

“(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.

Statutory Notes and Related Subsidiaries

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.

DEADLINE

Pub. L. 116-260, div. AA, title I, §161(b), Dec. 27, 2020, 134 Stat. 2667, provided that: “Not later than 90 days after the date of enactment of this Act [Dec. 27, 2020], the Secretary [of the Army] shall issue revised guidelines under section 203 of the Water Resources Development Act of 1986 (33 U.S.C. 2231) to implement the amendments made by this section [amending this section].”

HOLD HARMLESS

Pub. L. 116-260, div. AA, title I, §161(c), Dec. 27, 2020, 134 Stat. 2667, provided that:

“(1) ONE-YEAR WINDOW.—The amendments made by this section [amending this section] shall not apply to any feasibility study submitted to the Secretary [of the Army] under section 203 of the Water Resources Development Act of 1986 (33 U.S.C. 2231) during the one-year period prior to the date of enactment of this section [Dec. 27, 2020].

“(2) 2020 PROJECTS.—The amendments made by this section shall not apply to any project authorized by section 403 of this Act [section 403 of div. AA of Pub. L. 116-260, 134 Stat. 2743, which is not classified to the Code].”

§ 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)¹ 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 significant 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.

¹ See References in Text note below.

(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 this section, 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.

(2) No waiver

Nothing in this section may be construed to waive any requirement of section 3142 of title 40.

(3) Limitation

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

(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.

(d) Credit or reimbursement**(1) General rule**

Subject to paragraph (3), a project or separable element of a project carried out by a non-Federal interest under this section shall be eligible for credit or reimbursement for the Federal share of work carried out on a project or separable element of a project if—

(A) before initiation of construction of the project or separable element—

(i) the Secretary approves the plans for construction of the project or separable element of the project by the non-Federal interest;

(ii) the Secretary determines, before approval of the plans, that the project or separable element of the project is feasible; and

(iii) the non-Federal interest enters into a written agreement with the Secretary under section 1962d–5b of title 42, including an agreement to pay the non-Federal share, if any, of the cost of operation and maintenance of the project; and

(B) the Secretary determines that all Federal laws and regulations applicable to the construction of a water resources development project, and any conditions identified under subsection (b)(1)(B), were complied with by the non-Federal interest during construction of the project or separable element of the project.

(2) Application of credit

The Secretary may apply credit toward—

(A) the non-Federal share of authorized separable elements of the same project; or

(B) subject to the requirements of this section and section 2223 of this title, at the request of the non-Federal interest, the non-Federal share of a different water resources development project.

(3) Requirements

The Secretary may only apply credit or provide reimbursement under paragraph (1) if—

(A) Congress has authorized construction of the project or separable element of the project;

(B) the Secretary certifies that the project has been constructed in accordance with—

(i) all applicable permits or approvals; and

(ii) this section; and

(C) in the case of reimbursement, appropriations are provided by Congress for such purpose.

(4) Monitoring

The Secretary shall regularly monitor and audit any water resources development project, or separable element of a water resources development project, constructed by a non-Federal interest under this section to ensure that—

(A) the construction is carried out in compliance with the requirements of this section; and

(B) the costs of the construction are reasonable.

(5) Discrete segments**(A) In general**

The Secretary may authorize credit or reimbursement under this subsection for carrying out a discrete segment of a federally authorized water resources development project, or separable element thereof, before final completion of the project or separable element if—

(i) except as provided in clause (ii), the Secretary determines that the discrete segment satisfies the requirements of paragraphs (1) through (4) in the same manner as the project or separable element; and

(ii) notwithstanding paragraph (1)(A)(ii), the Secretary determines, before the approval of the plans under paragraph (1)(A)(i), that the discrete segment is technically feasible and environmentally acceptable.

