

(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; Pub. L. 115–270, title I, §1216, Oct. 23, 2018, 132 Stat. 3810.)

REFERENCES IN TEXT

Section 1122 of the Water Resources Development Act of 2016, referred to in subsec. (e)(2)(C), is section 1122 of Pub. L. 114–322, title I, §1122, Dec. 16, 2016, 130 Stat. 1645. Subsecs. (a) to (h) of section 1122 are set out as a note under section 2326 of this title. Subsec. (i) of section 1122 amended section 2326 of this title. Subsec. (j) of section 1122 amended section 1962d–5f of Title 42, The Public Health and Welfare. For complete classification of this section to the Code, see Tables.

AMENDMENTS

2018—Subsec. (e)(1). Pub. L. 115–270, §1216(1), substituted “shall assess, and issue a report to Congress on, the” for “shall assess the”.

Subsec. (e)(2)(C). Pub. L. 115–270, §1216(2), added subpar. (C).

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 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 ap-

propriations 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; Pub. L. 114–322, title I, §1108, Dec. 16, 2016, 130 Stat. 1634.)

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.

AMENDMENTS

Subsec. (b)(1). Pub. L. 114–322, §1108(1), substituted “Except as provided in subsection (c), the target total” for “The target total” in introductory provisions.

Subsecs. (c), (d). Pub. L. 114–322, §1108(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

“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.

§ 2238c. Additional measures at donor ports and energy transfer ports

(a) Definitions

In this section:

(1) Cargo container

The term “cargo container” means a cargo container that is 1 Twenty-foot Equivalent Unit.

(2) Discretionary cargo

The term “discretionary cargo” means maritime cargo for which the United States port of unloading is different than the United States port of entry.

(3) Donor port

(A) In general

The term “donor port” means a port—

(i) that is subject to the harbor maintenance fee under section 24.24 of title 19, Code of Federal Regulations (or a successor regulation);

(ii) at which the total amount of harbor maintenance taxes collected comprise not less than \$15,000,000 annually of the total funding of the Harbor Maintenance Trust Fund established under section 9505 of title 26;

(iii) that received less than 25 percent of the total amount of harbor maintenance taxes collected at that port in the previous 5 fiscal years; and

(iv) that is located in a State in which more than 2,000,000 cargo containers were unloaded from or loaded on to vessels in fiscal year 2012.

(B) Calculation

For the purpose of calculating the percentage described in subparagraph (A)(iii), payments described under subsection (c)(1) shall not be included.