

## 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.

## “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113-121, set out as a note under section 2201 of this title.

## SUBCHAPTER II—HARBOR DEVELOPMENT

**§ 2231. Study of water resources development projects by non-Federal interests**

**(a) Submission to Secretary**

**(1) In general**

A non-Federal interest may undertake a federally authorized feasibility study of a proposed water resources development project and submit the study to the Secretary.

**(2) Guidelines**

To assist non-Federal interests, the Secretary, as soon as practicable, shall issue guidelines for feasibility studies of water resources development projects to provide sufficient information for the formulation of the studies.

**(b) Review by Secretary**

The Secretary shall review each feasibility study received under subsection (a)(1) for the purpose of determining whether or not the study, and the process under which the study was developed, each comply with Federal laws and regulations applicable to feasibility studies of water resources development projects.

**(c) Submission to Congress**

**(1) Review and submission of studies to Congress**

Not later than 180 days after the date of receipt of a feasibility study of a project under subsection (a)(1), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes—

(A) the results of the Secretary’s review of the study under subsection (b), including a determination of whether the project is feasible;

(B) any recommendations the Secretary may have concerning the plan or design of the project; and

(C) any conditions the Secretary may require for construction of the project.

**(2) Limitation**

The completion of the review by the Secretary of a feasibility study that has been submitted under subsection (a)(1) may not be delayed as a result of consideration being given to changes in policy or priority with respect to project consideration.

**(d) Credit**

If a project for which a feasibility study has been submitted under subsection (a)(1) is authorized by a Federal law enacted after the date

of the submission to Congress under subsection (c), the Secretary shall credit toward the non-Federal share of the cost of construction of the project an amount equal to the portion of the cost of developing the study that would have been the responsibility of the United States if the study had been developed by the Secretary.

**(e) Review and technical assistance**

**(1) Review**

The Secretary may accept and expend funds provided by non-Federal interests to undertake reviews, inspections, certifications, and other activities that are the responsibility of the Secretary in carrying out this section.

**(2) Technical assistance**

At the request of a non-Federal interest, the Secretary shall provide to the non-Federal interest technical assistance relating to any aspect of a feasibility study if the non-Federal interest contracts with the Secretary to pay all costs of providing such technical assistance.

**(3) Limitation**

Funds provided by non-Federal interests under this subsection shall not be eligible for credit under subsection (d) or reimbursement.

**(4) Impartial decisionmaking**

In carrying out this section, the Secretary shall ensure that the use of funds accepted from a non-Federal interest will not affect the impartial decisionmaking of the Secretary, either substantively or procedurally.

**(5) Savings provision**

The provision of technical assistance by the Secretary under paragraph (2)—

(A) shall not be considered to be an approval or endorsement of the feasibility study; and

(B) shall not affect the responsibilities of the Secretary under subsections (b) and (c).

(Pub. L. 99-662, title II, §203, Nov. 17, 1986, 100 Stat. 4098; Pub. L. 113-121, title I, §1014(a), June 10, 2014, 128 Stat. 1219; Pub. L. 114-322, title I, §1126, Dec. 16, 2016, 130 Stat. 1648; Pub. L. 115-270, title I, §1152, Oct. 23, 2018, 132 Stat. 3788.)

## AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115-270, §1152(1), inserted “federally authorized” before “feasibility study”.

Subsec. (c). Pub. L. 115-270, §1152(2), amended subsec. (c) generally. Prior to amendment, text read as follows: “Not later than 180 days after the date of receipt of a feasibility study of a project under subsection (a)(1), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes—

“(1) the results of the Secretary’s review of the study under subsection (b), including a determination of whether the project is feasible;

“(2) any recommendations the Secretary may have concerning the plan or design of the project; and

“(3) any conditions the Secretary may require for construction of the project.”

Subsec. (e). Pub. L. 115-270, §1152(3), amended subsec. (e) generally. Prior to amendment, text read as follows: “At the request of a non-Federal interest, the Secretary may provide to the non-Federal interest technical assistance relating to any aspect of a feasibility

study if the non-Federal interest contracts with the Secretary to pay all costs of providing such technical assistance.”.

2016—Subsec. (e), Pub. L. 114–322 added subsec. (e).

2014—Pub. L. 113–121 amended section generally. Prior to amendment, section related to studies of projects by non-Federal interests.

#### 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 water resources development projects by non-Federal interests

#### (a) Water resources development project defined

In this section, the term “water resources development project” means a project recommendation that results from—

- (1) a feasibility report, as such term is defined in section 2282d(f)<sup>1</sup> of this title;
- (2) a completed feasibility study developed under section 2231 of this title; or
- (3) a final feasibility study for water resources development and conservation and other purposes that is specifically authorized by Congress to be carried out by the Secretary.

#### (b) Authority

##### (1) In general

A non-Federal interest may carry out a federally authorized water resources development project, or separable element thereof—

- (A) in accordance with a plan approved by the Secretary for the project or separable element; and
- (B) subject to any conditions that the Secretary may require, including any conditions specified under section 2231(c)(3) of this title.

##### (2) Conditions

Before carrying out a water resources development project, or separable element thereof, under this section, a non-Federal interest shall—

- (A) obtain any permit or approval required in connection with the project or separable element under Federal or State law, except as provided in paragraph (3); and
- (B) ensure that a final environmental impact statement or environmental assessment, as appropriate, for the project or separable element has been filed.

##### (3) Permit exception

###### (A) In general

For a project described in subsection (a)(1) or subsection (a)(3), or a separable element thereof, with respect to which a written agreement described in subparagraph (B) has been entered into, a non-Federal interest that carries out a project under this section shall not be required to obtain any Federal permits or approvals that would not be required if the Secretary carried out the project or separable element unless signifi-

cant new circumstances or information relevant to environmental concerns or compliance have arisen since development of the project recommendation.

#### (B) Written agreement

For purposes of this paragraph, a written agreement shall provide that the non-Federal interest shall comply with the same legal and technical requirements that would apply if the project or separable element were carried out by the Secretary, including all mitigation required to offset environmental impacts of the project or separable element as determined by the Secretary.

#### (C) Certifications

Notwithstanding subparagraph (A), if a non-Federal interest carrying out a project under this section would, in the absence of a written agreement entered into under this paragraph, be required to obtain a certification from a State under Federal law to carry out the project, such certification shall still be required if a written agreement is entered into with respect to the project under this paragraph.

#### (4) Data sharing

##### (A) In general

If a non-Federal interest for a water resources development project begins to carry out that water resources development project under this section, the non-Federal interest may request that the Secretary transfer to the non-Federal interest all relevant data and documentation under the control of the Secretary with respect to that water resources development project.

##### (B) Deadline

Except as provided in subparagraph (C), the Secretary shall transfer the data and documentation requested by a non-Federal interest under subparagraph (A) not later than the date that is 90 days after the date on which the non-Federal interest so requests such data and documentation.

##### (C) Limitation

Nothing in this paragraph obligates the Secretary to share any data or documentation that the Secretary considers to be proprietary information.

#### (c) Studies and engineering

##### (1) In general

When requested by an appropriate non-Federal interest, the Secretary shall undertake all necessary studies, engineering, and technical assistance on construction for any project to be undertaken under subsection (b), and provide technical assistance in obtaining all necessary permits for the construction, if the non-Federal interest contracts with the Secretary to furnish the United States funds for the studies, engineering, or technical assistance on construction in the period during which the studies, engineering, or technical assistance on construction are being conducted.

<sup>1</sup> See References in Text note below.