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**WATER RESOURCES DEVELOPMENT ACT OF 1986**



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December 29, 2000

SELECTED PROVISIONS OF THE WATER RESOURCES DEVELOPMENT ACT OF 1986

[As Amended Through P.L. 106-580, Dec. 29, 2000]

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act many be cited as the “Water Resources Development Act of 1986”.

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TITLE I—COST SHARING

SEC. 101. HARBORS.

(a) CONSTRUCTION.—

(1) PAYMENTS DURING CONSTRUCTION.—The non-Federal interests for a navigation project for a harbor or inland harbor, or any separable element thereof, on which a contract for physical construction has not been awarded before the date of enactment of this Act shall pay, during the period of construction of the project, the following costs associated with general navigation features:

(A) 10 percent of the cost of construction of the portion of the project which has a depth not in excess of 20 feet; plus

(B) 25 percent of the cost of construction of the portion of the project which has a depth is excess of 20 feet but not in excess of 45 feet; plus

(C) 50 percent of the cost of construction of the portion of the project which has a depth in excess of 45 feet.

(2) ADDITIONAL 10 PERCENT PAYMENT OVER 30 YEARS.—The non-Federal interests for a project to which paragraph (1) applies shall pay an additional 10 percent of the cost of the general navigation features of the project in cash over a period not to exceed 30 years, at an interest rate determined pursuant to section 106. The value of lands, easements, rights-of-way, and relocations provided under paragraph (3) and the costs of relocations borne by the non-Federal interests under paragraph (4) shall be credited toward the payment required under this paragraph.

(3) LANDS, EASEMENTS, AND RIGHTS-OF-WAY.—Except as provided under section 906(c), the non-Federal interests for a project to which paragraph (1) applies shall provide the lands, easements, rights-of-way, and relocations (other than utility relocations under paragraph (4)) necessary for the project, including any lands, easements, rights-of-way, and relocations (other than utility relocations accomplished under paragraph (4)) that are necessary for dredged material disposal facilities.

(4) UTILITY RELOCATIONS.—The non-Federal interests for a project to which paragraph (1) applies shall perform or assure the performance of all relocations of utilities necessary to carry out the project, except that in the case of a project for a deep-draft harbor and in the case of a project constructed by non-Federal interests under section 204, one-half of the cost of each such relocation shall be borne by the owner of the facility being relocated and one-half of the cost of each such relocation shall be borne by the non-Federal interests.

(5) DREDGED MATERIAL DISPOSAL FACILITIES FOR PROJECT CONSTRUCTION.—In this subsection, the term “general navigation features” includes constructed land-based and aquatic dredged material disposal facilities that are necessary for the disposal of dredged material required for project construction and for which a contract for construction has not been awarded on or before the date of the enactment of this paragraph.

(b) OPERATION AND MAINTENANCE.—

(1) IN GENERAL.—The Federal share of the cost of operation and maintenance of each navigation project for a harbor or inland harbor constructed by the Secretary pursuant to this Act or any other law approved after the date of the enactment of this Act shall be 100 percent, except that in the case of a deep-draft harbor, the non-Federal interests shall be responsible for an amount equal to 50 percent of the excess of the cost of the operation and maintenance of such project over the cost which the Secretary determines would be incurred for operation and maintenance of such project if such project had a depth of 45 feet.

(2) DREDGED MATERIAL DISPOSAL FACILITIES.—The Federal share of the cost of constructing land-based and aquatic dredged material disposal facilities that are necessary for the disposal of dredged material required for the operation and maintenance of a project and for which a contract for construction has not been awarded on or before the date of the enactment of this paragraph shall be determined in accordance with subsection (a). The Federal share of operating and maintaining such facilities shall be determined in accordance with paragraph (1).

(c) EROSION OR SHOALING ATTRIBUTABLE TO FEDERAL NAVIGATION WORKS.—Costs of constructing projects or measures for the prevention or mitigation of erosion or shoaling damages attributable to Federal navigation works shall be shared in the same proportion as the cost sharing provisions applicable to the project causing such erosion or shoaling. The non-Federal interests for the project causing the erosion or shoaling shall agree to operate and maintain such measures.

(d) NON-FEDERAL PAYMENTS DURING CONSTRUCTION.—The amount of any non-Federal share of the cost of any navigation project for a harbor or inland harbor shall be paid to the Secretary. Amounts required to be paid during construction shall be paid on an annual basis during the period of construction, beginning not later than one year after construction is initiated.

(e) AGREEMENT.—Before initiation of construction of a project to which this section applies, the Secretary and the non-Federal in-

terests shall enter into a cooperative agreement according to the provisions of section 221 of the Flood Control Act of 1970. The non-Federal interests shall agree to—

(1) provide to the Federal Government lands, easements, and rights-of-way, including those necessary for dredged material disposal facilities, and perform the necessary relocations required or construction, operation, and maintenance of such project;

(2) hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors;

(3) provide to the Federal Government the non-Federal share of all other costs of construction of such project; and

(4) in the case of a deep-draft harbor, be responsible for the non-Federal share of operation and maintenance required by subsection (b) of this section.

(f) **CONSIDERATION OF FUNDING REQUIREMENTS AND EQUITABLE APPORTIONMENT.**—The Secretary shall ensure, to the extent practicable, that—

(1) funding requirements for operation and maintenance dredging of commercial navigation harbors are considered before Federal funds are obligated for payment of the Federal share of costs associated with the construction of dredged material disposal facilities in accordance with subsections (a) and (b);

(2) funds expended for such construction are apportioned equitably in accordance with regional needs; and

(3) use of a dredged material disposal facility designed, constructed, managed, or operated by a private entity is not precluded if, consistent with economic and environmental considerations, the facility is the least-cost alternative.

(33 U.S.C. 2211)

**SEC. 102. INLAND WATERWAY TRANSPORTATION.**

(a) **CONSTRUCTION.**—One-half of the costs of construction—

(1) of each project authorized by title III of this Act,

(2) of the project authorized by section 1103(j) of this Act, and

(3) allocated to inland navigation for the project authorized by section 844 of this Act,

shall be paid only from amounts appropriated from the general fund of the Treasury. One-half of such costs shall be paid only from amounts appropriated from the Inland Waterways Trust Fund. For purposes of this subsection, the term “construction” shall include planning, designing, engineering, surveying, the acquisition of all lands, easements, and rights-of-way necessary for the project, including lands for disposal of dredged material, and relocations necessary for the project.

(b) **OPERATION AND MAINTENANCE.**—The Federal share of the cost of operation and maintenance of any project for navigation on the inland waterways is 100 percent.

(c) **AUTHORIZATIONS FROM GENERAL FUND.**—Any Federal responsibility—

(1) with respect to a project authorized by title III or section 1103(j), or  
(2) with respect to the portion of the project authorized by section 844 allocated to inland navigation,  
which responsibility is not provided for in subsection (a) of this section shall be paid only from amounts appropriated from the general fund of the Treasury.

(33 U.S.C. 2212)

**SEC. 103. FLOOD CONTROL AND OTHER PURPOSES.**

(a) FLOOD CONTROL.—

(1) GENERAL RULE.—The non-Federal interests for a project with costs assigned to flood control (other than a non-structural project) shall—

(A) pay 5 percent of the cost of the project assigned to flood control during construction of the project;

(B) provide all lands, easements, rights-of-way, and dredged material disposal areas required only for flood control and perform all related necessary relocations; and

(C) provide that portion of the joint costs of lands, easements, rights-of-way, dredged material disposal areas, and relocations which is assigned to flood control.

(2) 35 PERCENT MINIMUM CONTRIBUTION.—If the value of the contributions required under paragraph (1) of this subsection is less than 35 percent of the cost of the project assigned to flood control, the non-Federal interest shall pay during construction of the project such additional amounts as are necessary so that the total contribution of the non-Federal interests under this subsection is equal to 35 percent of the cost of the project assigned to flood control.

(3) 50 PERCENT MAXIMUM.—The non-Federal share under paragraph (1) shall not exceed 50 percent of the cost of the project assigned to flood control. The preceding sentence does not modify the requirement of paragraph (1)(A) of this subsection.

(4) DEFERRED PAYMENT OF AMOUNT EXCEEDING 30 PERCENT.—If the total amount of the contribution required under paragraph (1) of this subsection exceeds 30 percent of the cost of the project assigned to flood control, the non-Federal interests may pay the amount of the excess to the Secretary over a 15-year period (or such shorter period as many be agreed to by the Secretary and the non-Federal interests) beginning on the date construction of the project or separable element is completed, at an interest rate determined pursuant to section 106. The preceding sentence does not modify the requirement of paragraph (1)(A) of this subsection.

(b) NONSTRUCTURAL FLOOD CONTROL PROJECTS.—

(1) IN GENERAL.—The non-Federal share of the cost of non-structural flood control measures shall be 35 percent of the cost of such measures. The non-Federal interests for any such measures shall be required to provide all lands, easements, rights-of-way, dredged material disposal areas, and relocations necessary for the project, but shall not be required to contribute any amount in cash during construction of the project.

(2) NON-FEDERAL CONTRIBUTION IN EXCESS OF 35 PERCENT.—At any time during construction of a project, if the Secretary determines that the costs of land, easements, rights-of-way, dredged material disposal areas, and relocations for the project, in combination with other costs contributed by the non-Federal interests, will exceed 35 percent, any additional costs for the project (not to exceed 65 percent of the total costs of the project) shall be a Federal responsibility and shall be contributed during construction as part of the Federal share.

(c) OTHER PURPOSES.—The non-Federal share of the cost assigned to other project purposes shall be as follows:

(1) hydroelectric power: 100 percent, except that the marketing of such power and the recovery of costs of constructing, operating, maintaining, and rehabilitating such projects shall be in accordance with existing law: *Provided*, That after the date of enactment of this Act, the Secretary shall not submit to Congress any proposal for the authorization of any water resources project that has a hydroelectric power component unless such proposal contains the comments of the appropriate Power Marketing Administrator designated pursuant to section 302 of the Department of Energy Organization Act (Public Law 95-91) concerning the appropriate Power Marketing Administration's ability to market the hydroelectric power expected to be generated and not required in the operation of the project under the applicable Federal power marketing law, so that, 100 percent of operation, maintenance and replacement costs, 100 percent of the capital investment allocated to the purpose of hydroelectric power (with interest at rates established pursuant to or prescribed by applicable law), and any other costs assigned in accordance with law for return from power revenues can be returned within the period set for the return of such costs by or pursuant to such applicable Federal power marketing law;

(2) municipal and industrial water supply: 100 percent;

(3) agricultural water supply: 35 percent;

(4) recreation, including recreational navigation: 50 percent of separable costs and, in the case of any harbor or inland harbor or channel project, 50 percent of joint and separable costs allocated to recreational navigation;

(5) hurricane and storm damage reduction: 35 percent;

(6) aquatic plant control: 50 percent of control operations; and

(7) environmental protection and restoration: 35 percent; except that nothing in this paragraph shall affect or limit the applicability of section 906.

