

1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

#### CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

#### AMENDMENTS

2020—Pub. L. 116-260 amended section generally. Prior to amendment, text read as follows: “Any discretionary appropriation for the Corps of Engineers derived from the Harbor Maintenance Trust Fund (not to exceed the total amount deposited in the Harbor Maintenance Trust Fund in the prior fiscal year) shall be subtracted from the estimate of discretionary budget authority and outlays for any estimate of an appropriations Act under the Congressional Budget and Impoundment Control Act of 1974 or the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided*, That the modifications described in this section shall not take effect until the earlier of January 1, 2021 or the date of enactment of legislation authorizing the development of water resources and shall remain in effect thereafter.”

### § 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.

#### (4) Energy commodity

The term “energy commodity” includes—

- (A) petroleum products;
- (B) natural gas;
- (C) coal;
- (D) wind and solar energy components; and
- (E) biofuels.

#### (5) Energy transfer port

The term “energy transfer port” means a port—

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

(B)(i) at which energy commodities comprised greater than 25 percent of all commercial activity by tonnage in fiscal year 2012; and

(ii) through which more than 40,000,000 tons of cargo were transported in fiscal year 2012.

#### (6) Expanded uses

The term “expanded uses” has the meaning given the term in section 2238(f) of this title.

#### (7) Harbor maintenance tax

The term “harbor maintenance tax” has the meaning given the term in section 2238(f) of this title.

#### (8) Medium-sized donor port

The term “medium-sized donor port” means a port—

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

(B) at which the total amount of harbor maintenance taxes collected comprise annually more than \$5,000,000 but less than \$15,000,000 of the total funding of the Harbor Maintenance Trust Fund established under section 9505 of title 26;

(C) 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

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

#### (b) Authority

##### (1) In general

Subject to the availability of appropriations, the Secretary may provide to donor ports, medium-sized donor ports, and energy transfer ports amounts in accordance with this section.

##### (2) Limitations

Amounts provided under this section—

(A) for energy transfer ports shall be divided equally among all States with an energy transfer port;

(B) shall be made available to a port as either a donor port, medium-sized donor port, or an energy transfer port, and no port may receive amounts from more than 1 designation; and

(C) for donor ports and medium-sized donor ports—

(i) 50 percent of the funds shall be equally divided between the eligible donor ports as authorized by this section; and

(ii) 50 percent of the funds shall be divided between the eligible donor ports and eligible medium-sized donor ports based on the percentage of the total harbor maintenance tax revenues generated at each eligible donor port and medium-sized donor port.

**(c) Use of funds**

Amounts provided under this section may be used by a donor port, a medium-sized donor port, or an energy transfer port—

(1) to provide payments to importers entering cargo through that port, as calculated by the Secretary according to the value of discretionary cargo;

(2) for expanded uses; or

(3) for environmental remediation related to dredging berths and Federal navigation channels.

**(d) Administration of payments**

**(1) In general**

If a donor port, a medium-sized donor port, or an energy transfer port elects to provide payments to importers under subsection (c), the Secretary shall transfer to the Commissioner of U.S. Customs and Border Protection an amount equal to those payments that would otherwise be provided to the port under this section to provide the payments to the importers of the discretionary cargo that is—

(A) shipped through the port; and

(B) most at risk of diversion to seaports outside of the United States.

**(2) Requirement**

The Secretary, in consultation with a port electing to provide payments under subsection (c), shall determine the top importers at the port, as ranked by the value of discretionary cargo, and payments shall be limited to those top importers.

**(e) Report to Congress**

**(1) In general**

Not later than 18 months after June 10, 2014, the Secretary shall assess the impact of the authority provided by this section and submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report on the results of that assessment, including any recommendations for amending or reauthorizing the authority.

**(2) Factors**

In carrying out the assessment under paragraph (1), the Secretary shall assess—

(A) the impact of the amounts provided and used under this section on those ports that received funds under this section; and

(B) any impact on domestic harbors and ports that did not receive funds under this section.

