

The Water Resources Development Act of 1996, referred to in subsecs. (b)(1)(C) and (c), is Pub. L. 104-303, Oct. 12, 1996, 110 Stat. 3658. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 2201 of this title and Tables.

The Water Resources Development Act of 1986, referred to in subsecs. (b)(1)(D) and (c), is Pub. L. 99-662, Nov. 17, 1986, 100 Stat. 4082. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

The River and Harbor Act of 1960, referred to in subsecs. (b)(1)(E) and (c), is Pub. L. 86-645, title I, July 14, 1960, 74 Stat. 480. For complete classification of this Act to the Code, see Tables.

The Act of August 13, 1946, referred to in subsecs. (b)(1)(F) and (c), is act Aug. 13, 1946, ch. 960, 60 Stat. 1056. For complete classification of this Act to the Code, see Tables.

#### 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

2018—Subsec. (e). Pub. L. 115-270 added subsec. (e).

#### 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.

### § 2268. Marine technology review

#### (a) Dredging needs

The Secretary is authorized to conduct such studies as are necessary to provide a report to Congress on the dredging needs of the national ports and harbors of the United States. The report shall include existing and projected future project depths, types and sizes of ships in use, and world trade patterns, an assessment of the future national waterside infrastructure needs, and a comparison of drafts of United States and selected world ports.

#### (b) Authorization of appropriations

There is authorized to be appropriated \$2,500,000 to carry out this section for fiscal years beginning after September 30, 1992. Such sums shall remain available until expended.

(Pub. L. 102-580, title IV, § 402, Oct. 31, 1992, 106 Stat. 4862.)

#### Editorial Notes

##### CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1992, 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 3 of Pub. L. 102-580, set out as a note under section 2201 of this title.

### § 2269. Tribal partnership program

#### (a) Definition of Indian tribe

In this section, the term “Indian tribe” has the meaning given the term in section 5304 of title 25.

### (b) Program

#### (1) In general

In cooperation with Indian tribes and the heads of other Federal agencies, the Secretary may carry out water-related planning activities, or activities relating to the study, design, and construction of water resources development projects, that—

(A) will substantially benefit Indian tribes; and

(B) are located primarily within Indian country (as defined in section 1151 of title 18, and including lands that are within the jurisdictional area of an Oklahoma Indian tribe, as determined by the Secretary of the Interior, and are recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations) or in proximity to Alaska Native villages.

#### (2) Authorized activities

An activity conducted under paragraph (1) may address—

(A) projects for flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources;

(B) watershed assessments and planning activities; and

(C) such other projects as the Secretary, in cooperation with Indian tribes and the heads of other Federal agencies, determines to be appropriate.

#### (3) Feasibility study and reports

##### (A) In general

On the request of an Indian tribe, the Secretary shall conduct a study on, and provide to the Indian tribe a report describing, the feasibility of a water resources development project described in paragraph (1).

##### (B) Recommendation

A report under subparagraph (A) may, but shall not be required to, contain a recommendation on a specific water resources development project.

#### (4) Design and construction

##### (A) In general

The Secretary may carry out the design and construction of a water resources development project, or separable element of a project, described in paragraph (1) that the Secretary determines is feasible if the Federal share of the cost of the project or separable element is not more than \$18,500,000.

##### (B) Specific authorization

If the Federal share of the cost of the project or separable element described in subparagraph (A) is more than \$18,500,000, the Secretary may only carry out the project or separable element if Congress enacts a law authorizing the Secretary to carry out the project or separable element.

#### (c) Consultation and coordination with Secretary of the Interior

##### (1) In general

In recognition of the unique role of the Secretary of the Interior concerning trust respon-

sibilities with Indian tribes and in recognition of mutual trust responsibilities, the Secretary shall consult with the Secretary of the Interior concerning an activity conducted under subsection (b).

**(2) Integration of activities**

The Secretary shall—

(A) integrate civil works activities of the Department of the Army with activities of the Department of the Interior to avoid conflicts, duplications of effort, or unanticipated adverse effects on Indian tribes; and

(B) consider the authorities and programs of the Department of the Interior and other Federal agencies in any recommendations concerning an activity conducted under subsection (b).

**(d) Cost sharing**

**(1) Ability to pay**

**(A) In general**

Any cost-sharing agreement for an activity conducted under subsection (b) shall be subject to the ability of the non-Federal interest to pay.

**(B) Use of procedures**

**(i) In general**

The ability of a non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary.