(d) CERTAIN OTHER COSTS ASSIGNED TO PROJECT PURPOSES.—

(1) CONSTRUCTION.—Costs of constructing projects or measures for beach erosion control and water quality enhancement shall be assigned to appropriate project purposes listed in subsections (a), (b), and (c) and shall be shared in the same percentage as the purposes to which the costs are assigned, except that all costs assigned to benefits to privately owned shores (where use of such shores is limited to private interests) or to prevention of losses of private lands shall be borne by

non-Federal interests and all costs assigned to the protection of federally owned shores shall be borne by the United States.

(2) PERIODIC NOURISHMENT.—

(A) IN GENERAL.—In the case of a project authorized for construction after December 31, 1999, except for a project for which a District Engineer's Report is completed by that date, the non-Federal cost of the periodic nourishment of the project, or any measure for shore protection or beach erosion control for the project, that is carried out—

- (i) after January 1, 2001, shall be 40 percent;
- (ii) after January 1, 2002, shall be 45 percent; and
- (iii) after January 1, 2003, shall be 50 percent.

(B) BENEFITS TO PRIVATELY OWNED SHORES.—All costs assigned to benefits of periodic nourishment projects or measures to privately owned shores (where use of such shores is limited to private interests) or to prevention of losses of private land shall be borne by the non-Federal interest.

(C) BENEFITS TO FEDERALLY OWNED SHORES.—All costs assigned to the protection of federally owned shores for periodic nourishment measures shall be borne by the United States.

(e) APPLICABILITY.—

(1) IN GENERAL.—This section applies to any project (including any small project which is not specifically authorized by Congress and for which the Secretary has not approved funding before the date of enactment of this Act), or separable element thereof, on which physical construction is initiated after April 30, 1986, as determined by the Secretary, except as provided in paragraph (2). For the purpose of the preceding sentence, physical construction shall be considered to be initiated on the date of the award of a construction contract.

(2) EXCEPTIONS.—This section shall not apply to the Yazoo Basin, Mississippi, Demonstration Erosion Control Program, authorized by Public Law 98–8, or to the Harlan, Kentucky, or Barbourville, Kentucky, elements of the project authorized by section 202 of Public Law 96–367.

(f) DEFINITION OF SEPARABLE ELEMENT.—For purposes of this Act, the term “separable element” means a portion of a project—

(1) which is physically separable from other portions of the project; and

(2) which—

(A) achieves hydrologic effects, or

(B) produces physical or economic benefits, which are separately identifiable from those produced by other portions of the project.

(g) DEFERRAL OF PAYMENT.—(1) With respect to the projects listed in paragraph (2), no amount of the non-Federal share required under this section shall be required to be paid during the three-year period beginning on the date of enactment of this Act.

(2) The projects referred to in paragraph (1) are the following:

(A) Boeuf and Tensas Rivers, Tensas Basin, Louisiana and Arkansas, authorized by the Flood Control Act of 1946;



(B) Eight Mile Creek, Arkansas, authorized by Public Law 99-88; and

(C) Rocky Bayou Area, Yazoo Blackwater Area, Yazoo Basin, Mississippi, authorized by the Flood Control Act approved August 18, 1941.

(h) ASSIGNED JOINT AND SEPARABLE COSTS.—The share of the costs specified under this section for each project purpose shall apply to the joint and separable costs of construction of each project assigned to that purpose, except as otherwise specified in this Act.

(i) LANDS, EASEMENTS, RIGHTS-OF-WAY, DREDGED MATERIAL DISPOSAL AREAS, AND RELOCATIONS.—Except as provided under section 906(c), the non-Federal interests for a project to which this section applies shall provide all lands, easements, rights-of-way, and dredged material disposal areas required for the project and perform all necessary relocations, except to the extent limited by any provision of this section. The value of any contribution under the preceding sentence shall be included in the non-Federal share of the project specified in this section.

(j) AGREEMENT.—

(1) REQUIREMENT FOR AGREEMENT.—Any project to which this section applies (other than a project for hydroelectric power) shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary to pay 100 percent of the operations, maintenance, and replacement and rehabilitation costs of the project, to pay the non-Federal share of the costs of construction required by this section, and to hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors.

(2) ELEMENTS OF AGREEMENT.—The agreement required pursuant to paragraph (1) shall be in accordance with the requirements of section 221 of the Flood Control Act of 1970 (84 Stat. 1818) and shall provide for the rights and duties of the United States and the non-Federal interest with respect to the construction, operation, and maintenance of the project, including, but not limited to, provisions specifying that, in the event the non-Federal interest fails to provide the required non-Federal share of costs for such work, the Secretary—

(A) shall terminate or suspend work on the project unless the Secretary determines that continuation of the work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests in connection with the project; and

(B) may terminate or adjust the rights and privileges of the non-Federal interest to project outputs under the terms of the agreement.

(k) PAYMENT OPTIONS.—Except as otherwise provided in this section, the Secretary may permit the full non-Federal contribution to be made without interest during construction of the project or separable element, or with interest at a rate determined pursuant to section 106 over a period of not more than thirty years from the date of completion of the project or separable element. Repayment

contracts shall provide for recalculation of the interest rate at five-year intervals.

(1) **DELAY OF INITIAL PAYMENT.**—At the request of any non-Federal interest the Secretary may permit such non-Federal interest to delay the initial payment of any non-Federal contribution under this section or section 101 for up to one year after the date when construction is begun on the project for which such contribution is to be made. Any such delay in initial payment shall be subject to interest charges for up to six months at a rate determined pursuant to section 106.

(m) **ABILITY TO PAY.**—

(1) **IN GENERAL.**—Any cost-sharing agreement under this section for a feasibility study, or for construction of an environmental protection and restoration project, a flood control project, a project for navigation, storm damage protection, shoreline erosion, hurricane protection, or recreation, or an agricultural water supply project, shall be subject to the ability of the non-Federal interest to pay.

(2) **CRITERIA AND PROCEDURES.**—The ability of a non-Federal interest to pay shall be determined by the Secretary in accordance with criteria and procedures in effect under paragraph (3) on the day before the date of enactment of the Water Resources Development Act of 2000; except that such criteria and procedures shall be revised, and new criteria and procedures shall be developed, not later than 180 days after such date of enactment to reflect the requirements of such paragraph (3).

(3) **REVISION OF CRITERIA AND PROCEDURES.**—In revising criteria and procedures pursuant to paragraph (2), the Secretary—

(A) shall consider—

(i) per capita income data for the county or counties in which the project is to be located; and

(ii) the per capita non-Federal cost of construction of the project for the county or counties in which the project is to be located; and

(B) may consider additional criteria relating to the non-Federal interest's financial ability to carry out its cost-sharing responsibilities, to the extent that the application of such criteria does not eliminate areas from eligibility for a reduction in the non-Federal share as determined under subparagraph (A).

(4) **NON-FEDERAL SHARE.**—Notwithstanding subsection (a), the Secretary may reduce the requirement that a non-Federal interest make a cash contribution for any project that is determined to be eligible for a reduction in the non-Federal share under criteria and procedures in effect under paragraphs (1), (2), and (3).

(33 U.S.C. 2213)

**SEC. 104. GENERAL CREDIT FOR FLOOD CONTROL.**

(a) **GUIDELINES.**—Within one year after the date of enactment of this Act, the Secretary shall issue guidelines to carry out this section, consistent with the principles and guidelines on project for-

mulation. The guidelines shall include criteria for determining whether work carried out by non-Federal interests is compatible with a project for flood control and procedures for making such determinations. The guidelines under this section shall be promulgated after notice in the Federal Register and opportunity for comment.

(b) ANALYSIS OF COSTS AND BENEFITS.—The guidelines established under subsection (a) shall provide for the Secretary to consider, in analyzing the costs and benefits of a proposed project for flood control, the costs and benefits produced by any flood control work carried out by non-Federal interests that the Secretary determines to be compatible with the project. For purposes of the preceding sentence the Secretary may consider only work carried out after the date which is 5 years before the first obligation of funds for the reconnaissance study for such project. In no case may work which was carried out more than 5 years before the date of the enactment of this Act be considered under this subsection, unless otherwise provided in this Act.

(c) CREDITING OF NON-FEDERAL SHARE.—The guidelines established under subsection (a) shall provide for crediting the cost of work carried out by the non-Federal interests against the non-Federal share of the cost of an authorized project for flood control as follows:

(1) Work which is carried out after the end of the reconnaissance study and before the submission to Congress of the final report of the Chief of Engineers on the project and which is determined by the Secretary to be compatible with the project shall be included as part of the project and shall be recommended by the Secretary in the final report for credit against the non-Federal share of the cost of the project.

(2) Work which is carried out after submission of the final report of the Chief of Engineers to Congress and which is determined by the Secretary to be compatible with the project shall be considered as part of the project and shall be credited by the Secretary against the non-Federal share of the cost of the project in accordance with the guidelines promulgated pursuant to subsection (a).

In no event may work which was carried out more than 5 years before the date of enactment of this Act be considered under this subsection, unless otherwise provided in this Act.

(d) PROCEDURE FOR WORK DONE BEFORE DATE OF ENACTMENT.—The Secretary shall consider, under subsections (b) and (c), work carried out before the date of enactment of this Act by non-Federal interests on a project for flood control, if the non-Federal interests apply to the Secretary for consideration of such work not later than March 31, 1987. The Secretary shall make determinations under subsections (b) and (c) with respect to such work not later than 6 months after guidelines are issued under subsection (a).