**(f) Authorization of appropriations**

**(1) In general**

There is authorized to be appropriated to carry out this section \$50,000,000 for each of fiscal years 2015 through 2022.

**(2) Division between donor ports, medium-sized donor ports, and energy transfer ports**

For each fiscal year, amounts made available to carry out this section shall be provided in equal amounts to—

(A) donor ports and medium-sized donor ports; and

(B) energy transfer ports.

**(g) Savings clause**

Nothing in this section waives any statutory requirement related to the transportation of merchandise as authorized under chapter 551 of title 46.

(Pub. L. 113–121, title II, §2106, June 10, 2014, 128 Stat. 1280; Pub. L. 114–322, title I, §1110, Dec. 16, 2016, 130 Stat. 1634; Pub. L. 116–260, div. AA, title I, §104(a)–(b)(2), Dec. 27, 2020, 134 Stat. 2621, 2622.)

AMENDMENT OF SECTION

*Pub. L. 116–260, div. AA, title I, §104(b), Dec. 27, 2020, 134 Stat. 2621, provided that, effective Oct. 1, 2022, this section is amended as follows:*

*(1) Subsection (a) is amended—*

*(A) in paragraph (3)(A)—*

*(i) by amending clause (ii) to read as follows:*

*“(ii) at which the total amount of harbor maintenance taxes collected (including the estimated taxes related to domestic cargo and cruise passengers) comprise not less than \$15,000,000 annually of the total funding of the Harbor Maintenance Trust Fund on an average annual basis for the previous 3 fiscal years;”;*

*(ii) in clause (iii)—*

*(I) by inserting “(including the estimated taxes related to domestic cargo and cruise passengers)” after “taxes collected”; and*

*(II) by striking “5 fiscal years” and inserting “3 fiscal years”; and*

*(iii) in clause (iv), by striking “in fiscal year 2012” and inserting “on an average annual basis for the previous 3 fiscal years”;*

*(B) in paragraph (5)(B), by striking “in fiscal year 2012” each place it appears and inserting “on an average annual basis for the previous 3 fiscal years”;*

*(C) by redesignating paragraph (8) as paragraph (9) and inserting after paragraph (7) the following:*

*“(8) Harbor maintenance trust fund*

*“The term ‘Harbor Maintenance Trust Fund’ means the Harbor Maintenance Trust Fund established by section 9505 of title 26.”;*

*(D) in paragraph (9), as so redesignated—*

*(i) by amending subparagraph (B) to read as follows:*

*“(B) at which the total amount of harbor maintenance taxes collected (including the estimated taxes related to domestic cargo and cruise passengers) comprise annually more than \$5,000,000 but less than \$15,000,000 of the total funding of the Harbor Maintenance Trust Fund on an average annual basis for the previous 3 fiscal years;”;*

*(ii) in subparagraph (C)—*

*(I) by inserting “(including the estimated taxes related to domestic cargo and cruise passengers)” after “taxes collected”; and*

(II) by striking “5 fiscal years” and inserting “3 fiscal years”; and

(iii) in subparagraph (D), by striking “in fiscal year 2012” and inserting “on an average annual basis for the previous 3 fiscal years”.

(2)(A) By striking subsection (e) and redesignating subsections (f) and (g) as subsections (e) and (f), respectively; and

(B) in subsection (e), as so redesignated, by amending paragraph (1) to read as follows:

“(1) In general

“There are authorized to be appropriated to carry out this section—

“(A) \$56,000,000 for fiscal year 2023;

“(B) \$58,000,000 for fiscal year 2024;

“(C) \$60,000,000 for fiscal year 2025;

“(D) \$62,000,000 for fiscal year 2026;

“(E) \$64,000,000 for fiscal year 2027;

“(F) \$66,000,000 for fiscal year 2028;

“(G) \$68,000,000 for fiscal year 2029; and

“(H) \$70,000,000 for fiscal year 2030.”

