

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 Great Lakes St. 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

##### (A) Allocation

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).

#### (B) Additional uses at emerging harbors

##### (i) Uses

In each fiscal year, the Secretary may use not more than \$5,000,000 of funds allocated for emerging harbor projects under paragraph (1) to pay for the costs of up to 10 projects for maintenance dredging of a marina or berthing area, in an emerging harbor, that includes an area that is located adjacent to, or is accessible by, a Federal navigation project, subject to clauses (ii) and (iii) of this subparagraph.

##### (ii) Eligible emerging harbors

The Secretary may use funds as authorized under clause (i) at an emerging harbor that—

(I) supports commercial activities, including commercial fishing operations, commercial fish processing operations, recreational and sport fishing, and commercial boat yards; or

(II) supports activities of the Secretary of the department in which the Coast Guard is operating.

##### (iii) Cost-sharing requirements

The Secretary shall require a non-Federal interest to contribute not less than 25 percent of the costs for maintenance dredging of that portion of a maintenance dredging project described in clause (i) that is located outside of the Federal navigation project, which may be provided as an in-kind contribution, including through the use of dredge equipment owned by non-Federal interest to carry out such activities.

#### (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, and issue a report to Congress on, 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 uses described in subsection (c)(3)(B) and 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.

**(C) Opportunities for beneficial use of dredged materials**

In carrying out paragraph (1), the Secretary shall identify potential opportunities for the beneficial use of dredged materials obtained from harbors and inland harbors referred to in subsection (a)(2), including projects eligible under section 1122 of the Water Resources Development Act of 2016 (130 Stat. 1645; 33 U.S.C. 2326 note).

**(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**

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

**(3) Emerging harbor project**

The term “emerging harbor project” means a project that is assigned to an emerging harbor.

**(4) 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.

(C) An in-water improvement, if the improvement—

- (i) is for the seismic reinforcement of a wharf or other berthing structure, or the repair or replacement of a deteriorating wharf or other berthing structure, at a port facility;
- (ii) benefits commercial navigation at the harbor; and
- (iii) is located in, or adjacent to, a berth that is accessible to a Federal navigation project.

(D) An activity to maintain slope stability at a berth in a harbor that is accessible to a Federal navigation project if such activity benefits commercial navigation at the harbor.

**(5) 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.

#### (6) Harbor maintenance tax

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

#### (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; Pub. L. 115-270, title I, § 1216, Oct. 23, 2018, 132 Stat. 3810; Pub. L. 116-260, div. AA, title I, § 102(b), title V, § 512(c)(5)(B), Dec. 27, 2020, 134 Stat. 2619, 2756.)

## Editorial Notes

### 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

2020—Subsec. (a)(1). Pub. L. 116-260, § 512(c)(5)(B), substituted “Great Lakes St. Lawrence Seaway Development Corporation” for “Saint Lawrence Seaway Development Corporation”.

Subsec. (c)(3). Pub. L. 116-260, § 102(b)(1), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (e)(2)(A)(ii). Pub. L. 116-260, § 102(b)(2), inserted “uses described in subsection (c)(3)(B) and” after “costs for”.

Subsec. (f)(2), (3). Pub. L. 116-260, § 102(b)(3)(C), added pars. (2) and (3) and struck out former par. (2) which defined “emerging harbor project”.

Subsec. (f)(4). Pub. L. 116-260, § 102(b)(3)(B), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (f)(4)(C), (D). Pub. L. 116-260, § 102(b)(3)(D), added subpars. (C) and (D).

Subsec. (f)(5). Pub. L. 116-260, § 102(b)(3)(B), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (f)(6). Pub. L. 116-260, § 102(b)(3)(A), (B), redesignated par. (5) as (6) and struck out former par. (6) which defined “high-use harbor project”.

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”.

## Statutory Notes and Related Subsidiaries

### AUTHORIZATION OF APPROPRIATIONS FOR NAVIGATION

Pub. L. 116-260, div. AA, title I, § 102(a), Dec. 27, 2020, 134 Stat. 2618, provided that:

“(1) IN GENERAL.—In carrying out subsection (c) of section 210 of the Water Resources Development Act of 1986 (33 U.S.C. 2238), for each fiscal year, of the funds made available under such section (including funds appropriated from the Harbor Maintenance Trust Fund), the Secretary [of the Army] shall, to the extent practicable, unless otherwise directed in an Act making appropriations for the Corps of Engineers, make expenditures to pay for operation and maintenance costs of the harbors and inland harbors referred to in subsection (a)(2) of such section, to the extent there are identifiable operations and maintenance needs, of—

“(A) not less than 15 percent of such funds for emerging harbor projects, including eligible breakwater and jetty needs at such harbor projects;

“(B) not less than 13 percent of such funds for projects that are located within the Great Lakes Navigation System;

“(C) 12 percent of such funds for expanded uses carried out at donor ports and energy transfer ports, of which—

“(i) ½ shall be provided to energy transfer ports; and

“(ii) ¾ shall be provided to donor ports;

“(D) not less than 17 percent of such funds for projects that are assigned to commercial strategic seaports; and

“(E) any remaining funds for operation and maintenance costs of any harbor or inland harbor referred to in such subsection (a)(2) [33 U.S.C. 2238(a)(2)] based on an equitable allocation of such funds among such harbors and inland harbors, in accordance with subsection (c)(1) of such section 210 [33 U.S.C. 2238(c)(1)].

“(2) DEFINITIONS.—In this subsection:

“(A) COMMERCIAL STRATEGIC SEAPORT.—The term ‘commercial strategic seaport’ means a commercial harbor supporting the coordination of efficient port operations during peacetime and national defense emergencies that is designated as strategic through the National Port Readiness Network.

“(B) DONOR PORT; ENERGY TRANSFER PORT.—The terms ‘donor port’ and ‘energy transfer port’ have the meanings given those terms in section 2106 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2238c).

“(C) EMERGING HARBOR PROJECT; GREAT LAKES NAVIGATION SYSTEM.—The terms ‘emerging harbor project’ and ‘Great Lakes Navigation System’ have the meanings given those terms in section 210 of the Water Resources Development Act of 1986 (33 U.S.C. 2238).

“(3) EFFECTIVE DATE.—This subsection shall take effect on October 1, 2022.”

#### 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.)

#### Editorial Notes

##### 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.

#### Statutory Notes and Related Subsidiaries

##### 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.