(B) Determination

Credit or reimbursement may not be made available to a non-Federal interest pursuant

to this paragraph until the Secretary determines that—

- (i) the construction of the discrete segment for which credit or reimbursement is requested is complete; and
- (ii) the construction is consistent with the authorization of the applicable water resources development project, or separable element thereof, and the plans approved under paragraph (1)(A)(i).

(C) Written agreement

(i) In general

As part of the written agreement required under paragraph (1)(A)(iii), a non-Federal interest to be eligible for credit or reimbursement under this paragraph shall—

- (I) identify any discrete segment that the non-Federal interest may carry out; and
- (II) agree to the completion of the water resources development project, or separable element thereof, with respect to which the discrete segment is a part and establish a timeframe for such completion.

(ii) Remittance

If a non-Federal interest fails to complete a water resources development project, or separable element thereof, that it agreed to complete under clause (i)(II), the non-Federal interest shall remit any reimbursements received under this paragraph for a discrete segment of such project or separable element.

(D) Discrete segment defined

In this paragraph, the term “discrete segment” means a physical portion of a water resources development project to be carried out, or separable element thereof—

- (i) described by a non-Federal interest in a written agreement required under paragraph (1)(A)(iii); and
- (ii) that the non-Federal interest can operate and maintain, independently and without creating a hazard, in advance of final completion of the water resources development project, or separable element thereof.

(e) Notification of committees

If a non-Federal interest notifies the Secretary that the non-Federal interest intends to carry out a project, or separable element thereof, under this section, the Secretary shall provide written notice to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives concerning the intent of the non-Federal interest.

(f) Operation and maintenance

(1) Assumption of maintenance

Whenever a non-Federal interest carries out improvements to a federally authorized harbor or inland harbor, the Secretary shall be responsible for operation and maintenance in accordance with section 2211(b) of this title if—

- (A) before construction of the improvements—

(i) the Secretary determines that the improvements are feasible and consistent with the purposes of this subchapter; and

(ii) the Secretary and the non-Federal interest execute a written agreement relating to operation and maintenance of the improvements;

(B) the Secretary certifies that the project or separable element of the project is constructed in accordance with applicable permits and appropriate engineering and design standards; and

(C) the Secretary does not find that the project or separable element is no longer feasible.

(2) Federal financial participation in the costs of a locally preferred plan.

In the case of improvements determined by the Secretary pursuant to paragraph (1)(A)(i) to deviate from the national economic development plan, the Secretary shall be responsible for all operation and maintenance costs of such improvements, as described in section 2211(b) of this title, including costs in excess of the costs of the national economic development plan, if the Secretary determines that the improvements satisfy the requirements of paragraph (1).

(Pub. L. 99-662, title II, §204, Nov. 17, 1986, 100 Stat. 4099; Pub. L. 101-640, title III, §303, Nov. 28, 1990, 104 Stat. 4634; Pub. L. 113-121, title I, §1014(b)(1), June 10, 2014, 128 Stat. 1220; Pub. L. 114-322, title I, §1127, Dec. 16, 2016, 130 Stat. 1648; Pub. L. 115-270, title I, §1153, Oct. 23, 2018, 132 Stat. 3789; Pub. L. 116-260, div. AA, title I, §105(a), (b), Dec. 27, 2020, 134 Stat. 2622.)

Editorial Notes

REFERENCES IN TEXT

Section 2282d(f) of this title, referred to in subsec. (a)(1), was redesignated section 2282(g) of this title by Pub. L. 115-270, title I, §1332(a)(3), Oct. 23, 2018, 132 Stat. 3834.

AMENDMENTS

2020—Subsec. (c)(1). Pub. L. 116-260, §105(a), substituted “under this section” for “under subsection (b)”.

Subsec. (f). Pub. L. 116-260, §105(b), amended subsec. (f) generally. Prior to amendment, subsec. (f) related to operation and maintenance.

2018—Subsec. (b)(1). Pub. L. 115-270, §1153(1)(A), inserted “federally authorized” before “water resources development project” in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 115-270, §1153(1)(B), inserted “, except as provided in paragraph (3)” after “Federal or State law”.