(e) PROCEDURE FOR WORK DONE AFTER DATE OF ENACTMENT.—The Secretary shall consider work carried out after the date of enactment of this Act by non-Federal interests on a project for flood control under subsections (b) and (c) in accordance with the guidelines issued under subsection (a). The guidelines shall re-

quire prior approval by the Secretary of any flood control work carried out after the date of enactment of this Act in order to be considered under this section, taking into account the economic and environmental feasibility of the project.

(f) **LIMITATION NOT APPLICABLE.**—Any flood control work included as part of the non-Federal share of the cost of a project under this section shall not be subject to the limitation contained in the last sentence of section 215(a) of the Flood Control Act of 1968.

(g) **CASH CONTRIBUTION NOT AFFECTED.**—Nothing in this section affects the requirement of section 103(a)(1)(A).

(33 U.S.C. 2214)

**SEC. 105. FEASIBILITY STUDIES; PLANNING, ENGINEERING, AND DESIGN.**

(a) **FEASIBILITY STUDIES.**—

(1) **COST SHARING.**—

(A) **IN GENERAL.**—The Secretary shall not initiate any feasibility study for a water resources project after November 17, 1986, until appropriate non-Federal interests agree, by contract, to contribute 50 percent of the cost of the study.

(B) **PAYMENT OF COST SHARE DURING PERIOD OF STUDY.**—During the period of the study, the non-Federal share of the cost of the study payable under subparagraph (A) shall be 50 percent of the sum of—

(i) the cost estimate for the study as contained in the feasibility cost-sharing agreement; and

(ii) any excess of the cost of the study over the cost estimate if the excess results from—

(I) a change in Federal law; or

(II) a change in the scope of the study requested by the non-Federal interests.

(C) **PAYMENT OF COST SHARE ON AUTHORIZATION OF PROJECT OR TERMINATION OF STUDY.**—

(i) **PROJECT TIMELY AUTHORIZED.**—Except as otherwise agreed to by the Secretary and the non-Federal interests and subject to clause (ii), the non-Federal share of any excess of the cost of the study over the cost estimate (excluding any excess cost described in subparagraph (B)(ii)) shall be payable on the date on which the Secretary and the non-Federal interests enter into an agreement pursuant to section 101(e) or 103(j) with respect to the project.

(ii) **PROJECT NOT TIMELY AUTHORIZED.**—If the project that is the subject of the study is not authorized by the date that is 5 years after the completion of the final report of the Chief of Engineers concerning the study or the date that is 2 years after the termination of the study, the non-Federal share of any excess of the cost of the study over the cost estimate (excluding any excess cost described in subparagraph (B)(ii)) shall be payable to the United States on that date.

(D) AMENDMENT OF COST ESTIMATE.—The cost estimate referred to in subparagraph (B)(i) may be amended only by agreement of the Secretary and the non-Federal interests.

(E) IN-KIND CONTRIBUTIONS.—The non-Federal share required under this paragraph may be satisfied by the provision of services, materials, supplies, or other in-kind services necessary to prepare the feasibility report.

(2) APPLICABILITY.—This subsection shall not apply to any water resources study primarily designed for the purposes of navigational improvements in the nature of dams, locks, and channels on the Nation's system of inland waterways.

(b) PLANNING AND ENGINEERING.—The Secretary shall not initiate any planning or engineering authorized by this Act for a water resources project until appropriate non-Federal interests agree, by contract, to contribute 50 percent of the cost of the planning and engineering during the period of the planning and engineering. Costs of planning and engineering of projects for which non-Federal interests contributed 50 percent of the cost of the feasibility study shall be treated as costs of construction.

(c) DESIGN.—Costs of design of a water resources project shall be shared in the same percentage as the purposes of such project.

(33 U.S.C. 2215)

#### **SEC. 106. RATE OF INTEREST.**

Whenever a non-Federal interest is required or elects to repay an amount under this Act over a period of time, the amount to be repaid shall include interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period, during the month preceding the fiscal year in which costs for the construction of the project are first incurred (or in the case of recalculation the fiscal year in which the recalculation is made), plus a premium of one-eighth of one percentage point for transaction costs; except that such rates for hydroelectric power shall be in accordance with existing law.

(33 U.S.C. 2216)

#### **SEC. 107. LIMITATION ON APPLICABILITY OF CERTAIN PROVISIONS IN REPORTS.**

If any provision in any report designated by this Act recommends that a State contribute in cash 5 percent of the construction costs allocated to non-vendible project purposes and 10 percent of the construction costs allocated to vendible project purposes, such provision shall not apply to the project recommended in such report.

(33 U.S.C. 2217)

#### **SEC. 108. GENERAL APPLICABILITY OF COST SHARING.**

Unless otherwise specified, the cost sharing provisions of this title shall apply to all projects in this Act. The Federal share of any cost of a project authorized by this Act for which cost a Federal

share is not established in this title, shall be the share of such cost otherwise provided by law.

(33 U.S.C. 2218)

**SEC. 109. DEFINITIONS.**

For purposes of this title, terms shall have the meanings given by section 214 of this Act.

(33 U.S.C. 2219)

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**TITLE II—HARBOR DEVELOPMENT**

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**SEC. 203. STUDIES OF PROJECTS BY NON-FEDERAL INTERESTS.**

(a) **SUBMISSION TO SECRETARY.**—A non-Federal interest may on its own undertake a feasibility study of a proposed harbor or inland harbor project and submit it to the Secretary. To assist non-Federal interests, the Secretary shall, as soon as practicable, promulgate guidelines for studies of harbors or inland harbors to provide sufficient information for the formulation of studies.

(b) **REVIEW BY SECRETARY.**—The Secretary shall review each study submitted under subsection (a) for the purpose of determining whether or not such study and the process under which such study was developed comply with Federal laws and regulations applicable to feasibility studies of navigation projects for harbors or inland harbors.

(c) **SUBMISSION TO CONGRESS.**—Not later than 180 days after receiving any study submitted under subsection (a), the Secretary shall transmit to the Congress, in writing, the results of such review and any recommendations the Secretary may have concerning the project described in such plan and design.

(d) **CREDIT AND REIMBURSEMENT.**—If a project for which a study has been submitted under subsection (a) is authorized by any provision of Federal law enacted after the date of such submission, the Secretary shall credit toward the non-Federal share of the cost of construction of such project an amount equal to the portion of the cost of developing such study that would be the responsibility of the United States if such study were developed by the Secretary.

(33 U.S.C. 2231)

**SEC. 204. CONSTRUCTION OF PROJECTS BY NON-FEDERAL INTERESTS.**

(a) **AUTHORITY.**—In addition to projects undertaken pursuant to sections 201 and 202 of this title, any non-Federal interest is authorized to undertake navigational improvements in harbors or inland harbors of the United States, subject to obtaining any permits required pursuant to Federal and State laws in advance of the actual construction of such improvements.

(b) **STUDIES AND ENGINEERING.**—When requested by an appropriate non-Federal interest the Secretary is authorized to undertake all necessary studies and engineering for any construction to be undertaken under the terms of subsection (a) of this section, and provide technical assistance in obtaining all necessary permits, if the non-Federal interest contracts with the Secretary to furnish the

United States funds for such studies and engineering during the period that they are conducted.

(c) COMPLETION OF STUDIES.—The Secretary is authorized to complete and transmit to the appropriate non-Federal interest any study for improvements to harbors or inland harbors of the United States which were initiated prior to the date of enactment of this Act, or, upon the request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest. 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 107 of the River and Harbor Act of 1960 or, upon request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest. Studies under this subsection shall be completed without regard to the requirements of subsection (b) of this section.

(d) AUTHORITY TO CARRY OUT IMPROVEMENT.—Any non-Federal interest which has requested and received from the Secretary pursuant to subsection (b) or (c) of this section, the completed study and engineering for an improvement to a harbor or an inland harbor, or separable element thereof, for the purpose of constructing such improvement and for which improvement a final environmental impact statement has been filed, shall be authorized to carry out the terms of the plan for such improvement. Any plan of improvement proposed to be implemented in accordance with this subsection shall be deemed to satisfy the requirements for obtaining the appropriate permits required under the Secretary's authority and such permits shall be granted subject to the non-Federal interest's acceptance of the terms and conditions of such permits: Provided, That the Secretary determines that the applicable regulatory criteria and procedures have been satisfied. The Secretary shall monitor any project for which permits are granted under this subsection in order to ensure that such project is constructed (and, in those cases where such activities will not be the responsibility of the Secretary, operated and maintained) in accordance with the terms and conditions of such permits.

(e) REIMBURSEMENT.—

(1) GENERAL RULE.—Subject to the enactment of appropriation Acts, the Secretary is authorized to reimburse any non-Federal interest an amount equal to the estimate of Federal share, without interest, of the cost of any authorized harbor or inland harbor improvement, or separable element thereof, including any small navigation project approved pursuant to section 107 of the River and Harbor Act of 1960, constructed under the terms of this section if—

(A) after authorization of the project (or, in the case of a small navigation project, after completion of a favorable project report by the Corps of Engineers) and before initiation of construction of the project or separable element—

(i) the Secretary approves the plans of construction of such project by such non-Federal interest, and

(ii) such non-Federal interest enters into an agreement to pay the non-Federal share, if any, of the cost of operation and maintenance of such project; and

(B) the Secretary finds before approval of the plans of construction of the project that the project, or separable element, is economically justified and environmentally acceptable.

(2) MATTERS TO BE CONSIDERED IN REVIEWING PLANS.—In reviewing such plans, the Secretary shall consider budgetary and programmatic priorities, potential impacts on the cost of dredging projects nationwide, and other factors that the Secretary deems appropriate.

(3) MONITORING.—The Secretary shall regularly monitor and audit any project for a harbor or inland harbor constructed under this subsection by a non-Federal interest in order to ensure that such construction is in compliance with the plans approved by the Secretary, and that costs are reasonable. No reimbursement shall be made unless and until the Secretary has certified that the work for which reimbursement is requested has been performed in accordance with applicable permits and the approved plans.

(f) OPERATION AND MAINTENANCE.—Whenever a non-Federal interest constructs improvements to any harbor or inland harbor, the Secretary shall be responsible for maintenance in accordance with section 101(b) if—

(1) the Secretary determines, before construction, that the improvements, or separable elements thereof, are economically justified, environmentally acceptable, and consistent with the purposes of this title;

(2) the Secretary certifies that the project is constructed in accordance with applicable permits and the appropriate engineering and design standards; and

(3) the Secretary does not find that the project, or separable element thereof, is no longer economically justified or environmentally acceptable.

