

112TH CONGRESS
2D SESSION

H. R. 6450

To facilitate and expedite the review of proposed improvements to Federal flood control projects to be constructed by local sponsors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2012

Mr. COSTELLO (for himself and Mr. SHIMKUS) introduced the following bill;
which was referred to the Committee on Transportation and Infrastructure

A BILL

To facilitate and expedite the review of proposed improvements to Federal flood control projects to be constructed by local sponsors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Local Modifications
5 to Federal Flood Control Projects Act of 2012”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) it is in the interest of the Federal Govern-
9 ment to permit local sponsors to investigate, plan,

1 design, fund, and construct improvements to Federal
2 flood control projects in order to reduce the risk
3 from flooding as quickly and efficiently as possible;
4 and

5 (2) the Secretary of the Army should take all
6 necessary actions to facilitate and expedite the re-
7 view of proposed improvements to Federal flood con-
8 trol projects to be constructed by local sponsors.

9 **SEC. 3. FLOOD CONTROL PROJECTS.**

10 (a) TAKING POSSESSION OF, USE OF, OR INJURY TO
11 HARBOR OR RIVER IMPROVEMENTS.—Section 14 of the
12 Act of March 3, 1899 (33 U.S.C. 408) is amended to read
13 as follows:

14 **“SEC. 14. TAKING POSSESSION OF, USE OF, OR INJURY TO**
15 **HARBOR OR RIVER IMPROVEMENTS.**

16 “(a) PROHIBITION.—It shall not be lawful for any
17 person or persons to take possession of or make use of
18 for any purpose, or build upon, alter, deface, destroy,
19 move, injure, obstruct by fastening vessels thereto or oth-
20 erwise, or in any manner whatever impair the usefulness
21 of any sea wall, bulkhead, jetty, dike, levee, wharf, pier,
22 or other work built by the United States, or any piece of
23 plant, floating or otherwise, used in the construction of
24 such work under the control of the United States, in whole
25 or in part, for the preservation and improvement of any

1 of its navigable waters or to prevent floods, or as boundary
2 marks, tide gauges, surveying stations, buoys, or other es-
3 tablished marks, nor remove for ballast or other purposes
4 any stone or other material composing such works.

5 “(b) EXCEPTIONS.—

6 “(1) TEMPORARY OCCUPATION OR USE.—Sub-
7 ject to paragraph (3), the Secretary of the Army, on
8 the recommendation of the Chief of Engineers, may
9 grant permission for the temporary occupation or
10 use of any of the aforementioned public works when
11 in the Secretary’s judgment the occupation or use
12 will not be injurious to the public interest.

13 “(2) PERMANENT ALTERATION, OCCUPATION,
14 OR USE.—Subject to paragraph (3), the Secretary,
15 on the recommendation of the Chief of Engineers,
16 may grant permission for the permanent alteration,
17 occupation, or use of any of the aforementioned pub-
18 lic works when in the judgment of the Secretary the
19 permanent alteration, occupation, or use will not be
20 injurious to the public interest and will not impair
21 the usefulness of the public work.

22 “(3) SPECIAL RULES FOR LOCAL SPONSORS OF
23 FLOOD CONTROL PROJECTS.—

24 “(A) REVIEW OF IMPROVEMENTS.—In the
25 case of an aforementioned public work that is

1 a flood control project, the Secretary shall grant
 2 permission to a local sponsor to construct an
 3 improvement to such flood control project in ac-
 4 cordance with section 14a.

5 “(B) EXEMPTION FOR OPERATION AND
 6 MAINTENANCE ACTIVITIES.—This section does
 7 not apply to operation and maintenance activi-
 8 ties of a local sponsor with respect to a flood
 9 control project.

10 “(C) DEFINITIONS.—In this paragraph,
 11 the terms ‘construct’, ‘flood control project’,
 12 ‘improvement’, ‘local sponsor’, and ‘operation
 13 and maintenance activities’ have the meanings
 14 given those terms in section 14a.”.

15 (b) IMPROVEMENTS TO FLOOD CONTROL PROJECTS
 16 PROPOSED BY LOCAL SPONSORS.—The Act of March 3,
 17 1899 (30 Stat. 1121) is amended by inserting after sec-
 18 tion 14 the following:

19 **“SEC. 14a. IMPROVEMENTS TO FLOOD CONTROL PROJECTS**
 20 **PROPOSED BY LOCAL SPONSORS.**

21 “(a) AUTHORITY TO GRANT PERMISSION FOR IM-
 22 PROVEMENTS.—The Secretary of the Army, on the rec-
 23 ommendation of the Chief of Engineers, may grant per-
 24 mission to a local sponsor to construct an improvement
 25 to a flood control project in accordance with this section.