**(ii) Determination**

Not later than 180 days after June 10, 2014, the Secretary shall issue guidance on the procedures described in clause (i).

**(2) Credit**

The Secretary may credit toward the non-Federal share of the costs of an activity conducted under subsection (b) the cost of services, studies, supplies, or other in-kind contributions provided by the non-Federal interest.

**(3) Sovereign immunity**

The Secretary shall not require an Indian tribe to waive the sovereign immunity of the Indian tribe as a condition to entering into a cost-sharing agreement under this subsection.

**(4) Water resources development projects**

**(A) In general**

The non-Federal share of costs for the study of a water resources development project described in subsection (b)(1) shall be 50 percent.

**(B) Other costs**

The non-Federal share of costs of design and construction of a project described in subparagraph (A) shall be assigned to the appropriate project purposes described in sections 2211 and 2213 of this title and shared in the same percentages as the purposes to which the costs are assigned.

**(5) Water-related planning activities**

**(A) In general**

The non-Federal share of costs of a watershed and river basin assessment conducted under subsection (b) shall be 25 percent.

**(B) Other costs**

The non-Federal share of costs of other water-related planning activities described in subsection (b)(1) shall be 50 percent.

**(e) Restrictions**

The Secretary is authorized to carry out activities under this section for fiscal years 2015 through 2024.

(Pub. L. 106-541, title II, §203, Dec. 11, 2000, 114 Stat. 2588; Pub. L. 110-114, title II, §2011, Nov. 8, 2007, 121 Stat. 1074; Pub. L. 113-121, title I, §1031(a), June 10, 2014, 128 Stat. 1232; Pub. L. 114-322, title I, §1121, Dec. 16, 2016, 130 Stat. 1644; Pub. L. 115-270, title I, §1157(i), Oct. 23, 2018, 132 Stat. 3794; Pub. L. 116-260, div. AA, title III, §303, Dec. 27, 2020, 134 Stat. 2703.)

**Editorial Notes**

**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 2000, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

**AMENDMENTS**

2020—Subsec. (b)(4). Pub. L. 116-260 substituted “\$18,500,000” for “\$12,500,000” in subpars. (A) and (B).

2018—Subsec. (b)(4). Pub. L. 115-270 amended par. (4) generally. Prior to amendment, text read as follows:

“(A) IN GENERAL.—The Secretary may carry out the design and construction of a water resources development project described in paragraph (1) that the Secretary determines is feasible if the Federal share of the cost of the project is not more than \$10,000,000.

“(B) SPECIFIC AUTHORIZATION.—If the Federal share of the cost of a project described in subparagraph (A) is more than \$10,000,000, the Secretary may only carry out the project if Congress enacts a law authorizing the Secretary to carry out the project.”

2016—Subsec. (b)(1). Pub. L. 114-322, §1121(1)(A), substituted “the Secretary may carry out water-related planning activities, or activities relating to the study, design, and construction of water resources development projects,” for “the Secretary may carry out water-related planning activities and study and determine the feasibility of carrying out water resources development projects” in introductory provisions.

Subsec. (b)(2). Pub. L. 114-322, §1121(1)(B), substituted “Authorized activities” for “Matters to be studied” in heading and “An activity” for “A study” in introductory provisions.

Subsec. (b)(3), (4). Pub. L. 114-322, §1121(1)(C), added pars. (3) and (4).

Subsec. (c)(1). Pub. L. 114-322, §1121(2)(A), substituted “an activity” for “studies”.

Subsec. (c)(2)(B). Pub. L. 114-322, §1121(2)(B), substituted “an activity conducted” for “carrying out projects studied”.

Subsec. (d)(1)(A). Pub. L. 114-322, §1121(3)(A), substituted “an activity conducted” for “a study”.

Subsec. (d)(2) to (5). Pub. L. 114-322, §1121(3)(B), added pars. (2) to (5) and struck out former par. (2). Prior to amendment, text of par. (2) read as follows: “The Secretary may credit toward the non-Federal share of the costs of a study under subsection (b) the cost of services, studies, supplies, or other in-kind contributions provided by the non-Federal interest if the Secretary determines that the services, studies, supplies, and other in-kind contributions will facilitate completion of the study.”

2014—Subsec. (d)(1)(B). Pub. L. 113-121, §1031(a)(1), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Subsec. (e). Pub. L. 113-121, §1031(a)(2), added subsec. (e) and struck out former subsec. (e) which authorized appropriations for fiscal years 2002 to 2012.

