

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.

§ 2351. Durability, sustainability, and resilience

In carrying out the activities of the Corps of Engineers, the Secretary, to the maximum extent practicable, shall encourage the use of durable and sustainable materials and resilient construction techniques that—

(1) allow a water resources infrastructure project—

(A) to resist hazards due to a major disaster; and

(B) to continue to serve the primary function of the water resources infrastructure project following a major disaster;

(2) reduce the magnitude or duration of a disruptive event to a water resources infrastructure project; and

(3) have the absorptive capacity, adaptive capacity, and recoverability to withstand a potentially disruptive event.

(Pub. L. 113–121, title III, § 3022, June 10, 2014, 128 Stat. 1301.)

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.

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.

§ 2351a. Operation and maintenance of existing infrastructure

The Secretary shall improve the reliability, and operation and maintenance of, existing infrastructure of the Corps of Engineers, and, as necessary, improve its resilience to cyber-related threats.

(Pub. L. 115–270, title I, § 1113, Oct. 23, 2018, 132 Stat. 3775.)

Editorial Notes**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 2018, and also as part of the America’s Water Infrastructure Act of 2018, 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 102 of Pub. L. 115–270, set out as a note under section 2201 of this title.

§ 2352. Funding to process permits**(a) Funding to process permits****(1) Definitions**

In this subsection:

(A) Natural gas company

The term “natural gas company” has the meaning given the term in section 16451 of title 42, except that the term also includes a person engaged in the transportation of natural gas in intrastate commerce.

(B) Public-utility company

The term “public-utility company” has the meaning given the term in section 16451 of title 42.

(C) Railroad carrier

The term “railroad carrier” has the meaning given the term in section 20102 of title 49.

(2) Permit processing

The Secretary, after public notice, may accept and expend funds contributed by a non-Federal public entity or a public-utility company, natural gas company, or railroad carrier to expedite the evaluation of a permit of that entity, company, or carrier related to a project or activity for a public purpose under the jurisdiction of the Department of the Army.

(3) Effect on other entities

To the maximum extent practicable, the Secretary shall ensure that expediting the evaluation of a permit through the use of funds accepted and expended under this section does not adversely affect the timeline for evaluation (in the Corps district in which the project or activity is located) of permits under the jurisdiction of the Department of the Army of other entities that have not contributed funds under this section.

(4) GAO study

Not later than December 31, 2022, the Comptroller General of the United States shall carry out a followup study of the implementation by the Secretary of the authority provided under paragraph (2) to public-utility companies, natural gas companies, and railroad carriers, including an evaluation of the compliance with the requirements of this section and, with respect to a permit for those entities, the requirements of applicable Federal laws.

(b) Effect on permitting**(1) In general**

In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decisionmaking with respect to permits, either substantively or procedurally.

(2) Impartial decisionmaking

In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall—

(A) be reviewed by—

(i) the District Commander, or the Commander’s designee, of the Corps District in which the project or activity is located; or

(ii) the Commander of the Corps Division in which the District is located if the evaluation of the permit is initially conducted by the District Commander; and

(B) utilize the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.

(c) Limitation on use of funds

None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under subsection (b)(2)(A).

(d) Public availability

(1) In general

The Secretary shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public in a common format, including on the Internet, and in a manner that distinguishes final permit decisions under this section from other final actions of the Secretary.

(2) Decision document

The Secretary shall—

(A) use a standard decision document for evaluating all permits using funds accepted under this section; and

(B) make the standard decision document, along with all final permit decisions, available to the public, including on the Internet.

(3) Agreements

The Secretary shall make all active agreements to accept funds under this section available on a single public Internet site.

(e) Reporting

(1) In general

The Secretary shall prepare an annual report on the implementation of this section, which, at a minimum, shall include for each district of the Corps of Engineers that accepts funds under this section—

(A) a comprehensive list of any funds accepted under this section during the previous fiscal year;

(B) a comprehensive list of the permits reviewed and approved using funds accepted under this section during the previous fiscal year, including a description of the size and type of resources impacted and the mitigation required for each permit; and

(C) a description of the training offered in the previous fiscal year for employees that is funded in whole or in part with funds accepted under this section.

(2) Submission

Not later than 90 days after the end of each fiscal year, the Secretary shall—

(A) submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives the annual report described in paragraph (1); and

(B) make each report received under subparagraph (A) available on a single publicly accessible Internet site.

(Pub. L. 106-541, title II, §214, Dec. 11, 2000, 114 Stat. 2594; Pub. L. 108-137, title I, §114, Dec. 1, 2003, 117 Stat. 1836; Pub. L. 109-99, §1, Nov. 11,

2005, 119 Stat. 2169; Pub. L. 109-209, §1, Mar. 24, 2006, 120 Stat. 318; Pub. L. 109-434, §1, Dec. 20, 2006, 120 Stat. 3197; Pub. L. 110-114, title II, §2002, Nov. 8, 2007, 121 Stat. 1067; Pub. L. 111-120, §1, Dec. 22, 2009, 123 Stat. 3478; Pub. L. 111-315, §1, Dec. 18, 2010, 124 Stat. 3450; Pub. L. 113-121, title I, §1006, June 10, 2014, 128 Stat. 1212; Pub. L. 114-322, title I, §1125, Dec. 16, 2016, 130 Stat. 1648; Pub. L. 115-270, title I, §1145, Oct. 23, 2018, 132 Stat. 3785.)

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.

Section was formerly classified as a note under section 2201 of this title.

