

over any matter arising out of or concerning, the imposition, computation, collection, and enforcement of port or harbor dues by a non-Federal interest under this section.

(2) Any person who suffers legal wrong or is adversely affected or aggrieved by the imposition by a non-Federal interest of a proposed scheme or schedule of port or harbor dues under this section may, not later than 180 days after the date of hearing under subsection (a)(5)(A)(iii) of this section, commence an action to seek judicial review of that proposed scheme or schedule in the appropriate district court under paragraph (1).

(3) On petition of the Attorney General or any other party, that district court may—

(A) grant appropriate injunctive relief to restrain an action by that non-Federal interest violating the conditions of consent in subsection (a) of this section;

(B) order the refund of any port or harbor dues not lawfully collected; and

(C) grant other appropriate relief or remedy.

(c) Collection of duties

(1)² Delivery of certificate and manifest

(A) Upon arrival of vessel

Upon the arrival of a vessel in a harbor in which the vessel may be subject to the levy of port or harbor dues under this section, the master of that vessel shall, within forty-eight hours after arrival and before any cargo is unloaded from that vessel, deliver to the appropriate authorized representative appointed under subsection (a)(6)(C) of this section a tonnage certificate for the vessel and a manifest of the cargo aboard that vessel or, if the vessel is in ballast, a declaration to that effect.

(B) Before departure of vessel

The shipper, consignor, or terminal operator having custody of any cargo to be loaded on board a vessel while the vessel is in a harbor in which the vessel may be subject to the levy of port or harbor dues under this section shall, within forty-eight hours before departure of that vessel, deliver to the appropriate authorized representative appointed under subsection (a)(6)(C) of this section an export declaration specifying the cargo to be loaded on board that vessel.

(d) Enforcement

At the request of an authorized representative referred to in subsection (a)(6)(C) of this section, the Secretary of the Treasury may:

(1) withhold the clearance required by section 60105 of title 46 for a vessel if the master, owner, or operator of a vessel subject to port or harbor dues under this section fails to comply with the provisions of this section including any non-Federal law, regulation or ordinance issued hereunder; and

(2) assess a penalty or initiate a forfeiture of the cargo in the same manner and under the same procedures as are applicable for failure to pay customs duties under the Tariff Act of 1930 (19 U.S.C. 1202 et seq.) if the shipper, con-

signor, consignee, or terminal operator having title to or custody of cargo subject to port or harbor dues under this section fails to comply with the provisions of this section including any non-Federal law, regulation, or ordinance issued hereunder.

(e) Maritime Lien

Port or harbor dues levied under this section against a vessel constitute a maritime lien against the vessel and port or harbor dues levied against cargo constitute a lien against the cargo that may be recovered in an action in the district court of the United States for the district in which the vessel or cargo is found.

(Pub. L. 99-662, title II, §208, Nov. 17, 1986, 100 Stat. 4102; Pub. L. 104-66, title I, §1021(g), Dec. 21, 1995, 109 Stat. 713.)

REFERENCES IN TEXT

Subsection (b) of this section, referred to in subsec. (a)(6)(B), which related to audits, was struck out by Pub. L. 104-66 and subsec. (c) was redesignated as subsec. (b).

Subsection (c) of this section, referred to in subsec. (a)(6)(D), which related to jurisdiction, was redesignated as subsec. (b) by Pub. L. 104-66.

The Tariff Act of 1930, referred to in subsec. (d)(2), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended, which is classified generally to chapter 4 (§1202 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

CODIFICATION

In subsec. (d)(1), “section 60105 of title 46” substituted for “section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)” on authority of Pub. L. 109-304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

AMENDMENTS

1995—Subsecs. (b) to (f). Pub. L. 104-66 redesignated subsecs. (c) to (f) as (b) to (e), respectively, and struck out heading and text of former subsec. (b). Text read as follows: “The Comptroller General of the United States shall—

“(1) carry out periodic audits of the operations of non-Federal interests that elect to levy port or harbor dues under this section to determine if the conditions of subsection (a) of this section are being complied with;

“(2) submit to each House of the Congress a written report containing the findings resulting from each audit; and

“(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

² So in original. No par. (2) has been enacted.

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 fiscal year, 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 fiscal year, if priority funds are available, the Secretary shall use at least 10 percent of such funds for emerging harbor projects.

(B) Additional considerations

For each fiscal year, 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 5304 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) Additional requirement

In the first report submitted under subparagraph (A) following December 16, 2016, the Secretary shall identify, to the maximum extent practicable, transportation cost savings realized by achieving and maintaining the constructed width and depth for the harbors and inland harbors referred to in subsection (a)(2), on a project-by-project basis.

(C) 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; Pub. L. 114-322, title I, §§1103, 1107, 1114, Dec. 16, 2016, 130 Stat. 1633, 1634, 1638.)

AMENDMENTS

2016—Subsec. (c)(3). Pub. L. 114-322, §1103(1), substituted “for each fiscal year” for “for each of fiscal years 2015 through 2022”.

Subsec. (d)(1)(A). Pub. L. 114-322, §1103(2), added subpar. (A) and struck out former subpar. (A). Prior to amendment, text read as follows: “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.”

Subsec. (d)(1)(B). Pub. L. 114-322, § 1107, substituted “For each fiscal year” for “For each of fiscal years 2015 through 2024” in introductory provisions.

Subsec. (e)(3)(B), (C). Pub. L. 114-322, § 1114, added subpar. (B) and redesignated former subpar. (B) as (C).

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”.

GUIDANCE

Pub. L. 113-121, title II, § 2102(d), as added by Pub. L. 114-322, title I, § 1112, Dec. 16, 2016, 130 Stat. 1637, provided that: “Not later than 90 days after the date of enactment of the Water Resources Development Act of 2016 [Dec. 16, 2016], the Secretary [of the Army] shall publish on the website of the Corps of Engineers guidance on the implementation of this section [amending this section, section 2211 of this title, and section 9505 of Title 26, Internal Revenue Code] and the amendments made by this section.”

§ 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

Except as provided in subsection (c), 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) Exception

If the target total budget resources for a fiscal year described in subparagraphs (A) through (J) of subsection (b)(1) is lower than the target total budget resources for the previous fiscal year, the target total budget resources shall be adjusted to be equal to the lesser of—

(1) 103 percent of the total budget resources appropriated for the previous fiscal year; or

(2) 100 percent of the total amount of harbor maintenance taxes received in the previous fiscal year.

(d) Impact on other funds

(1) Sense of Congress

It is the sense of Congress that any increase in funding for harbor maintenance programs