

mittee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

LOCAL COOPERATION, STUDY; REPORT TO CONGRESS

Pub. L. 93-251, title I, §24, Mar. 7, 1974, 88 Stat. 20, provided that the Secretary of the Army make a study of the items of local cooperation involving hold and save harmless provisions which have been required for water resource development projects under his jurisdiction and report on such study to Congress not later than June 30, 1975.

LAND AND WATER USE, STUDY; REPORT TO CONGRESS

Pub. L. 93-251, title I, §25, Mar. 7, 1974, 88 Stat. 20, provided that the Secretary of the Army conduct a study on land use practices and recreational uses at water resource development projects under his jurisdiction and report on such study to Congress not later than June 30, 1975.

NATIONAL STREAMBANK EROSION PREVENTION AND CONTROL DEMONSTRATION PROGRAM

Pub. L. 93-251, title I, §32, Mar. 7, 1974, 88 Stat. 21, as amended by Pub. L. 94-587, §§155, 161, Oct. 22, 1976, 90 Stat. 2932, 2933, known as the "Streambank Erosion Control Evaluation and Demonstration Act of 1974", directed the Secretary of the Army, acting through the Chief of Engineers, to establish and conduct for a period of five fiscal years a national streambank erosion prevention and control demonstration program, to consist of an evaluation of the extent of streambank erosion on navigable rivers and their tributaries; development of new methods and techniques for bank protection, research on soil stability, and identification of the causes of erosion; a report to the Congress on the results of such studies and the recommendations of the Secretary of the Army on means for the prevention and correction of streambank erosion; and demonstration projects, including bank protection works. The final report to the Congress was to be made by Secretary of the Army no later than Dec. 31, 1981.

NATIONAL SHORELINE EROSION CONTROL DEVELOPMENT AND DEMONSTRATION PROGRAM

Pub. L. 93-251, title I, §54, Mar. 7, 1974, 88 Stat. 26, known as the "Shoreline Erosion Control Demonstration Act of 1974", directed the Secretary of the Army, acting through the Chief of Engineers, to establish and conduct for a period of five fiscal years a national shoreline erosion control development and demonstration program, to consist of planning, constructing, operating, evaluating, and demonstrating prototype shoreline erosion control devices, both engineered and vegetative, and to be carried out in cooperation with the Secretary of Agriculture, particularly with respect to vegetative means of preventing and controlling shoreline erosion, and in cooperation with Federal, State, and local agencies, private organizations, and the Shoreline Erosion Advisory Panel established pursuant to section 54(d) of Pub. L. 93-251. The Panel was to expire ninety days after termination of the five-year program. The Secretary of the Army was to submit to Congress a final report, sixty days after the fifth fiscal year of funding, such report to include a comprehensive evaluation of the national shoreline erosion control development and demonstration program.

TECHNICAL AND ENGINEERING ASSISTANCE FOR NON-DEVELOPMENT OF EROSION PREVENTION METHODS

Pub. L. 93-251, title I, §55, Mar. 7, 1974, 88 Stat. 28, provided that: "The Secretary of the Army, acting through the Chief of Engineers, is authorized to provide technical and engineering assistance to non-Federal public interests in developing structural and non-structural methods of preventing damages attributable to shore and streambank erosion."

VISITOR PROTECTION SERVICES, STUDY; REPORT TO CONGRESS

Pub. L. 93-251, title I, §75, Mar. 7, 1974, 88 Stat. 32, directed Secretary of the Army to conduct a study on need for and means of providing visitor protection services at water resource development projects under jurisdiction of Department of the Army and report on such study to Congress not later than Dec. 31, 1974.

§ 1962d-5a. Reimbursement to States

(a) **Combination of reimbursement of installation costs and reduction in contributions; single project limitation**

The Secretary of the Army, acting through the Chief of Engineers, may, when he determines it to be in the public interest, enter into agreements providing for reimbursement to States or political subdivisions thereof for work to be performed by such non-Federal public bodies at water resources development projects authorized for construction under the Secretary of the Army and the supervision of the Chief of Engineers. Such agreements may provide for reimbursement of installation costs incurred by such entities or an equivalent reduction in the contributions they would otherwise be required to make, or in appropriate cases, for a combination thereof. The amount of Federal reimbursement, including reductions in contributions, for a single project shall not exceed \$5,000,000 or 1 percent of the total project cost, whichever is greater; except that the amount of actual Federal reimbursement, including reductions in contributions, for such project may not exceed \$7,000,000 in any fiscal year.

(b) **Agreement provisions; termination of agreement for failure to commence work**

Agreements entered into pursuant to this section shall (1) fully describe the work to be accomplished by the non-Federal public body, and be accompanied by an engineering plan if necessary therefor; (2) specify the manner in which such work shall be carried out; (3) provide for necessary review of design and plans, and inspection of the work by the Chief of Engineers or his designee; (4) state the basis on which the amount of reimbursement shall be determined; (5) state that such reimbursement shall be dependent upon the appropriation of funds applicable thereto or funds available therefor, and shall not take precedence over other pending projects of higher priority for improvements; and (6) specify that reimbursement or credit for non-Federal installation expenditures shall apply only to work undertaken on Federal projects after project authorization and execution of the agreement, and does not apply retroactively to past non-Federal work. Each such agreement shall expire three years after the date on which it is executed if the work to be undertaken by the non-Federal public body has not commenced before the expiration of that period. The time allowed for completion of the work will be determined by the Secretary of the Army, acting through the Chief of Engineers, and stated in the agreement.