(g) DEMONSTRATION OF NON-FEDERAL INTERESTS ACTING AS AGENT OF SECRETARY.—For the purpose of demonstrating the potential advantages and efficiencies of non-Federal management of projects, the Secretary may approve as many as two proposals pursuant to which the non-Federal interests will undertake part or all of a harbor project authorized by Congress as the agent of the Secretary by utilizing its own personnel or by procuring outside services, so long as the cost of doing so will not exceed the cost of the Secretary undertaking the project.

(33 U.S.C. 2232)

**SEC. 205. 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 204 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 the date of enactment of this Act, 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.

(33 U.S.C. 2233)

**SEC. 206. NONAPPLICABILITY TO SAINT LAWRENCE SEAWAY.**

Sections 203, 204, and 205 do not apply to any harbor or inland harbor project for that portion of the Saint Lawrence Seaway administered by the Saint Lawrence Seaway Development Corporation.

(33 U.S.C. 2234)

**SEC. 207. CONSTRUCTION IN USABLE INCREMENTS.**

Any navigation project for a harbor or inland harbor authorized by this title or any other provision of law enacted before, on, or after the date of enactment of this title may be constructed in usable increments.

(33 U.S.C. 2235)

**SEC. 208. PORT OR HARBOR DUES.**

(a) CONSENT OF CONGRESS.—Subject to the following conditions, a non-Federal interest may levy port or harbor dues (in the form of tonnage duties or fees) on a vessel engaged in trade entering or departing from a harbor and on cargo loaded on or unloaded from that vessel under clauses 2 and 3 of section 10, and under clause 3 of section 8, of Article 1 of the Constitution:

(1) PURPOSES.—Port or harbor dues may be levied only in conjunction with a harbor navigation project whose construction is complete (including a usable increment of the project) and for the following purposes and in amounts not to exceed those necessary to carry out those purposes:

(A)(i) to finance the non-Federal share of construction and operation and maintenance costs of a navigation project for a harbor under the requirements of section 101 of this Act; or

(ii) to finance the cost of construction and operation and maintenance of a navigation project for a harbor under section 204 or 205 of this Act; and

(B) provide emergency response services in the harbor, including contingency planning, necessary personnel training, and the procurement of equipment and facilities.

(2) LIMITATION ON PORT OR HARBOR DUES FOR EMERGENCY SERVICE.—Port or harbor dues may not be levied for the purposes described in paragraph (1)(B) of this subsection after the dues cease to be levied for the purposes described in paragraph (1)(A) of this subsection.

(3) GENERAL LIMITATIONS.—(A) Port or harbor dues may not be levied under this section in conjunction with a deepening feature of a navigation improvement project on any vessel if that vessel, based on its design draft, could have utilized the project at mean low water before construction. In the case of project features which solely—

- (i) widen channels or harbors,
- (ii) create or enlarge bend easings, turning basins or anchorage areas, or provide protected areas, or
- (iii) remove obstructions to navigation,

only vessels at least comparable in size to those used to justify these features may be charged under this section.

(B) In developing port or harbor dues that may be charged under this section on vessels for project features constructed under this title, the non-Federal interest may consider such criteria as: elapsed time of passage, safety of passage, vessel economy of scale, under keel clearance, vessel draft, vessel squat, vessel speed, sinkage, and trim.

(C) Port or harbor dues authorized by this section shall not be imposed on—

- (i) vessels owned and operated by the United States Government, a foreign country, a State, or a political subdivision of a country or State, unless engaged in commercial services;
- (ii) towing vessels, vessels engaged in dredging activities, or vessels engaged in intraport movements; or
- (iii) vessels with design drafts of 20 feet or less when utilizing general cargo and deep-draft navigation projects.

(4) FORMULATION OF PORT OR HARBOR DUES.—Port or harbor dues may be levied only on a vessel entering or departing from a harbor and its cargo on a fair and equitable basis. In formulating port and harbor dues, the non-Federal interest shall consider—

- (A) the direct and indirect cost of construction, operations, and maintenance, and providing the facilities and services under paragraph (1) of this subsection;
- (B) the value of those facilities and services to the vessel and cargo;
- (C) the public policy or interest served; and
- (D) any other pertinent factors.

(5) NOTICE AND HEARING.—(A) Before the initial levy of or subsequent modification to port or harbor dues under this section, a non-Federal interest shall transmit to the Secretary—

- (i) the text of the proposed law, regulation, or ordinance that would establish the port or harbor dues, includ-

ing provisions for their administration, collection, and enforcement;

(ii) the name, address, and telephone number of an official to whom comments on and requests for further information on the proposal are to be directed;

(iii) the date by which comments on the proposal are due and a date for a public hearing on the proposal at which any interested party may present a statement; however, the non-Federal interest may not set a hearing date earlier than 45 days after the date of publication of the notice in the Federal Register required by subparagraph (B) of this paragraph or set a deadline for receipt of comments earlier than 60 days after the date of publication; and

(iv) a written statement signed by an appropriate official that the non-Federal interest agrees to be governed by the provisions of this section.

(B) On receiving from a non-Federal interest the information required by subparagraph (A) of this paragraph, the Secretary shall transmit the material required by clauses (i) through (iii) of subparagraph (A) of this paragraph to the Federal Register for publication.

(C) Port or harbor dues may be imposed by a non-Federal interest only after meeting the conditions of this paragraph.

(6) REQUIREMENTS ON NON-FEDERAL INTEREST.—A non-Federal interest shall—

(A) file a schedule of any port or harbor dues levied under this subsection with the Secretary and the Federal Maritime Commission, which the Commission shall make available for public inspection;

(B) provide to the Comptroller General of the United States on request of the Comptroller General any records or other evidence that the Comptroller General considers to be necessary and appropriate to enable the Comptroller General to carry out the audit required under subsection (b) of this section;

(C) designate an officer or authorized representative, including the Secretary of the Treasury acting on a cost-reimbursable basis, to receive tonnage certificates and cargo manifests from vessels which may be subject to the levy of port or harbor dues, export declarations from shippers, consignors, and terminal operators, and such other documents as the non-Federal interest may by law, regulation, or ordinance require for the imposition, computation, and collection of port or harbor dues; and

(D) consent expressly to the exclusive exercise of Federal jurisdiction under subsection (c) of this section.

(b) JURISDICTION.—(1) The district court of the United States for the district in which is located a non-Federal interest that levies port or harbor dues under this section has original and exclusive jurisdiction over any matter arising out of or concerning, the imposition, computation, collection, and enforcement of port or harbor dues by a non-Federal interest under this section.

(2) Any person who suffers legal wrong or is adversely affected or aggrieved by the imposition by a non-Federal interest of a pro-

posed scheme or schedule of port or harbor dues under this section may, not later than 180 days after the date of hearing under subsection (a)(5)(A)(iii) of this section, commence an action to seek judicial review of that proposed scheme or schedule in the appropriate district court under paragraph (1).

(3) On petition of the Attorney General or any other party, that district court may—

(A) grant appropriate injunctive relief to restrain an action by that non-Federal interest violating the conditions of consent in subsection (a) of this section;

(B) order the refund of any port or harbor dues not lawfully collected; and

(C) grant other appropriate relief or remedy.

(c) COLLECTION OF DUTIES.—

(1) DELIVERY OF CERTIFICATE AND MANIFEST.—

(A) UPON ARRIVAL OF VESSEL.—Upon the arrival of a vessel in a harbor in which the vessel may be subject to the levy of port or harbor dues under this section, the master of that vessel shall, within forty-eight hours after arrival and before any cargo is unloaded from that vessel, deliver to the appropriate authorized representative appointed under subsection (a)(6)(C) of this section a tonnage certificate for the vessel and a manifest of the cargo aboard that vessel or, if the vessel is in ballast, a declaration to that effect.

(B) BEFORE DEPARTURE OF VESSEL.—The shipper, consignee, or terminal operator having custody of any cargo to be loaded on board a vessel while the vessel is in a harbor in which the vessel may be subject to the levy of port or harbor dues under this section shall, within forty-eight hours before departure of that vessel, deliver to the appropriate authorized representative appointed under subsection (a)(6)(C) of this section an export declaration specifying the cargo to be loaded on board that vessel.

(d) ENFORCEMENT.—At the request of an authorized representative referred to in subsection (a)(6)(C) of this section, the Secretary of the Treasury may:

(1) withhold the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) for a vessel if the master, owner, or operator of a vessel subject to port or harbor dues under this section fails to comply with the provisions of this section including any non-Federal law, regulation or ordinance issued hereunder; and

(2) assess a penalty or initiate a forfeiture of the cargo in the same manner and under the same procedures as are applicable for failure to pay customs duties under the Tariff Act of 1930 (19 App. U.S.C. 1202 et seq.) if the shipper, consignee, or terminal operator having title to or custody of cargo subject to port or harbor dues under this section fails to comply with the provisions of this section including any non-Federal law, regulation, or ordinance issued hereunder.

(e) MARITIME LIEN.—Port or harbor dues levied under this section against a vessel constitute a maritime lien against the vessel and port or harbor dues levied against cargo constitute a lien

against the cargo that may be recovered in an action in the district court of the United States for the district in which the vessel or cargo is found.

(33 U.S.C. 2236)

**SEC. 209. INFORMATION FOR NATIONAL SECURITY.**

Any non-Federal interest shall provide the United States the information necessary for military readiness planning and harbor, inland harbor, and national security, including information necessary to obtain national security clearances for individuals employed in critical harbor and inland harbor positions.

(33 U.S.C. 2237)

**SEC. 210. AUTHORIZATION OF APPROPRIATIONS.**

(a) TRUST FUND.—There are authorized to be appropriated out of the Harbor Maintenance Trust Fund, established by section 9505 of the Internal Revenue Code of 1954, for each fiscal year such sums as may be necessary to pay—

(1) 100 percent of the eligible operations and maintenance costs of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation for such fiscal year; and

(2) up to 100 percent of the eligible operations and maintenance costs assigned to commercial navigation of all harbors and inland harbors within the United States.

(b) GENERAL FUND.—There are authorized to be appropriated out of the general fund of the Treasury of the United States for each fiscal year such sums as may be necessary to pay the balance of all eligible operations and maintenance costs not provided by payments from the Harbor Maintenance Trust Fund under this section.