2007—Subsec. (b)(1). Pub. L. 110-114, §2011(a)(1), inserted “carry out water-related planning activities and” after “the Secretary may” in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 110-114, §2011(a)(2), inserted “, and including lands that are within the jurisdictional area of an Oklahoma Indian tribe, as determined by the Secretary of the Interior, and are recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations” after “section 1151 of title 18”.

Subsec. (b)(2). Pub. L. 110-114, §2011(a)(3), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (e). Pub. L. 110-114, §2011(b), substituted “2012” for “2006”.

#### Statutory Notes and Related Subsidiaries

##### “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106-541, set out as a note under section 2201 of this title.

#### § 2270. Subsurface drain systems research and development

Subject to the availability of appropriations, the Secretary, acting through the Director of the Engineer Research and Development Center and, where appropriate, in consultation with other Federal agencies, shall carry out research and development activities relating to the use of subsurface drain systems as—

- (1) a flood risk-reduction measure; or
- (2) a coastal storm risk-reduction measure.

(Pub. L. 116-260, div. AA, title II, §227, Dec. 27, 2020, 134 Stat. 2698.)

#### Editorial Notes

##### 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.

#### Statutory Notes and Related Subsidiaries

##### “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116-260, set out as a note under section 2201 of this title.

#### SUBCHAPTER V—GENERAL PROVISIONS

#### § 2280. Maximum cost of projects

##### (a) In general

In order to insure against cost overruns, each total cost set forth with respect to a project for water resources development and conservation and related purposes authorized to be carried out by the Secretary in this Act or in a law enacted after the date of the enactment of this Act, including the Water Resources Development Act of 1988, or in an amendment made by this Act or any later law with respect to such a project shall be the maximum cost of that project, except that such maximum amount—

- (1) may be increased by the Secretary for modifications which do not materially alter the scope or functions of the project as authorized, but not by more than 20 percent of the total cost stated for the project in this Act, in any later law, or in an amendment made by this Act or any later law; and

(2) shall be automatically increased for—

(A) changes in construction costs applied to unconstructed features (including real property acquisitions, preconstruction studies, planning, engineering, and design) from the date of enactment of this Act or any later law (unless otherwise specified) as indicated by engineering and other appropriate cost indexes; and

(B) additional studies, modifications, and actions (including mitigation and other environmental actions) authorized by this Act or any later law or required by changes in Federal law.

##### (b) Contributions by non-Federal interests

Notwithstanding subsection (a), in accordance with section 701h of this title, the Secretary may accept funds from a non-Federal interest for any authorized water resources development project that has exceeded its maximum cost under subsection (a), and use such funds to carry out such project, if the use of such funds does not increase the Federal share of the cost of such project.

(Pub. L. 99-662, title IX, §902, Nov. 17, 1986, 100 Stat. 4183; Pub. L. 100-676, §3(b), Nov. 17, 1988, 102 Stat. 4014; Pub. L. 113-121, title I, §1023, June 10, 2014, 128 Stat. 1228.)

#### Editorial Notes

##### REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 99-662, Nov. 17, 1986, 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

The date of enactment of this Act, referred to in subsec. (a), is the date of enactment of Pub. L. 99-662, which was approved Nov. 17, 1986.

The Water Resources Development Act of 1988, referred to in subsec. (a), is Pub. L. 100-676, Nov. 17, 1988, 102 Stat. 4012. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2201 of this title and Tables.

##### AMENDMENTS

2014—Pub. L. 113-121 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1988—Pub. L. 100-676, §3(b)(1), substituted “with respect to a project for water resources development and conservation and related purposes authorized to be carried out by the Secretary in this Act or in a law enacted after the date of the enactment of this Act, including the Water Resources Development Act of 1988, or in an amendment made by this Act or any later law with respect to such a project” for “in this Act, or an amendment made by this Act, for a project”.

Par. (1). Pub. L. 100-676, §3(b)(2), inserted “, in any later law,” after “in this Act”, and “or any later law” after “by this Act”.

Par. (2). Pub. L. 100-676, §3(b)(3), (4), inserted “or any later law” after “of this Act” in subpars. (A) and (B).

#### § 2281. Matters to be addressed in planning

##### (a) In general

Enhancing national economic development (including benefits to particular regions of the Nation not involving the transfer of economic activity to such regions from other regions), the quality of the total environment (including preservation and enhancement of the environ-