See 2020 Amendment notes below.

### Editorial Notes

#### 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

2020—Subsec. (a)(3)(A)(ii). Pub. L. 116-260, § 104(b)(1)(A)(i), amended cl. (ii) generally. Prior to amendment, text read as follows: “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;”.

Subsec. (a)(3)(A)(iii). Pub. L. 116-260, § 104(b)(1)(A)(ii), inserted “(including the estimated taxes related to domestic cargo and cruise passengers)” after “taxes collected” and substituted “3 fiscal years” for “5 fiscal years”.

Subsec. (a)(3)(A)(iv). Pub. L. 116-260, § 104(b)(1)(A)(iii), substituted “on an average annual basis for the previous 3 fiscal years” for “in fiscal year 2012”.

Subsec. (a)(5)(B). Pub. L. 116-260, § 104(b)(1)(B), substituted “on an average annual basis for the previous 3 fiscal years” for “in fiscal year 2012” in two places.

Subsec. (a)(8), (9). Pub. L. 116-260, § 104(b)(1)(C), added par. (8) and redesignated former par. (8) as (9).

Subsec. (a)(9)(B). Pub. L. 116-260, § 104(b)(1)(D)(i), amended subpar. (B) generally. Prior to amendment, text read as follows: “at which the total amount of harbor maintenance taxes collected comprise annually more than \$5,000,000 but less than \$15,000,000 of the total funding of the Harbor Maintenance Trust Fund established under section 9505 of title 26;”.

Subsec. (a)(9)(C). Pub. L. 116-260, § 104(b)(1)(D)(ii), inserted “(including the estimated taxes related to domestic cargo and cruise passengers)” after “taxes collected” and substituted “3 fiscal years” for “5 fiscal years”.

Subsec. (a)(9)(D). Pub. L. 116-260, § 104(b)(1)(D)(iii), substituted “on an average annual basis for the previous 3 fiscal years” for “in fiscal year 2012”.

Subsec. (e). Pub. L. 116-260, § 104(b)(2)(A), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to report to Congress.

Subsec. (e)(1). Pub. L. 116-260, § 104(b)(2)(B), amended par. (1) generally. Prior to amendment, text read as follows: “There is authorized to be appropriated to carry out this section \$50,000,000 for each of fiscal years 2015 through 2020.”

Subsec. (f). Pub. L. 116-260, § 104(b)(2)(A), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (f)(1). Pub. L. 116-260, § 104(a)(1), substituted “2022” for “2020”.

Subsec. (f)(3). Pub. L. 116-260, § 104(a)(2), struck out par. (3). Prior to amendment, text read as follows: “If the target total budget resources under subparagraphs (A) through (D) of section 2238b(b)(1) of this title are met for each of fiscal years 2016 through 2020, there is authorized to be appropriated to carry out this section \$50,000,000 for each of fiscal years 2021 through 2025.”

Subsec. (g). Pub. L. 116-260, § 104(b)(2)(A), redesignated subsec. (g) as (f).

2016—Subsec. (a)(2). Pub. L. 114-322, § 1110(1)(B), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 114-322, § 1110(1)(C), designated existing provisions as subpar. (A) and inserted heading, redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (A), and added subpar. (B).

Pub. L. 114-322, § 1110(1)(A), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 114-322, § 1110(1)(A), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 114-322, § 1110(1)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (a)(5)(A). Pub. L. 114-322, § 1110(1)(D), substituted “Code of Federal Regulations” for “Code of Federal Regulation”.

Subsec. (a)(6), (7). Pub. L. 114-322, § 1110(1)(A), redesignated pars. (5) and (6) as (6) and (7), respectively.

Subsec. (a)(8). Pub. L. 114-322, § 1110(1)(E), added par. (8).