(33 U.S.C. 2238)

[Section 211 repealed by §412(f) of P.L. 101-640, Nov. 28, 1990, 104 Stat. 4650]

**SEC. 212. EMERGENCY RESPONSE SERVICES.**

(a) GRANTS.—The Secretary is authorized to make grants to any non-Federal interest operating a project for a harbor for provision of emergency response services in such harbor (including contingency planning, necessary personnel training, and the procurement of equipment and facilities either by the non-Federal interest, by a local agency or municipality, or by a combination of local agencies or municipalities on a cost-reimbursable basis, either by a cooperative agreement, mutual aid plan, or mutual assistance plan entered into between one or more non-Federal interests, public agencies, or local municipalities).

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1986, and ending before October 1, 1992, \$5,000,000.

(33 U.S.C. 2240)

**SEC. 213. HARBOR OFFICE AT MORRO BAY, CALIFORNIA.**

For reasons of navigation safety, subject to section 903(a) of this Act, the Secretary is authorized to make a grant to the non-Federal interest operating Morro Bay Harbor, California, for con-

struction of a new harbor office at such harbor, at a total cost of \$500,000, with an estimated first Federal cost of \$375,000 and an estimated first non-Federal cost of \$125,000.

**SEC. 214. DEFINITIONS.**

For purposes of this title—

(1) **DEEP-DRAFT HARBOR.**—The term “deep-draft harbor” means a harbor which is authorized to be constructed to a depth of more than 45 feet (other than a project which is authorized by section 202 of this title).

(2) **ELIGIBLE OPERATIONS AND MAINTENANCE.**—(A) Except as provided in subparagraph (B), the term “eligible operations and maintenance” means all Federal operations, maintenance, repair, and rehabilitation, including (i) maintenance dredging reasonably necessary to maintain the width and nominal depth of any harbor or inland harbor; (ii) the construction of dredged material disposal facilities that are necessary for the operation and maintenance of any harbor or inland harbor; (iii) dredging and disposing of contaminated sediments that are in or that affect the maintenance of Federal navigation channels; (iv) mitigating for impacts resulting from Federal navigation operation and maintenance activities; and (v) operating and maintaining dredged material disposal facilities.

(B) As applied to the Saint Lawrence Seaway, the term “eligible operations and maintenance” means all operations, maintenance, repair, and rehabilitation, including maintenance dredging reasonably necessary to keep such Seaway or navigation improvements operated or maintained by the Saint Lawrence Seaway Development Corporation in operation and reasonable state of repair.

(C) The term “eligible operations and maintenance” does not include providing any lands, easements, or rights-of-way, or performing relocations required for project operations and maintenance.

(3) **GENERAL CARGO HARBOR.**—The term “general cargo harbor” means a harbor for which a project is authorized by section 202 of this title and any other harbor which is authorized to be constructed to a depth of more than 20 feet but not more than 45 feet;

(4) **HARBOR.**—The term “harbor” means any channel or harbor, or element thereof, in the United States, capable of being utilized in the transportation of commercial cargo in domestic or foreign waterborne commerce by commercial vessels. The term does not include—

(A) an inland harbor;

(B) the Saint Lawrence Seaway;

(C) local access or berthing channels;

(D) channels or harbors constructed or maintained by nonpublic interests; and

(E) any portion of the Columbia River other than the channels on the downstream side of Bonneville lock and dam.

(5) **INLAND HARBOR.**—The term “inland harbor” means a navigation project which is used principally for the accommo-

dition of commercial vessels and the receipt and shipment of waterborne cargoes on inland waters. The term does not include—

- (A) projects on the Great Lakes;
- (B) projects that are subject to tidal influence;
- (C) projects with authorized depths of greater than 20 feet;
- (D) local access or berthing channels; and
- (E) projects constructed or maintained by nonpublic interests.

(6) NOMINAL DEPTH.—The term “nominal depth” means, in relation to the stated depth for any navigation improvement project, such depth, including any greater depths which must be maintained for any harbor or inland harbor or element thereof included within such project in order to ensure the safe passage at mean low tide of any vessel requiring the stated depth.

(7) NON-FEDERAL INTEREST.—The term “non-Federal interest” has the meaning such term has under section 221 of the Flood Control Act of 1970 and includes any interstate agency and port authority established under a compact entered into between two or more States with the consent of Congress under section 10 of Article I of the Constitution.

(8) UNITED STATES.—The term “United States” means all areas included within the territorial boundaries of the United States, including the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and any other territory or possession over which the United States exercises jurisdiction.

(33 U.S.C. 2241)

**SEC. 215. SHORT TITLE.**

This title may be cited as the “Harbor Development and Navigation Improvement Act of 1986”.

(33 U.S.C. 2201 note)

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**TITLE IX—GENERAL PROVISIONS**

**SEC. 901. ANNUAL OBLIGATION CEILINGS.**

Notwithstanding any other provision of law, the Secretary shall, from funds appropriated, obligate no sums in excess of the sums specified in this title for the combined purpose of the “Construction, General” account and the construction component of the “Flood Control, Mississippi River and Tributaries” account:

- (1) For the fiscal year ending September 30, 1987, the sum of \$1,400,000,000.
- (2) For the fiscal year ending September 30, 1988, the sum of \$1,500,000,000.
- (3) For the fiscal year ending September 30, 1989, the sum of \$1,600,000,000.
- (4) For the fiscal year ending September 30, 1990, the sum of \$1,700,000,000.



(5) For the fiscal year ending September 30, 1991, the sum of \$1,800,000,000.

Nothing contained herein limits or otherwise amends authority conferred under section 10 of the River and Harbor Act of September 22, 1922 (42 Stat. 1043; 33 U.S.C. 621). Any amounts obligated against funds furnished or reimbursed during each such fiscal year by other Federal agencies or non-Federal interests shall not be counted against the limitation on obligations provided for in this Act.

**SEC. 902. MAXIMUM COST OF PROJECTS.**

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.

(33 U.S.C. 2280)

**SEC. 903. GENERAL REQUIREMENTS.**

(a) PROCEDURE FOR CERTAIN PROJECTS AUTHORIZED FOR CONSTRUCTION.—(1) In the case of any project authorized for construction by this Act which is specifically made subject to this subsection, no construction may be commenced until the Secretary has reviewed and commented on such project and reported thereon to the Congress, or until 90 days have passed following the receipt of the proposed plan of the project from the Chief of Engineers, whichever first occurs.

(2) The Secretary shall review and comment on—

(A) at least one-third of the projects to which this subsection applies during the one-year period beginning on the date of enactment of this Act,

(B) at least two-thirds of such projects during the two-year period beginning on the date of enactment of this Act, and

(C) all of such projects during the three-year period beginning on the date of enactment of this Act.

(3) Any project to which this subsection applies on which the Secretary has not commented before the end of the 3-year period beginning on the date of enactment of this Act shall be deemed to have been approved by the Secretary for purposes of this subsection.

(b) **PROCEDURE FOR PROJECTS AUTHORIZED FOR CONSTRUCTION SUBJECT TO A FAVORABLE REPORT.**—Any project specifically made subject to this subsection is authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the report cited for such project, with such modifications and are recommended by the Chief of Engineers and approved by the Secretary, and with such other modifications as are recommended by the Secretary. If no report is cited for a project, the project is authorized to be prosecuted by the Secretary in accordance with a final report of the Chief of Engineers, and with such modifications as are recommended by the Secretary, and no construction on such project may be initiated until such a report is issued and approved by the Secretary.

(c) **BENEFIT-COST RATIO WAIVER.**—(1) In his recommendations for authorization of any project, or separable element, for flood control, the Secretary may include features that would not produce national economic development benefits greater than cost, if the non-Federal interests enter into a binding agreement requiring the non-Federal interests to pay during construction of the project or separable element an amount sufficient to make the remaining costs of that project or separable element equal to the estimated value of the national economic development benefits of that project or separable element.

(2) Non-Federal payments pursuant to paragraph (1) shall be in addition to payments required under section 103 of this Act which are applicable to the remaining costs of the project.

(d) **OTHER REQUIREMENTS.**—Sections 201 and 202 and the fourth sentence of section 203 of the Flood Control Act of 1968 shall apply to all projects authorized by this Act.

**SEC. 904. MATTERS TO BE ADDRESSED IN PLANNING.**

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 environment), the well-being of the people of the United States, the prevention of loss of life, and the preservation of cultural and historical values shall be addressed in the formulation and evaluation of water resources projects to be carried out by the Secretary, and the associated benefits and costs, both quantifiable and unquantifiable, and information regarding potential loss of human life that may be associated with flooding and coastal storm events, shall be displayed in the benefits and costs of such projects.

(33 U.S.C. 2281)

**SEC. 905. FEASIBILITY REPORTS.**

(a) In the case of any water resources project-related study authorized to be undertaken by the Secretary, the Secretary shall prepare a feasibility report, subject to section 105 of this Act. Such feasibility report shall describe, with reasonable certainty, the eco-

conomic, environmental, and social benefits and detriments of the recommended plan and alternative plans considered by the Secretary and the engineering features (including hydrologic and geologic information), the public acceptability, and the purposes, scope, and scale of the recommended plan. The feasibility report shall also include the views of other Federal agencies and non-Federal agencies with regard to the recommended plan, a description of a non-structural alternative to the recommended plan when such plan does not have significant nonstructural features, and a description of the Federal and non-Federal participation in such plan, and shall demonstrate that States, other non-Federal interests, and Federal agencies have been consulted in the development of the recommended plan. This subsection shall not apply to (1) any study with respect to which a report has been submitted to Congress before the date of enactment of this Act, (2) any study for a project, which project is authorized for construction by this Act and is not subject to section 903(b), (3) any study for a project which is authorized under any of the following sections: section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s), section 2 of the Flood Control Act of August 28, 1946 (33 U.S.C. 701r), section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577), section 3 of the Act entitled "An Act authorizing Federal participation in the cost of protecting the shores of publicly owned property", approved August 13, 1946 (33 U.S.C. 426g), and section 111 of the River and Harbor Act of 1968 (33 U.S.C. 426i), and (4) general studies not intended to lead to recommendation of a specific water resources project.