Subsec. (b)(3), (4). Pub. L. 115-270, §1153(1)(C), added pars. (3) and (4).

Subsec. (c). Pub. L. 115-270, §1153(2), amended subsec. (c) generally. Prior to amendment, text read as follows: “When requested by an appropriate non-Federal interest, the Secretary may undertake all necessary studies and engineering for any construction 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 in the period during which the studies and engineering are being conducted.”

Subsec. (d)(3)(C). Pub. L. 115-270, §1153(3)(A), added subpar. (C).

Subsec. (d)(5). Pub. L. 115-270, §1153(3)(B)(i), substituted “water resources development” for “flood damage reduction” wherever appearing.

Subsec. (d)(5)(A). Pub. L. 115-270, §1153(3)(B)(ii), substituted “for carrying out a discrete segment of a federally authorized” for “for a discrete segment of a” in introductory provisions.

Subsec. (d)(5)(D). Pub. L. 115-270, §1153(3)(B)(iii), inserted “to be carried out” after “project” in introductory provisions.

2016—Subsec. (d)(5). Pub. L. 114-322 added par. (5).

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

1990—Subsec. (c). Pub. L. 101-640, §303(a), inserted after first sentence “The Secretary is further authorized to complete and transmit to the appropriate non-Federal interest any study for improvement to harbors or inland harbors of the United States that is initiated pursuant to section 577 of this title or, upon request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest.”

Subsec. (e). Pub. L. 101-640, §303(b)(1), redesignated subsec. (e), relating to operation and maintenance, as (f).

Subsec. (e)(1). Pub. L. 101-640, §303(b)(2), (3), in introductory provisions inserted “including any small navigation project approved pursuant to section 577 of this title,” after “or separable element thereof,” and in subpar. (A) inserted “(or, in the case of a small navigation project, after completion of a favorable project report by the Corps of Engineers)” after “authorization of the project”.

Subsec. (f). Pub. L. 101-640, §303(b)(1), redesignated subsec. (e), relating to operation and maintenance, as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 101-640, §303(b)(1), redesignated subsec. (f) as (g).

Statutory Notes and Related Subsidiaries

SAVINGS PROVISION

Pub. L. 113-121, title I, §1014(d), June 10, 2014, 128 Stat. 1222, provided that: “Nothing in this section [amending this section and section 2231 of this title, repealing sections 426i-1 and 701b-13 of this title, and repealing provisions set out as a note under this section] may be construed to affect an agreement in effect on the date of enactment of this Act [June 10, 2014], or an agreement that is finalized between the Corps of Engineers and a non-Federal interest on or before December 31, 2014, under any of the following sections (as such sections were in effect on the day before such date of enactment):

“(1) Section 204 of the Water Resources Development Act of 1986 (33 U.S.C. 2232).

“(2) Section 206 of the Water Resources Development Act of 1992 (33 U.S.C. 426i-1).

“(3) Section 211 of the Water Resources Development Act of 1996 (33 U.S.C. 701b-13).”

REPORT ON IMPROVEMENTS BY NON-FEDERAL INTEREST

Pub. L. 116-260, div. AA, title I, §105(c), Dec. 27, 2020, 134 Stat. 2623, provided that: “A non-Federal interest may submit to the Secretary [of the Army] a report on improvements to a federally authorized harbor or inland harbor to be carried out by the non-Federal interest, containing any information necessary for the Secretary determine whether the improvements satisfy the requirements of section 204(f)(1) of the Water Resources Development Act of 1986 (33 U.S.C. 2232[(f)(1)]), including—

“(1) the economic justification for the improvements;

“(2) details of the project improvement plan and design;

“(3) proposed arrangements for the work to be performed; and

“(4) documents relating to any applicable permits required for the project improvements.”