Subsec. (b)(1). Pub. L. 114-322, § 1110(2)(A), substituted “donor ports, medium-sized donor ports,” for “donor ports”.

Subsec. (b)(2)(B), (C). Pub. L. 114-322, § 1110(2)(B), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: “shall be made available to a port as either a donor port or an energy transfer port and no port may receive amounts as both a donor port and an energy transfer port.”

Subsec. (c). Pub. L. 114-322, § 1110(3)(A), substituted “donor port, a medium-sized donor port,” for “donor port” in introductory provisions.

Subsec. (c)(1). Pub. L. 114-322, § 1110(3)(B), struck out “or shippers transporting cargo” after “entering cargo” and substituted “the Secretary” for “U.S. Customs and Border Protection” and “value of discretionary cargo” for “amount of harbor maintenance taxes collected”.

Subsec. (d). Pub. L. 114-322, § 1110(4), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: “If a donor port or an energy transfer port elects to provide payments to importers or shippers under subsection (c), the Secretary shall transfer the amount that would otherwise be provided to the port under this section that is equal to those payments to the Commissioner of U.S. Customs and Border Protection to provide the payments to the importers or shippers.”

Subsec. (f)(1). Pub. L. 114-322, § 1110(5)(A), substituted “2020” for “2018”.

Subsec. (f)(2). Pub. L. 114-322, § 1110(5)(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “For each fiscal year, amounts made available to carry out this section shall be provided in equal amounts to donor ports and energy transfer ports.”

Subsec. (f)(3). Pub. L. 114-322, § 1110(5)(C), substituted “2016 through 2020” for “2015 through 2018” and “2021 through 2025” for “2019 through 2022”.

Subsec. (g). Pub. L. 114-322, § 1110(6), added subsec. (g).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. AA, title I, § 104(b)(3), Dec. 27, 2020, 134 Stat. 2622, provided that: “The amendments made by this subsection [amending this section] shall take effect on October 1, 2022.”

## “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.

**§ 2238d. Maintenance of harbors of refuge**

The Secretary is authorized to maintain federally authorized harbors of refuge to restore and maintain the authorized dimensions of the harbors.

(Pub. L. 114-322, title I, §1109, Dec. 16, 2016, 130 Stat. 1634.)

**Editorial Notes**

## CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

**Statutory Notes and Related Subsidiaries**

## “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 1002 of Pub. L. 114-322, set out as a note under section 2201 of this title.

**§ 2239. Repealed. Pub. L. 101-640, title IV, § 412(f), Nov. 28, 1990, 104 Stat. 4650**

Section, Pub. L. 99-662, title II, §211, Nov. 17, 1986, 100 Stat. 4106; Pub. L. 100-676, §32, Nov. 17, 1988, 102 Stat. 4030, directed Administrator of Environmental Protection Agency to designate one or more sites for disposal of dredged material as an alternative to disposal at the Mud Dump in New Jersey.

**Statutory Notes and Related Subsidiaries**

## SEDIMENTS DECONTAMINATION TECHNOLOGY

Pub. L. 102-580, title IV, §405, Oct. 31, 1992, 106 Stat. 4863, as amended by Pub. L. 104-303, title II, §226, Oct. 12, 1996, 110 Stat. 3697; Pub. L. 106-53, title II, §204, Aug. 17, 1999, 113 Stat. 285, provided that:

## “(a) DECONTAMINATION PROJECT.—

“(1) SELECTION OF TECHNOLOGIES.—Based upon a review of decontamination technologies identified pursuant to section 412(c) of the Water Resources Development Act of 1990 [Pub. L. 101-640, set out below], the Administrator of the Environmental Protection Agency and the Secretary shall, within 1 year after the date of the enactment of this Act [Oct. 31, 1992], jointly select removal, pre-treatment, post-treatment, and decontamination technologies for contaminated marine sediments for a decontamination project in the New York/New Jersey Harbor.

