expected costs for expanded uses at eligible harbors or inland harbors referred to in subsection (d)(2).

**(B) Uses of harbors and inland harbors**

In carrying out paragraph (1), the Secretary shall identify current uses (and, to the extent practicable, assess the national, regional, and local benefits of such uses) of harbors and inland harbors referred to in subsection (a)(2), including the use of those harbors for—

- (i) commercial navigation, including the movement of goods;
- (ii) domestic trade;
- (iii) international trade;
- (iv) commercial fishing;
- (v) subsistence, including use by Indian tribes (as defined in section 450b of title 25) for subsistence and ceremonial purposes;
- (vi) use as a harbor of refuge;
- (vii) transportation of persons;
- (viii) purposes relating to domestic energy production, including the fabrication, servicing, or supply of domestic offshore energy production facilities;
- (ix) activities of the Secretary of the department in which the Coast Guard is operating;
- (x) activities of the Secretary of the Navy;
- (xi) public health and safety related equipment for responding to coastal and inland emergencies;
- (xii) recreation purposes; and
- (xiii) other authorized purposes.

**(3) Report to Congress**

**(A) In general**

For fiscal year 2016, and biennially thereafter, in conjunction with the President's annual budget submission to Congress under section 1105(a) of title 31, the Secretary shall submit to the Committee on Environment

and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives a report that, with respect to harbors and inland harbors referred to in subsection (a)(2)—

(i) identifies the operation and maintenance costs associated with the harbors and inland harbors, including those costs required to achieve and maintain the constructed width and depth for the harbors and inland harbors and the costs for expanded uses at eligible harbors and inland harbors, on a project-by-project basis;

(ii) identifies the amount of funding requested in the President's budget for the operation and maintenance costs associated with the harbors and inland harbors, on a project-by-project basis;

(iii) identifies the unmet operation and maintenance needs associated with the harbors and inland harbors, on a project-by-project basis; and

(iv) identifies the harbors and inland harbors for which the President will allocate funding over the subsequent 5 fiscal years for operation and maintenance activities, on a project-by-project basis, including the amounts to be allocated for such purposes.

#### **(B) Public availability**

The Secretary shall make the report submitted under subparagraph (A) available to the public, including on the Internet.

#### **(f) Definitions**

In this section:

##### **(1) Constructed width and depth**

The term “constructed width and depth” means the width and depth to which a project has been constructed, which may not exceed the authorized width and depth of the project.

##### **(2) Emerging harbor project**

The term “emerging harbor project” means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2) that transits less than 1,000,000 tons of cargo annually.

##### **(3) Expanded uses**

The term “expanded uses” means the following activities:

(A) The maintenance dredging of a berth in a harbor that is accessible to a Federal navigation project and that benefits commercial navigation at the harbor.

(B) The maintenance dredging and disposal of legacy-contaminated sediment, and sediment unsuitable for open water disposal, if—

(i) such dredging and disposal benefits commercial navigation at the harbor; and

(ii) such sediment is located in and affects the maintenance of a Federal navigation project or is located in a berth that is accessible to a Federal navigation project.

##### **(4) Great Lakes Navigation System**

The term “Great Lakes Navigation System” includes—

(A)(i) Lake Superior;

(ii) Lake Huron;

(iii) Lake Michigan;

(iv) Lake Erie; and

(v) Lake Ontario;

(B) all connecting waters between the lakes referred to in subparagraph (A) used for commercial navigation;

(C) any navigation features in the lakes referred to in subparagraph (A) or waters described in subparagraph (B) that are a Federal operation or maintenance responsibility; and

(D) areas of the Saint Lawrence River that are operated or maintained by the Federal Government for commercial navigation.

##### **(5) Harbor maintenance tax**

The term “harbor maintenance tax” means the amounts collected under section 4461 of title 26.

##### **(6) High-use harbor project**

The term “high-use harbor project” means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2) that transits not less than 10,000,000 tons of cargo annually.

##### **(7) Moderate-use harbor project**

The term “moderate-use harbor project” means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2) that transits annually—

(A) more than 1,000,000 tons of cargo; but

(B) less than 10,000,000 tons of cargo.

##### **(8) Priority funds**

The term “priority funds” means the difference between—

(A) the total funds that are made available under this section to pay the costs described in subsection (a)(2) for a fiscal year; and

(B) the total funds made available under this section to pay the costs described in subsection (a)(2) in fiscal year 2012.

##### **(9) Underserved harbor project**

###### **(A) In general**

The term “underserved harbor project” means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2)—

(i) that is a moderate-use harbor project or an emerging harbor project;

(ii) that has been maintained at less than the constructed width and depth of the project during each of the preceding 6 fiscal years; and

(iii) for which State and local investments in infrastructure have been made at those projects during the preceding 6 fiscal years.