(b) Before initiating any feasibility study under subsection (a) of this section after the date of enactment of this Act, the Secretary shall first perform, at Federal expense, a reconnaissance study of the water resources problem in order to identify potential solutions to such problem in sufficient detail to enable the Secretary to determine whether or not planning to develop a project should proceed to the preparation of a feasibility report. Such reconnaissance study shall include a preliminary analysis of the Federal interest, costs, benefits, and environmental impacts of such project, and an estimate of the costs of preparing the feasibility report. The duration of a reconnaissance study shall normally be no more than twelve months, but in all cases is to be limited to eighteen months.

(c) For purposes of studies undertaken pursuant to this section, the Secretary is authorized to consider benefits which may accrue to Indian tribes as a result of a project resulting from such a study.

(d) The Secretary shall undertake such measures as are necessary to ensure that standard and uniform procedures and practices are followed by each district office (and each division office for any area in which there is no district office) of the United States Army Corps of Engineers in the preparation of feasibility reports on water resources projects.

(e) ENHANCED PUBLIC PARTICIPATION.—

(1) IN GENERAL.—The Secretary shall establish procedures to enhance public participation in the development of each feasibility study under subsection (a), including, if appropriate, establishment of a stakeholder advisory group to assist the Secretary with the development of the study.

(2) MEMBERSHIP.—If the Secretary provides for the establishment of a stakeholder advisory group under this subsection, the membership of the advisory group shall include balanced representation of social, economic, and environmental interest groups, and such members shall serve on a voluntary, uncompensated basis.

(3) LIMITATION.—Procedures established under this subsection shall not delay development of any feasibility study under subsection (a).

(33 U.S.C. 2282)

**SEC. 906. FISH AND WILDLIFE MITIGATION.**

(a)(1) In the case of any water resources project which is authorized to be constructed by the Secretary before, on, or after the date of enactment of this Act, construction of which has not commenced as of the date of enactment of this Act, and which necessitates the mitigation of fish and wildlife losses, including the acquisition of lands or interests in lands to mitigate losses to fish and wildlife, as a result of such project, such mitigation, including acquisition of the lands or interests—

(A) shall be undertaken or acquired before any construction of the project (other than such acquisition) commences, or

(B) shall be undertaken or acquired concurrently with lands and interests in lands for project purposes (other than mitigation of fish and wildlife losses),

whichever the Secretary determines is appropriate, except that any physical construction required for the purposes of mitigation may be undertaken concurrently with the physical construction of such project.

(2) For the purposes of this subsection, any project authorized before the date of enactment of this Act on which more than 50 percent of the land needed for the project, exclusive of mitigation lands, has been acquired shall be deemed to have commenced construction under this subsection.

(b)(1) After consultation with appropriate Federal and non-Federal agencies, the Secretary is authorized to mitigate damages to fish and wildlife resulting from any water resources project under his jurisdiction, whether completed, under construction, or to be constructed. Such mitigation may include the acquisition of lands, or interests therein, except that—

(A) acquisition under this paragraph shall not be by condemnation in the case of projects completed as of the date of enactment of this Act or on which at least 10 percent of the physical construction on the project has been completed as of the date of enactment of this Act; and

(B) acquisition of water, or interests therein, under this paragraph, shall not be by condemnation.

The Secretary, shall, under the terms of this paragraph, obligate no more than \$30,000,000 in any fiscal year. With respect to any water resources project, the authority under this subsection shall not apply to measures that cost more than \$7,500,000 or 10 percent of the cost of the project, whichever is greater.

(2) Whenever, after his review, the Secretary determines that such mitigation features under this subsection are likely to require

condemnation under subparagraph (A) or (B) of paragraph (1) of this subsection, the Secretary shall transmit to Congress a report on such proposed modification, together with his recommendations.

(c) Costs incurred after the date of enactment of this Act, including lands, easements, rights-of-way, and relocations, for implementation and operation, maintenance, and rehabilitation to mitigate damages to fish and wildlife shall be allocated among authorized project purposes in accordance with applicable cost allocation procedures, and shall be subject to cost sharing or reimbursement to the same extent as such other project costs are shared or reimbursed, except that when such costs are covered by contracts entered into prior to the date of enactment of this Act, such costs shall not be recovered without the consent of the non-Federal interests or until such contracts are complied with or renegotiated.

(d) MITIGATION PLANS AS PART OF PROJECT PROPOSALS.—

(1) IN GENERAL.—After November 17, 1986, the Secretary shall not submit any proposal for the authorization of any water resources project to the Congress unless such report contains (A) a recommendation with a specific plan to mitigate fish and wildlife losses created by such project, or (B) a determination by the Secretary that such project will have negligible adverse impact on fish and wildlife. Specific mitigation plans shall ensure that impacts to bottomland hardwood forests are mitigated in-kind, to the extent possible. In carrying out this subsection, the Secretary shall consult with appropriate Federal and non-Federal agencies.

(2) DESIGN OF MITIGATION PROJECTS.—The Secretary shall design mitigation projects to reflect contemporary understanding of the science of mitigating the adverse environmental impacts of water resources projects.

(e) In those cases when the Secretary, as part of any report to Congress, recommends activities to enhance fish and wildlife resources, the fish costs of such enhancement shall be a Federal cost when—

(1) such enhancement provides benefits that are determined to be national, including benefits to species that are identified by the National Marine Fisheries Service as of national economic importance, species that are subject to treaties or international convention to which the United States is a party, and anadromous fish;

(2) such enhancement is designed to benefit species that have been listed as threatened or endangered by the Secretary of the Interior under the terms of the Endangered Species Act, as amended (16 U.S.C. 1531, et seq.), or

(3) such activities are located on lands managed as a national wildlife refuge.

When benefits of enhancement do not qualify under the preceding sentence, 25 percent of such first costs of enhancement shall be provided by non-Federal interests under a schedule of reimbursement determined by the Secretary. Not more than 80 percent of the non-Federal share of such first costs may be satisfied through in-kind contributions, including facilities, supplies, and services that are necessary to carry out the enhancement project. The non-Fed-

eral share of operation, maintenance, and rehabilitation of activities to enhance fish and wildlife resources shall be 25 percent.

(f) Fish and wildlife enhancement measures carried out as part of the project for Atchafalaya Floodway System, Louisiana, authorized by Public Law 99-88, and the project for Mississippi Delta, Region, Louisiana, authorized by the Flood Control Act of 1965, shall be considered to provide benefits that are national for purposes of this section.

(g) The provisions of subsections (a), (b), and (d) shall be deemed to supplement the responsibility and authority of the Secretary pursuant to the Fish and Wildlife Coordination Act, and nothing in this section is intended to affect that Act.

(33 U.S.C. 2283)

**SEC. 907. BENEFITS AND COSTS ATTRIBUTABLE TO ENVIRONMENTAL MEASURES.**

In the evaluation by the Secretary of benefits and costs of a water resources project, the benefits attributable to measures included in a project for the purpose of environmental quality, including improvement of the environment and fish and wildlife enhancement, shall be deemed to be at least equal to the costs of such measures.

(33 U.S.C. 2284)

**SEC. 908. MITIGATION FUND.**

There is established an Environmental Protection and Mitigation Fund. There is authorized to be appropriated to such fund \$35,000,000 for fiscal years beginning after September 30, 1986. Amounts in the fund shall be available for undertaking, in advance of construction of any water resources project authorized to be constructed by the Secretary, such measures authorized as part of such project, including the acquisition of lands and interests therein, as may be necessary to ensure that project-induced losses to fish and wildlife production and habitat will be mitigated. The Secretary shall reimburse the Fund for any amounts expended under this section for a water resources project from the first appropriations made for construction, including planning and designing, of such project.

(33 U.S.C. 2285)

**SEC. 909. RIVER BASIN AUTHORIZATIONS.**

(a) In addition to previous authorizations, there is authorized to be appropriated for the prosecution of the comprehensive plan of development of each river basin or project that is referred to below by name and date of basic authorization, such sums as are necessary for the Secretary to complete the comprehensive plan of development.

Basin	Act of Congress
Alabama-Coosa River Basin .....	March 2, 1945
Arkansas River Basin .....	June 28, 1938
Arkansas-Red River Basin .....	November 7, 1966
Baltimore Harbor .....	December 31, 1970
Blue River Basin .....	December 31, 1970
Brazos River Basin .....	September 3, 1954
Central and Southern Florida .....	June 30, 1948

Basin	Act of Congress
Columbia River Basin .....	May 17, 1950
Connecticut River Basin .....	June 22, 1936
Cottonwood Creek, California .....	December 31, 1970
Gulf Intracoastal Waterway, St. Marks, Tampa .....	August 13, 1968
Mississippi River and Tributaries .....	May 15, 1928
Missouri River Basin .....	June 28, 1938
North Branch Susquehanna River Basin .....	July 3, 1958
Ohio River Basin .....	June 22, 1936
Ouachita River Basin .....	May 17, 1950
Red Run Drain and Lower Clinton River .....	December 31, 1970
Red River Waterway .....	August 13, 1968
Sabine River Basin .....	December 31, 1970
Sacramento River Basin .....	December 22, 1944
San Joaquin River Basin .....	December 22, 1944
Santa Ana River Basin .....	June 22, 1936
South Platte River Basin .....	May 17, 1950
Tampa Harbor .....	December 31, 1970
Trinity River Basin .....	October 27, 1965
Upper Mississippi River Basin .....	June 28, 1938
Wabash River Basin .....	August 13, 1968
White River Basin .....	June 28, 1938

(b) The sums authorized by this section include those necessary for the Secretary to complete local flood protection in the Columbia River Basin, as authorized by section 204 of the Flood Control Act of 1950 (64 Stat. 178).

**SEC. 910. CONTINUED PLANNING AND INVESTIGATIONS.**

(a) After the Chief of Engineers transmits his recommendations for a water resources development project to the Secretary for transmittal to the Congress, as authorized in the first section of the Act of December 22, 1944, and before authorization for construction of such project, the Chief of Engineers is authorized to undertake continued planning and engineering (other than preparation of plans and specifications) for such project if the Chief of Engineers finds that the project is without substantial controversy and justifies further engineering, economic, and environmental investigations and the Chief of Engineers transmits to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a statement of such findings. In the one-year period after authorization for construction of such project, the Chief of Engineers is authorized to undertake planning, engineering, and design for such project.

(b) Not later than January 15, 1987, and each January 15 thereafter, the Secretary shall prepare and transmit a report on the activities undertaken under this section in the preceding fiscal year to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(c) The authorization made by this section shall be in addition to any other authorization for planning, engineering, and design of water resources development projects and shall not be construed as a limitation on any other such authorization.