“(2) RECOMMENDED PROGRAM.—Upon selection of technologies, the Administrator and the Secretary shall jointly recommend a program of selected technologies to assess their effectiveness in rendering sediments acceptable for unrestricted ocean disposal or beneficial reuse, or both.

“(3) PROJECT PURPOSE.—The purpose of the project to be carried out under this section is to provide for the development of 1 or more sediment decontamination technologies on a pilot scale demonstrating a capacity of at least 500,000 cubic yards per year.

“(4) PRACTICAL END-USE PRODUCTS.—Technologies selected for demonstration at the pilot scale shall be intended to result in practical end-use products.

“(5) ASSISTANCE BY THE SECRETARY.—The Secretary shall assist the project to ensure expeditious completion by providing sufficient quantities of contami-

nated dredged material to conduct the full-scale demonstrations to stated capacity.

“(b) DECONTAMINATION DEFINED.—For purposes of this section, ‘decontamination’ may include local or remote prototype or production and laboratory decontamination technologies, sediment pre-treatment and post-treatment processes, and siting, economic, or other measures necessary to develop a matrix for selection of interim prototype of long-term processes. Decontamination techniques need not be preproven in terms of likely success.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$22,000,000 to complete technology testing, technology commercialization, and the development of full scale processing facilities within the New York/New Jersey Harbor. Such sums shall remain available until expended.

“(d) REPORTS.—Not later than September 30, 1998, and periodically thereafter, the Administrator and the Secretary shall transmit to Congress a report on the results of the project to be carried out under this section, including an assessment of the progress made in achieving the purpose of the project set forth in subsection (a)(3).

“(e) SUPPORT.—In carrying out the program under this section, the Secretary is encouraged to use contracts, cooperative agreements, and grants with colleges and universities and other non-Federal entities.”

## ALTERNATIVES TO MUD DUMP SITE FOR DISPOSAL OF DREDGED MATERIAL

Pub. L. 101-640, title IV, §412, Nov. 28, 1990, 104 Stat. 4650, provided that:

“(a) REPORT.—Within 90 days after the date of the enactment of this Act [Nov. 28, 1990], the Administrator of the Environmental Protection Agency shall submit to the Congress a final report on the feasibility of designating an alternative site to the Mud Dump Site at a distance not less than 20 miles from the shoreline.

“(b) PLAN.—Within 180 days after the date of the enactment of this Act [Nov. 28, 1990], the Secretary and the Administrator of the Environmental Protection Agency shall submit to Congress a plan for the long-term management of dredged material from the New York/New Jersey Harbor region. The plan shall include—

“(1) an identification of the source, quantities, and characteristics of material to be dredged;

“(2) a discussion of potential alternative sites for disposal of dredged material, including the feasibility of altering the boundaries of the Mud Dump Site;

“(3) measures to reduce the quantities of dredged material proposed for ocean disposal;

“(4) measures to reduce the amount of contaminants in materials proposed to be dredged from the Harbor through source controls and decontamination technology;

“(5) a program for monitoring the physical, chemical, and biological effects of dumping dredged material at the Mud Dump Site; and

“(6) a study of the characteristics of the bottom sediments, including type and distribution.

“(c) DEMONSTRATION PROJECT.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall implement a demonstration project for disposing on an annual basis up to 10 percent of the material dredged from the New York/New Jersey Harbor region in an environmentally sound manner other than by ocean disposal. Environmentally sound alternatives may include, among others, capping of borrow pits, construction of a containment island, application for landfill cover, habitat restoration, and use of decontamination technology.

“(d) MUD DUMP SITE DEFINED.—For purposes of this section, the term ‘Mud Dump Site’ means the area located approximately 5¼ miles east of Sandy Hook, New Jersey, with boundary coordinates of 40 degrees, 23 minutes, 48 seconds North, 73 degrees, 51 minutes, 28 seconds West; 40 degrees, 21 minutes, 48 seconds North,