PROJECT STUDIES SUBJECT TO INDEPENDENT PEER REVIEW

Pub. L. 116-260, div. AA, title I, §105(d), Dec. 27, 2020, 134 Stat. 2623, provided that: “The Secretary [of the Army] shall not be required to subject a project study for a project with a cost of less than \$200,000,000, which the Secretary determines satisfies the requirements of section 204(f)(1) of the Water Resources Development Act of 1986 (33 U.S.C. 2232[(f)(1)]), to independent peer review under section 2034(a)(3)(A)(i) of the Water Resources Development Act of 2007 (33 U.S.C. 2343(a)(3)(A)(i)).”

PRECONSTRUCTION ENGINEERING DESIGN DEMONSTRATION PROGRAM

Pub. L. 115-270, title I, §1176, Oct. 23, 2018, 132 Stat. 3801, provided that:

“(a) DEFINITION OF ENVIRONMENTAL IMPACT STATEMENT.—In this section, the term ‘environmental impact statement’ means the detailed written statement required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

“(b) DEMONSTRATION PROGRAM.—The Secretary [of the Army] shall establish a demonstration program to allow a project authorized to execute pursuant to [former] section 211 of the Water Resources Development Act of 1996 (33 U.S.C. 701b-13) (as in effect on the day before the date of enactment of the Water Resources Reform and Development Act of 2014 (128 Stat. 1193) [June 10, 2014]) to begin preconstruction engineering and design on a determination by the Secretary that the project is technically feasible, economically justified, and environmentally acceptable.

“(c) REQUIREMENTS.—For each project authorized to begin preconstruction engineering and design under subsection (b)—

“(1) the project shall conform to the feasibility study and the environmental impact statement approved by the Secretary; and

“(2) the Secretary and the non-Federal sponsor shall jointly agree to the construction design of the project.

“(d) SECRETARY REVIEW OF POTENTIAL ADVERSE IMPACTS.—When reviewing the feasibility study and the environmental impact statement for a project under subsection (b), the Secretary shall follow current USACE Policy, Regulations, and Guidance, to assess potential adverse downstream impacts to the Pearl River Basin. Upon completion of the Secretary’s determination under subsection (b), the non-Federal sponsor shall design the project in a manner that addresses any potential adverse impacts or that provides mitigation in accordance with section 906 of the Water Resources Development Act of 1986 (33 U.S.C. 2283).

“(e) SUNSET.—The authority to carry out the demonstration program under this section shall terminate on the date that is 5 years after the date of enactment of this Act [Oct. 23, 2018].

“(f) SAVINGS PROVISION.—Nothing in this section supersedes, precludes, or affects any applicable requirements for a project under subsection (b) under—

“(1) section 906 of the Water Resources Development Act of 1986 (33 U.S.C. 2283); or

“(2) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).”

NAVIGATION SAFETY

Pub. L. 114-322, title I, §1102, Dec. 16, 2016, 130 Stat. 1633, provided that: “The Secretary [of the Army] shall use section 5 of the Act of March 4, 1915 (38 Stat. 1053, chapter 142; 33 U.S.C. 562), to carry out navigation safety activities at those projects eligible for operation and maintenance under section 204(f) of the Water Resources Development Act of 1986 (33 U.S.C. 2232(f)).”

OPERATION AND MAINTENANCE OF CERTAIN PROJECTS

Pub. L. 113-121, title I, §1016, June 10, 2014, 128 Stat. 1223, provided that: “The Secretary [of the Army] may

assume responsibility for operation and maintenance in accordance with section 101(b) of the Water Resources Development Act of 1986 (33 U.S.C. 2211(b)) (as amended by section 2102(b)) for improvements to a federally authorized harbor or inland harbor that are carried out by a non-Federal interest prior to December 31, 2014, if the Secretary determines that the requirements under paragraphs (2) and (3) of section 204(f) of the Water Resources Development Act of 1986 (33 U.S.C. 2232(f)) are met."