###### **(B) Administration**

For purposes of this paragraph, State and local investments in infrastructure shall include infrastructure investments made using amounts made available for activities under section 5305(a)(9) of title 42.

(Pub. L. 99-662, title II, §210, Nov. 17, 1986, 100 Stat. 4106; Pub. L. 101-640, title III, §316, Nov. 28,

1990, 104 Stat. 4641; Pub. L. 113–121, title II, § 2102(a), June 10, 2014, 128 Stat. 1273.)

AMENDMENTS

2014—Subsecs. (c) to (f). Pub. L. 113–121 added subsecs. (c) to (f).

1990—Subsec. (a)(2). Pub. L. 101–640 substituted “up to 100 percent” for “not more than 40 percent”.

**§ 2238a. Estimate of harbor maintenance needs**

For fiscal year 2014 and each fiscal year thereafter, the President’s budget request submitted pursuant to section 1105 of title 31, United States Code, shall include—

(1) an estimate of the nationwide average availability, expressed as a percentage, of the authorized depth and authorized width of all navigation channels authorized to be maintained using appropriations from the Harbor Maintenance Trust Fund that would result from harbor maintenance activities to be funded by the budget request; and

(2) an estimate of the average annual amount of appropriations from the Harbor Maintenance Trust Fund that would be required to increase that average availability to 95 percent over a 3-year period.

(Pub. L. 112–141, div. A, title I, § 1537, July 6, 2012, 126 Stat. 585.)

CODIFICATION

Section was enacted as part of the Moving Ahead for Progress in the 21st Century Act, also known as the MAP-21, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

EFFECTIVE DATE

Section effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

**§ 2238b. Funding for harbor maintenance programs**

**(a) Definitions**

In this section:

**(1) Total amount of harbor maintenance taxes received**

The term “total amount of harbor maintenance taxes received” means, with respect to a fiscal year, the aggregate of amounts appropriated, transferred, or credited to the Harbor Maintenance Trust Fund under section 9505(a) of title 26 for that fiscal year as set forth in the current year estimate provided in the President’s budget request for the subsequent fiscal year, submitted pursuant to section 1105 of title 31.

**(2) Total budget resources**

The term “total budget resources” means the total amount made available by appropriations Acts from the Harbor Maintenance Trust Fund for a fiscal year for making expenditures under section 9505(c) of title 26.

**(b) Target appropriations**

**(1) In general**

The target total budget resources made available to the Secretary from the Harbor Maintenance Trust Fund for a fiscal year shall be not less than the following:

(A) For fiscal year 2015, 67 percent of the total amount of harbor maintenance taxes received in fiscal year 2014.

(B) For fiscal year 2016, 69 percent of the total amount of harbor maintenance taxes received in fiscal year 2015.

(C) For fiscal year 2017, 71 percent of the total amount of harbor maintenance taxes received in fiscal year 2016.

(D) For fiscal year 2018, 74 percent of the total amount of harbor maintenance taxes received in fiscal year 2017.

(E) For fiscal year 2019, 77 percent of the total amount of harbor maintenance taxes received in fiscal year 2018.

(F) For fiscal year 2020, 80 percent of the total amount of harbor maintenance taxes received in fiscal year 2019.

(G) For fiscal year 2021, 83 percent of the total amount of harbor maintenance taxes received in fiscal year 2020.

(H) For fiscal year 2022, 87 percent of the total amount of harbor maintenance taxes received in fiscal year 2021.

(I) For fiscal year 2023, 91 percent of the total amount of harbor maintenance taxes received in fiscal year 2022.

(J) For fiscal year 2024, 95 percent of the total amount of harbor maintenance taxes received in fiscal year 2023.

(K) For fiscal year 2025, and each fiscal year thereafter, 100 percent of the total amount of harbor maintenance taxes received in the previous fiscal year.

**(2) Use of amounts**

The total budget resources described in paragraph (1) may be used only for making expenditures under section 9505(c) of title 26.

**(c) Impact on other funds**

**(1) Sense of Congress**

It is the sense of Congress that any increase in funding for harbor maintenance programs under this section shall result from an overall increase in appropriations for the civil works program of the Corps of Engineers and not from reductions in the appropriations for other programs, projects, and activities carried out by the Corps of Engineers for other authorized purposes.

**(2) Application**

The target total budget resources for a fiscal year specified in subsection (b)(1) shall only apply in a fiscal year for which the level of appropriations provided for the civil works program of the Corps of Engineers in that fiscal year is increased, as compared to the previous fiscal year, by a dollar amount that is at least equivalent to the dollar amount necessary to address such target total budget resources in that fiscal year.

(Pub. L. 113–121, title II, § 2101, June 10, 2014, 128 Stat. 1272.)

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.