(c) **Certification of performance**

No reimbursement shall be made, and no expenditure shall be credited, pursuant to this sec-

tion, unless and until the Chief of Engineers or his designee, has certified that the work for which reimbursement or credit is requested has been performed in accordance with the agreement.

(d) Beach erosion control projects

Reimbursement for work commenced by non-Federal public bodies no later than one year after August 13, 1968, to carry out or assist in carrying out projects for beach erosion control, may be made in accordance with the provisions of section 426f of title 33. Reimbursement for such work may, as an alternative, be made in accordance with the provisions of this section, provided that agreement required herein shall have been executed prior to commencement of the work. Expenditures for projects for beach erosion control commenced by non-Federal public bodies subsequent to one year after August 13, 1968, may be reimbursed by the Secretary of the Army, acting through the Chief of Engineers, only in accordance with the provisions of this section.

(e) Prohibition of construction for Federal assumption of responsibilities of non-Federal bodies or for Federal liability for unnecessary or inapplicable project work of such bodies

This section shall not be construed (1) as authorizing the United States to assume any responsibilities placed upon a non-Federal body by the conditions of project authorization, or (2) as committing the United States to reimburse non-Federal interests if the Federal project is not undertaken or is modified so as to make the work performed by the non-Federal Public body no longer applicable.

(f) Allotment limitation for any fiscal year; specific project reimbursement authorizations

The Secretary of the Army is authorized to allot from any appropriations hereafter made for civil works, not to exceed \$10,000,000 for any one fiscal year to carry out the provisions of this section. This limitation does not include specific project authorizations providing for reimbursement.

(Pub. L. 90-483, title II, §215, Aug. 13, 1968, 82 Stat. 747; Pub. L. 99-662, title IX, §913, Nov. 17, 1986, 100 Stat. 4190; Pub. L. 100-676, §12, Nov. 17, 1988, 102 Stat. 4025; Pub. L. 104-303, title II, §224(a), Oct. 12, 1996, 110 Stat. 3697; Pub. L. 110-161, div. C, title I, §116, Dec. 26, 2007, 121 Stat. 1945.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Flood Control Act of 1968, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

2007—Subsec. (a). Pub. L. 110-161, which directed the substitution of “\$7,000,000” for “\$5,000,000” in last sentence, was executed by making the substitution for “\$5,000,000” the second place it appeared, to reflect the probable intent of Congress.

1996—Subsec. (a). Pub. L. 104-303, in last sentence, substituted “\$5,000,000” for “\$3,000,000” before “or 1 percent” and “any fiscal year.” for “any fiscal year..”

1988—Subsec. (a). Pub. L. 100-676 inserted before period at end “or 1 percent of the total project cost, whichever is greater; except that the amount of actual Federal reimbursement, including reductions in contributions, for such project may not exceed \$5,000,000 in any fiscal year.”

1986—Subsec. (a). Pub. L. 99-662 substituted “\$3,000,000” for “\$1,000,000”.

§ 1962d-5b. Written agreement requirement for water resources projects

(a) Cooperation of non-Federal interest

(1) In general

After December 31, 1970, the construction of any water resources project, or an acceptable separable element thereof, by the Secretary of the Army, acting through the Chief of Engineers, or by a non-Federal interest where such interest will be reimbursed for such construction under any provision of law, shall not be commenced until each non-Federal interest has entered into a written partnership agreement with the Secretary (or, where appropriate, the district engineer for the district in which the project will be carried out) under which each party agrees to carry out its responsibilities and requirements for implementation or construction of the project or the appropriate element of the project, as the case may be; except that no such agreement shall be required if the Secretary determines that the administrative costs associated with negotiating, executing, or administering the agreement would exceed the amount of the contribution required from the non-Federal interest and are less than \$25,000.

(2) Liquidated damages

A partnership agreement described in paragraph (1) may include a provision for liquidated damages in the event of a failure of one or more parties to perform.

(3) Obligation of future appropriations

In any partnership agreement described in paragraph (1) and entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future appropriations for such performance and payment when obligating future appropriations would be inconsistent with constitutional or statutory limitations of the State or a political subdivision of the State.

(4) Credit for in-kind contributions

(A) In general

A partnership agreement described in paragraph (1) may provide with respect to a project that the Secretary shall credit toward the non-Federal share of the cost of the project, including a project implemented without specific authorization in law or a project under an environmental infrastructure assistance program, the value of in-kind contributions made by the non-Federal interest, including—

- (i) the costs of planning (including data collection), design, management, mitigation, construction, and construction services that are provided by the non-Federal interest for implementation of the project;