DEMONSTRATION OF CONSTRUCTION OF FEDERAL
PROJECT BY NON-FEDERAL INTERESTS

Pub. L. 101-640, title IV, §404, Nov. 28, 1990, 104 Stat. 4646, which related to the demonstration of safety benefits and economic efficiencies of non-Federal management of harbor improvement projects, was repealed by Pub. L. 113-121, title I, §1014(c)(1), June 10, 2014, 128 Stat. 1222.

§ 2233. Coordination and scheduling of Federal, State, and local actions

(a) Notice of intent

The Secretary, on request from an appropriate non-Federal interest in the form of a written notice of intent to construct a navigation project for a harbor or inland harbor under section 2232 of this title or this section, shall initiate procedures to establish a schedule for consolidating Federal, State, and local agency environmental assessments, project reviews, and issuance of all permits for the construction of the project, including associated access channels, berthing areas, and onshore port-related facilities, before the initiation of construction. The non-Federal interest shall submit, with the notice of intent, studies and documentation, including environmental reviews, that may be required by Federal law for decisionmaking on the proposed project. A State shall not be required to participate in carrying out this section.

(b) Procedural requirements

Within 15 days after receipt of notice under subsection (a), the Secretary shall publish such notice in the Federal Register. The Secretary also shall provide written notification of the receipt of a notice under subsection (a) to all State and local agencies that may be required to issue permits for the construction of the project or related activities. The Secretary shall solicit the cooperation of those agencies and request their entry into a memorandum of agreement described in subsection (c). Within 30 days after publication of the notice in the Federal Register, State and local agencies that intend to enter into the memorandum of agreement shall notify the Secretary of their intent in writing.

(c) Scheduling agreement

Within 90 days after receipt of notice under subsection (a), the Secretary of the Interior, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and any State or local agencies that have notified the Secretary under subsection (b) shall enter into an agreement with the Secretary establishing a schedule of decisionmaking for approval of the project and permits associated with it and with related activities. Such schedule may not exceed two and one-half years from the date of the agreement.

(d) Contents of agreement

The agreement entered into under subsection (c), to the extent practicable, shall consolidate hearing and comment periods, procedures for data collection and report preparation, and the environmental review and permitting processes associated with the project and related activities. The agreement shall detail, to the extent possible, the non-Federal interest's responsibilities for data development and information that may be necessary to process each permit, including a schedule when the information and data will be provided to the appropriate Federal, State, or local agency.

(e) Preliminary decision

The agreement shall include a date by which the Secretary, taking into consideration the views of all affected Federal agencies, shall provide to the non-Federal interest in writing a preliminary determination whether the project and Federal permits associated with it are reasonably likely to receive approval.

(f) Revision of agreement

The Secretary may revise the agreement once to extend the schedule to allow the non-Federal interest the minimum amount of additional time necessary to revise its original application to meet the objections of a Federal, State, or local agency which is a party to the agreement.

(g) Progress reports

Six months before the final date of the schedule, the Secretary shall provide to Congress a written progress report for each navigation project for a harbor or inland harbor subject to this section. The Secretary shall transmit the report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. The report shall summarize all work completed under the agreement and shall include a detailed work program that will assure completion of all remaining work under the agreement.

(h) Final decision

Not later than the final day of the schedule, the Secretary shall notify the non-Federal interest of the final decision on the project and whether the permit or permits have been issued.

(i) Report on timesavings methods

Not later than one year after November 17, 1986, the Secretary shall prepare and transmit to Congress a report estimating the time required for the issuance of all Federal, State, and local permits for the construction of navigation projects for harbors or inland harbors and associated activities. The Secretary shall include in that report recommendations for further reducing the amount of time required for the issuance of those permits, including any proposed changes in existing law.

(Pub. L. 99-662, title II, §205, Nov. 17, 1986, 100 Stat. 4101.)

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Com-