AMENDMENTS

2018—Subsec. (a)(3). Pub. L. 115-270, §1145(1), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: “The authority provided under paragraph (2) to a public-utility company, natural gas company, or railroad carrier shall expire on the date that is 10 years after June 10, 2014.”

Subsec. (a)(4), (5). Pub. L. 115-270 redesignated par. (5) as (4) and substituted “December 31, 2022” for “4 years after June 10, 2014” and “carry out a followup study” for “carry out a study”.

2016—Subsec. (a)(1)(C). Pub. L. 114-322, §1125(1), added subpar. (C).

Subsec. (a)(2). Pub. L. 114-322, §1125(2), substituted “, natural gas company, or railroad carrier” for “or natural gas company” and “, company, or carrier” for “or company”.

Subsec. (a)(3). Pub. L. 114-322, §1125(3), substituted “, natural gas company, or railroad carrier” for “or natural gas company” and “10 years” for “7 years”.

Subsec. (a)(5). Pub. L. 114-322, §1125(4), substituted “, natural gas companies, and railroad carriers, including an evaluation of the compliance with the requirements of this section and, with respect to a permit for those entities, the requirements of applicable Federal laws” for “and natural gas companies”.

2014—Subsec. (a)(1), (2). Pub. L. 113-121, §1006(1)(A), (B), substituted “Funding to process permits” for “In general” in subsec. heading, added par. (1), redesignated text of subsec. (a) as par. (2), inserted heading, and inserted “or a public-utility company or natural gas company” after “non-Federal public entity” and “or company” after “that entity”.

Subsec. (a)(3) to (5). Pub. L. 113-121, §1006(1)(C), added pars. (3) to (5).

Subsecs. (d), (e). Pub. L. 113-121, §1006(2), added subsecs. (d) and (e) and struck out former subsecs. (d) and (e) which read as follows:

“(d) PUBLIC AVAILABILITY.—The Secretary shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public, including on the Internet.

“(e) DURATION OF AUTHORITY.—The authority provided under this section shall be in effect from October 1, 2000, through December 31, 2016.”

2010—Subsec. (a). Pub. L. 111-315, §1(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “The Secretary, after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army.”

Subsec. (b). Pub. L. 111-315, §1(3), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: “In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision-

making with respect to permits, either substantively or procedurally.”

Subsecs. (c) to (e), Pub. L. 111-315, §1(2)-(4), added subsecs. (c) and (d), redesignated former subsec. (c) as (e), and, in subsec. (e), substituted “2016” for “2010”.

2009—Subsec. (c), Pub. L. 111-120 substituted “2010” for “2009”.

2007—Subsec. (c), Pub. L. 110-114 substituted “2009” for “2008”.

2006—Subsec. (c), Pub. L. 109-434 substituted “December 31, 2008” for “December 31, 2006”.

Pub. L. 109-209 substituted “December 31, 2006” for “March 31, 2006”.

2005—Subsec. (a), Pub. L. 109-99, §1(1), substituted “The” for “In fiscal years 2001 through 2005, the”.

Subsec. (c), Pub. L. 109-99, §1(2), added subsec. (c).

2003—Subsec. (a), Pub. L. 108-137 substituted “2005” for “2003”.

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.

§ 2353. Structural health monitoring

(a) In general

The Secretary shall design and develop a structural health monitoring program to assess and improve the condition of infrastructure constructed and maintained by the Corps of Engineers, including research, design, and development of systems and frameworks for—

- (1) response to flood and earthquake events;
- (2) predisaster mitigation measures;
- (3) lengthening the useful life of the infrastructure; and
- (4) identifying risks due to sea level rise.

(b) Consultation and considerations

In developing the program under subsection (a), the Secretary shall—

- (1) consult with academic and other experts; and
- (2) consider models for maintenance and repair information, the development of degradation models for real-time measurements and environmental inputs, and research on qualitative inspection data as surrogate sensors.

(Pub. L. 114-322, title I, §1151, Dec. 16, 2016, 130 Stat. 1661.)

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.

§ 2353a. Aging infrastructure

(a) Definitions

In this section:

(1) Aging infrastructure

The term “aging infrastructure” means a water resources development project of the Corps of Engineers, or any other water resources, water storage, or irrigation project of another Federal agency, that is greater than 75 years old.

(2) Enhanced inspection

The term “enhanced inspection” means an inspection that uses current or innovative technology, including Light Detection and Ranging (commonly known as “LiDAR”), ground penetrating radar, subsurface imaging, or subsurface geophysical techniques, to detect whether the features of the aging infrastructure are structurally sound and can operate as intended, or are at risk of failure.

(b) Contracts for enhanced inspection

(1) In general

The Secretary may carry out enhanced inspections of aging infrastructure, pursuant to a contract with the owner or operator of the aging infrastructure.

(2) Certain circumstances

Subject to the availability of appropriations, or funds available pursuant to subsection (d), the Secretary shall enter into a contract described in paragraph (1), if—

- (A) the owner or operator of the aging infrastructure requests that the Secretary carry out the enhanced inspections; and
- (B) the inspection is at the full expense of such owner or operator.

(c) Limitation

The Secretary shall not require a non-Federal entity associated with a project under the jurisdiction of another Federal agency to carry out corrective or remedial actions in response to an enhanced inspection carried out under this section.

(d) Funding

The Secretary is authorized to accept funds from an owner or operator of aging infrastructure, and may use such funds to carry out an enhanced inspection pursuant to a contract entered into with such owner or operator under this section.

(Pub. L. 116-260, div. AA, title I, §138, Dec. 27, 2020, 134 Stat. 2651.)

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.