(33 U.S.C. 2287)

**SEC. 911. REVIEW OF COST EFFECTIVENESS OF DESIGN.**

During the design of each water resources project which has a total cost in excess of \$10,000,000, which is authorized before, on, or after the date of enactment of this Act and undertaken by the Secretary, and on which construction has not been initiated as of the date of enactment of this Act, the Secretary shall require a review of the cost effectiveness of such design. The review shall employ cost control techniques which will ensure that such project is designed in the most cost-effective way for the life of the project.

(33 U.S.C. 2288)

**SECTION 912. SECTION 221 AGREEMENTS.**

(a) Section 221(a) of the Flood Control Act of 1970 is amended—

(1) by inserting “, or an acceptable separable element thereof,” after “water resources project”, and by inserting “or the appropriate element of the project, as the case may be” after “for the project”; and

(2) by adding at the end the following: “In any such agreement 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 State legislative appropriations for such performance and payment when obligating future appropriations would be inconsistent with State constitutional or statutory limitations.”.

(b)(42 U.S.C. 1962d-5b note)(1) The Secretary may require compliance with any requirements pertaining to cooperation by non-Federal interests in carrying out any water resources project authorized before, on, or after the date of enactment of this Act.

(2) Whenever on the basis of any information available to the Secretary, the Secretary finds that any non-Federal interest is not providing cooperation required under subsection (a), the Secretary shall issue an order requiring such non-Federal interest to provide such cooperation. After notice and opportunity for a hearing, if the Secretary finds that any person is violating an order issued under this section, such person shall be subject to a civil penalty not to exceed \$10,000 per day of such violation, except that the total amount of civil penalties for any violation shall not exceed \$50,000.

(3) Non-Federal interests shall be liable for interest on any payments required pursuant to section 221 of the Flood Control Act of 1970 that may fall delinquent. The interest rate to be charged on any such delinquent payment shall be at a rate, to be determined by the Secretary of the Treasury, equal to 150 percent of the average bond equivalent rate of the thirteen-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional three-month period if the period of delinquency exceeds three months.

(4) The Secretary may request the Attorney General to bring a civil action for appropriate relief, including permanent or temporary injunction, for any violation of an order issued under this section, to collect a civil penalty imposed under this section, to recover any cost incurred by the Secretary in undertaking perform-



ance of any item of cooperation under section 221(d) of the Flood Control Act of 1970, or to collect interest for which a non-Federal interest is liable under paragraph (3). Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides, or is doing businesss, and such court shall have jurisdiction to restrain such violation, to require compliance, to require payment of any civil penalty imposed under this section, and to require payment of any costs incurred by the Secretary in undertaking performance of any such item.

(5) The Secretary is authorized to determine that no funds appropriated for operation and maintenance, including operation and maintenance of the project for flood control, Mississippi River and Tributaries, are to be used for the particular benefit of projects within the jurisdiction of any non-Federal interest when such non-Federal interest is in arrears for more than twenty-four months in the payment of charges due under an agreement entered into with the United States pursuant to section 221 of the Flood Control Act of 1970 (Public Law 91-611).

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**SEC. 914. URBAN AND RURAL FLOOD CONTROL FREQUENCY.**

In the preparation of feasibility reports for projects for flood damage prevention in urban and rural areas, the Secretary may consider and evaluate measures to reduce or eliminate damages from flooding without regard to frequency of flooding, drainage area, and amount of runoff. This section shall apply with respect to any project, or separable element thereof, the Federal share of the cost of which is less than \$3,000,000.

(33 U.S.C. 2289)

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**SEC. 916. FEDERAL REPAYMENT DISTRICT.**

(a) The Secretary may enter into a contract providing for the payment or recovery of an appropriate share of the costs of a project under his responsibility with a Federal Project Repayment District or other political subdivision of a State prior to the construction, operation, improvement, or financing of such project. The Federal Project Repayment District shall include lands and improvements which receive identifiable benefits from the construction or operation of such project. Such districts shall be established in accordance with State law, shall have specific boundaries which may be changed from time to time based upon further evaluations of benefits, and shall have the power to recover benefits through any cost-recovery approach that is consistent with State law and satisfies the applicable cost-recovery requirement under subsection (b).

(b) Prior to execution of an agreement pursuant to subsection (a) of this section, the Secretary shall require and approve a study from the State or political subdivision demonstrating that the revenues to be derived from a contract under this section, or an agreement with a Federal Project Repayment District, will be sufficient

to equal or exceed the cost recovery requirements over the term of repayment required by Federal law.

(33 U.S.C. 2291)

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**SEC. 918. SURVEYING AND MAPPING.**

Any surveying or mapping services to be performed in connection with a water resources project which is or has been authorized to be undertaken by the Secretary shall be procured in accordance with title IX of the Federal Property and Administrative Services Act of 1949.

(33 U.S.C. 2292)

**SEC. 919. PETROLEUM PRODUCT INFORMATION.**

(a) The Secretary shall disclose petroleum product information to any State taxing agency making a request under subsection (b). Such information shall be disclosed for the purpose of, and only to the extent necessary in, the administration of State tax laws.

(b) Disclosure of information under this section shall be permitted only upon written request by the head of the State taxing agency and only to the representatives of such agency designated in such written request as the individuals who are to inspect or to receive the information on behalf of such agency. Any such representative shall be an employee or legal representative of such agency.

(c)(1) Requests for the disclosure of information under this section, and such disclosure, shall be made in such manner and at such time and place as shall be prescribed by the Secretary.

(2) Information disclosed to any person under this section may be provided in the form of written documents or reproductions of such documents, or by any other mode or means which the Secretary determines necessary or appropriate. A reasonable fee may be prescribed for furnishing such information.

(3) Any reproduction of any document or other matter made in accordance with this subsection shall have the same legal status as the original, and any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding as if it were the original, whether or not the original is in existence.

(d) The Secretary shall not disclose information to a State taxing agency of a State under this section unless such State has in effect provisions of law which—

(1) exempt such information from disclosure under a State law requiring agencies of the State to make information available to the public, or

(2) otherwise protect the confidentiality of the information. Nothing in the preceding sentence shall be construed to prohibit the disclosure by an officer or employee of a State of information to another officer or employee of such State (or political subdivision of such State) to the extent necessary in the administration of State tax laws.

(e) For purposes of this section, the term—

(1) “petroleum product information” means information relating to petroleum products transported by vessel which is re-

ceived by the Secretary (A) under section 11 of the Act entitled “An Act authorizing construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes”, approved September 22, 1922 (42 Stat. 1043; 33 U.S.C. 555), or (B) under any other legal authority; and

(2) “State taxing agency” means any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws.

(f) Section 11 of the Act entitled “An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes”, approved September 22, 1922 (42 Stat. 1043; 33 U.S.C. 555) is amended—

(1) by striking out “\$100” and inserting in lieu thereof “not more than \$5,000”; and

(2) by inserting a new sentence at the end thereof as follows: “In addition, the Secretary may assess a civil penalty of up to \$2,500, per violation, against any person or entity that fails to provide timely, accurate statements required to be submitted pursuant to this section by the Secretary.”.

(33 U.S.C. 555a)

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#### **SEC. 923. REPROGRAMMING DURING NATIONAL EMERGENCIES.**

(a) In the event of a declaration of war or a declaration by the President of a national emergency in accordance with the National Emergencies Act (90 Stat. 1255; 50 U.S.C. 1601) that requires or may require use of the Armed Forces, the Secretary, without regard to any other provision of law, may (1) terminate or defer the construction, operation, maintenance, or repair of any Department of the Army civil works project that he deems not essential to the national defense, and (2) apply the resources of the Department of the Army’s civil works program, including funds, personnel, and equipment, to construct or assist in the construction, operation, maintenance, and repair of authorized civil works, military construction, and civil defense projects that are essential to the national defense.

(b) The Secretary shall immediately notify the appropriate committees of Congress of any actions taken pursuant to the authorities provided by this section, and cease to exercise such authorities not later than 180 calendar days after the termination of the state of war or national emergency, whichever occurs later.

(33 U.S.C. 2293)

#### **SEC. 924. OFFICE OF ENVIRONMENTAL POLICY.**

The Secretary shall establish in the Directorate of Civil Works of the Office of the Chief of Engineers an Office of Environmental Policy. Such Office shall be responsible for the formulation, coordination, and implementation of all matters concerning environmental quality and policy as they relate to the water resources program of the United States Army Corps of Engineers. Such Office shall, among other things, develop, and monitor compliance with, guidelines for the consideration of environmental quality in formulation and planning of water resources projects carried out by the

Secretary, the preparation and coordination of environmental impact statements for such projects, and the coordination with Federal, State, and local agencies of environmental aspects of such projects and regulatory responsibilities of the Secretary.

(33 U.S.C. 2294)

**SEC. 925. COMPILATION OF LAWS; ANNUAL REPORTS.**

(a) Within one year after the date of enactment of this Act, the laws of the United States relating to the improvement of rivers and harbors, flood control, beach erosion, and other water resources development enacted after November 8, 1966, and before January 1, 1987, shall be compiled under the direction of the Secretary and the Chief of Engineers and printed for the use of the Department of the Army, the Congress, and the general public. The Secretary shall reprint the volumes containing such laws enacted before November 8, 1966. In addition, the Secretary shall include an index in each volume so compiled or reprinted. The Secretary shall transmit copies of each such volume to Congress.

(b) The Secretary shall prepare and submit the annual report required by section 8 of the Act of August 11, 1888, in two volumes. Volume I shall consist of a summary and highlights of Corps of Engineers' activities, authorities, and accomplishments. Volume II shall consist of detailed information and field reports on Corps of Engineers' activities. The Secretary shall publish an index with each annual report.

(c) The Secretary shall prepare biennially for public information a report for each State containing a description of each water resources project under the jurisdiction of the Secretary in such State and the status of each such project. Each report shall include an index. The report for each State shall be prepared in a separate volume. The reports under this subsection shall be published at the same time and the first such reports shall be published not later than one year after the date of the enactment of this Act.

(33 U.S.C. 2295)

**SEC. 926. ACQUISITION OF RECREATION LANDS.**

(a) In the case of any water resources project which is authorized to be constructed by the Secretary before, on, or after the date of enactment of this Act, construction of which has not commenced before such date of enactment, and which involves the acquisition of lands or interests in lands for recreation purposes, such lands or interests shall be acquired along with the acquisition of lands and interests in lands for other project purposes.

