

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.

(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 appropriations 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.)

**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**

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).

**Statutory Notes and Related Subsidiaries**

**“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.

**§ 2238b–1. Budgetary treatment expansion and adjustment for the Harbor Maintenance Trust Fund**

Any discretionary appropriation for the Corps of Engineers—

(1) derived from the Harbor Maintenance Trust Fund, in this fiscal year and thereafter, not to exceed the sum of—

(A) the total amount deposited in the Harbor Maintenance Trust Fund in the fiscal year that is two years prior to the fiscal year for which the appropriation is being made; and

(B)(i) \$500,000,000 for fiscal year 2021;

(ii) \$600,000,000 for fiscal year 2022;

(iii) \$700,000,000 for fiscal year 2023;

(iv) \$800,000,000 for fiscal year 2024;

(v) \$900,000,000 for fiscal year 2025;

(vi) \$1,000,000,000 for fiscal year 2026;

(vii) \$1,200,000,000 for fiscal year 2027;

(viii) \$1,300,000,000 for fiscal year 2028;

(ix) \$1,400,000,000 for fiscal year 2029; and