(b) The Secretary is authorized to acquire real property by condemnation, purchase, donation, exchange, or otherwise, as a part of any water resources development project for use for public park and recreation purposes, including but not limited to, real property, not contiguous to the principal part of the project.

(33 U.S.C. 2296)

**SEC. 927. OPERATION AND MAINTENANCE ON RECREATION LANDS.**

The Secretary shall not require, under section 4 of the Flood Control Act of December 22, 1944 (58 Stat. 889), and the Federal Water Project Recreation Act, non-Federal interests to assume operation and maintenance of any recreational facility operated by

the Secretary at any water resources project as a condition to the construction of new recreational facilities at such project or any other water resources project.

(33 U.S.C. 2297)

**SEC. 928. IMPACT OF PROPOSED PROJECTS ON EXISTING RECREATION FACILITIES.**

Any report describing a project having recreation benefits that is submitted after the date of enactment of this Act to the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives by the Secretary, or by the Secretary of Agriculture under authority of the Watershed Protection and Flood Protection Act (68 Stat. 666; 16 U.S.C. 1001 et seq.), shall describe the usage of other, similar public recreational facilities within the general area of the project, and the anticipated impact of the proposed project on the usage of such existing recreational facilities.

(33 U.S.C. 2298)

**SEC. 929. AGRICULTURAL BENEFITS.**

Section 2 of the Watershed Protection and Flood Protection Act (68 Stat. 666; 16 U.S.C. 1002) is amended by inserting after the proviso in the paragraph relating to the definition of "works of improvement" the following: "Each such project submitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives after July 1, 1987, must contain benefits directly related to agriculture that account for at least 20 percent of the total benefits of the project."

**SEC. 930. PUBLIC ACCESS TO WATER IMPOUNDMENTS.**

The Secretary of Agriculture, acting through the Administrator of the Soil Conservation Service, shall study and report to the appropriate committees of the Senate and the House of Representatives by April 1, 1988, on the feasibility, the desirability, and the public interest involved in requiring that public access be provided to any or all water impoundments that have recreation-related potential and that were authorized pursuant to the Watershed Protection and Flood Protection Act (68 Stat. 666; 16 U.S.C. 1001 et seq.).

(16 U.S.C. 1004 note)

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**SEC. 935. ACQUISITION OF BEACH FILL.**

Notwithstanding any other provision of law, in any case in which the use of fill material for beach erosion and beach nourishment is authorized as a purpose of an authorized water resources project, the Secretary is authorized to acquire by purchase, exchange, or otherwise from nondomestic sources and utilize such material for such purposes if such materials are not available from domestic sources for environmental or economic reasons.

(33 U.S.C. 2299)

**SEC. 936. STUDY OF CORPS CAPABILITIES.**

The Secretary shall study and evaluate the measures necessary to increase the capabilities of the United States Army Corps

of Engineers to undertake the planning and construction of water resources projects on an expedited basis and to adequately comply with all requirements of law applicable to the water resources program of the Corps of Engineers. As part of such study the Secretary shall consider appropriate measures to increase reliance on the private sector in the conduct of the water resources program of the Corps of Engineers. The Secretary shall implement such measures as may be necessary to improve the capabilities referred to in the first sentence of this section, including the establishment of increased levels of personnel, changes in project planning and construction procedures designed to lessen the time required for such planning and construction, and procedures for expediting the coordination of water resources projects with Federal, State, and local agencies.

(33 U.S.C. 2300)

**SEC. 937. REPORTS ON HYDROPOWER STATISTICS.**

Not later than January 15, 1988, and each January 15 thereafter, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report which—

- (1) specifies the amount of electricity generated by each water resource project constructed by the Secretary which generated electricity in the preceding fiscal year;
- (2) specifies the revenues received by the United States from the sale of electricity generated by such project; and
- (3) specifies the costs of construction, operation, and maintenance of such project allocated to the generation of electricity.

In carrying out the study under this section, the Secretary shall compare the actual amount of capital costs repaid to that amount that would be required to repay capital costs. The first report submitted under this section shall specify the amounts of electricity generated, the revenues received, and the costs allocated for each such project before October 1, 1985, on a fiscal year basis in constant dollars. Each report thereafter shall specify the amounts of electricity generated, the revenues received, and the costs allocated for each such project for the preceding fiscal year.

(33 U.S.C. 2301)

**SEC. 938. REPORTS ON SMALL BUSINESS CONTRACTS.**

(a)(1) The Secretary shall, on an annual basis, transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report describing the number and dollar amount of contracts awarded in each industry category or subcategory broken down by Engineer District of the Army Corps of Engineers. Such report shall include the number and dollar amount of contracts (A) set aside for small business concerns; (B) awarded to small business or small disadvantaged business concerns; (C) available for competition by qualified firms of all sizes; and (D) awarded to other than small business or small disadvantaged business concerns.

- (2) For purposes of this section, the term—

(A) “contract” means any contract, or any subcontract in connection with a subcontracting plan entered into pursuant to section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)), which is funded through appropriations made available to the Corps of Engineers-Civil; and

(B) “industry category or subcategory” means the four digit SIC category or subcategory defined by the Small Business Administration.

(b) In the interest of efficient and cost effective operations by the Secretary, the Comptroller General of the United States shall conduct a study of the Secretary’s contracting procedures for civil works projects. Such study shall examine whether potential bidders or offerors, regardless of their size, are allowed to compete fairly in the interest of lowering cost on contracts for construction. Within two years of the date of enactment of this Act, the Comptroller General shall report his findings to Congress together with an assessment of whether contract procedures are applied uniformly among the various field offices under the Secretary’s jurisdiction. The report shall also provide recommendations on improving contracting procedures, including (1) how the Secretary can prepare proposals for construction that assure, to the greatest extent reasonable, that no potential bidder or offeror is precluded from competing fairly for contracts, (2) whether recordkeeping requirements imposed by the Secretary on contractors are appropriate in the interest of competition, and (3) the extent to which the private sector can be used more efficiently by the Secretary in contracting for construction, architecture, engineering, surveying, and mapping.

(33 U.S.C. 2302)

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**SEC. 942. TECHNICAL ASSISTANCE.**

(a) Upon request of the Governor of a State, or the appropriate official of local government, the Secretary is authorized to provide designs, plans, and specifications, and such other technical assistance as he deems advisable to such State or local government for its use in carrying out—

(1) projects for removing accumulated snags and other debris, and clearing and straightening channels in navigable streams and tributaries thereof; and

(2) projects for renovating navigable streams and tributaries thereof by means of predominantly nonstructural methods judged by the Secretary to be cost effective, for the purpose of improved drainage, water quality, and habitat diversity.

(b) The non-Federal share of the cost of any designs, plans, specifications or technical assistance provided under subsection (a) shall be 50 percent.

(33 U.S.C. 426m)

**SEC. 943. HISTORICAL PROPERTIES.**

The Secretary is authorized to preserve, restore, and maintain those historic properties located on water resources development project lands under the jurisdiction of the Department of the Army

if such properties have been entered into the National Register of Historic Places.

(33 U.S.C. 2303)

**SEC. 944. FLOOD HAZARD INFORMATION.**

The Secretary, the Director of the Federal Emergency Management Agency, and the Administrator of the Soil Conservation Service shall take necessary actions, including the posting and distribution of information and the preparation and distribution of educational materials and programs, to ensure that information relating to flood hazard areas is generally available to the public.

(33 U.S.C. 709b)

**SEC. 945. DREDGE VESSEL DISPOSAL.**

Notwithstanding any other provision of law, the Administrator of the General Services Administration, pursuant to the provisions of sections 202 and 203(j) of the Federal Property and Administrative Services Act of 1949, may dispose of any Corps of Engineers vessel used for dredging that is declared to be in excess of Federal needs by the Secretary, together with related equipment owned by the United States and under the control of the Chief of Engineers, through sale or lease to a foreign government as part of a Corps of Engineers technical assistance program, or to a Federal or State maritime academy for training purposes, or to a non-Federal public body for scientific, educational, or cultural purposes, or through sale solely for scrap to foreign or domestic interests. Any such vessel shall not be disposed of under this section or any other provision of law for use within the United States for the purpose of engaging in dredging activities. Amounts collected from the sale or lease of any such vessel or equipment shall be deposited into the revolving fund authorized by section 101 of the Civil Functions Appropriations Act, 1954 (67 Stat. 199; 33 U.S.C. 576), to be available, as provided in appropriations Acts, for the operation and maintenance of vessels under the control of the Corps of Engineers.

(40 U.S.C. 483d)

**SEC. 946. LIGHTING AT DOCKS AND BOAT LAUNCHING FACILITIES.**

Whenever the Secretary considers a permit application for a dock or a boat launching facility under section 10 of the Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 403), the Secretary shall consider the needs of such facility for lighting from sunset to sunrise to make such facility's presence known within a reasonable distance.

\* \* \* \* \*

(33 U.S.C. 403b)

**SEC. 948. BUDGET ACT REQUIREMENTS.**

Any spending authority under this Act shall be effective only to such extent and in such amounts as are provided in appropriation Acts. For purposes of this Act, the term "spending authority" has the meaning provided in section 401(c)(2) of the Congressional Budget Act of 1974, except that such term does not include spending authority for which an exception is made under section 401(d) of such Act.

(33 U.S.C. 2201 note)



**SEC. 949. SEPARABILITY.**

If any provision of this Act, or the application of any provision of this Act to any person or circumstances, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

(33 U.S.C. 2304)

**SEC. 950. USE OF FMHA FUNDS.**

Notwithstanding any other provision of law, Federal assistance made available by the Farmers Home Administration may be used to pay the non-Federal share of any other Federal grant-in-aid program for any project for water resources, including water pollution control.

(33 U.S.C. 2305)

**SEC. 951. REPORTS.**

If any report required to be transmitted under this Act to the Committee on Public Works and Transportation of the House of Representatives or the Committee on Environment and Public Works of the Senate pertains in whole or in part to fish and wild-life mitigation, benthic environmental repercussions, or ecosystem mitigation, the Federal officer required to prepare or transmit that report also shall transmit a copy of the report to the Committee on Merchant Marine and Fisheries of the House of Representatives.

(33 U.S.C. 2306)

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