1 “(b) STANDARD OF REVIEW.—

2 “(1) IMPROVEMENTS NECESSARY TO PROVIDE
3 QUALIFIED LEVEL OF PROTECTION.—

4 “(A) IN GENERAL.—For an improvement
5 to a flood control project that is necessary for
6 the project to provide a qualified level of protec-
7 tion, the Secretary shall grant permission under
8 subsection (a) when in the judgment of the Sec-
9 retary the proposed improvement does not per-
10 manently reduce the existing level of protection.

11 “(B) QUALIFIED LEVEL OF PROTEC-
12 TION.—As used in subparagraph (A), a quali-
13 fied level of protection is the lesser of—

14 “(i) the authorized level of protection;
15 or

16 “(ii) the level of protection necessary
17 to receive, maintain, or restore accredita-
18 tion pursuant to chapter I of the National
19 Flood Insurance Act of 1968 (42 U.S.C.
20 4011 et seq.).

21 “(2) IMPROVEMENTS ALTERING SCOPE OF
22 FLOOD CONTROL PROJECT.—

23 “(A) IN GENERAL.—For an improvement
24 to a flood control project associated with per-
25 manently increasing the level of protection pro-

1 vided by the project from the authorized level of
2 protection or permanently realigning the flood
3 control project to substantially increase or oth-
4 erwise significantly alter the geographic area
5 protected by the flood control project, the Sec-
6 retary shall grant permission under subsection
7 (a) when in the judgment of the Secretary the
8 improvement—

9 “(i) does not adversely affect the ex-
10 isting level of protection; and

11 “(ii) does not transfer the hydraulic
12 impact of the flood control project beyond
13 the standards that the Chief of Engineers
14 applies to flood control projects proposed
15 for initial Federal authorization.

16 “(B) LIMITATION.—This paragraph shall
17 not apply to an improvement that can be re-
18 viewed under paragraph (1).

19 “(c) CERTIFICATION BY REGISTERED PROFESSIONAL
20 ENGINEER REQUIRED FOR ALL IMPROVEMENTS.—The
21 Secretary may not grant permission under subsection (a)
22 with respect to an improvement unless the improvement
23 is constructed in accordance with plans and specifications
24 prepared and certified by a registered professional engi-
25 neer.

1 “(d) APPLICATIONS.—

2 “(1) IN GENERAL.—A local sponsor seeking
3 permission under subsection (a) to construct an im-
4 provement shall submit to the Secretary an applica-
5 tion requesting such permission.

6 “(2) DEADLINES FOR REVIEW.—

7 “(A) IN GENERAL.—If a local sponsor sub-
8 mits an application to the Secretary under
9 paragraph (1), the Secretary shall approve or
10 disapprove the application—

11 “(i) not later than 45 days after the
12 date of submission of the application, with
13 respect to an improvement subject to re-
14 view under subsection (b)(1); and

15 “(ii) not later than 120 days after the
16 date of submission of the application, with
17 respect to an improvement subject to re-
18 view under subsection (b)(2).

19 “(B) EXTENSIONS.—

20 “(i) INCOMPLETE APPLICATIONS.—If
21 the Secretary determines that an applica-
22 tion submitted by a local sponsor under
23 paragraph (1) is incomplete, the Secretary
24 shall notify the local sponsor of the specific
25 information that is missing or the analysis

1 that is needed to make a determination
2 under subsection (b). Upon submission of
3 the missing information or analysis by the
4 local sponsor, the Secretary may extend
5 the applicable review period under sub-
6 paragraph (A) by an additional 30 days.

7 “(ii) FURTHER EXTENSIONS BY MU-
8 TUAL AGREEMENT.—Any further extension
9 of the applicable review period may be
10 made only by mutual agreement of the
11 Secretary and the local sponsor.

12 “(e) APPROVAL AND DISAPPROVAL.—

13 “(1) APPROVAL.—If the Secretary approves an
14 application submitted under subsection (d), the Sec-
15 retary shall promptly notify the local sponsor of the
16 approval in writing.

17 “(2) DISAPPROVAL.—If the Secretary dis-
18 approves an application submitted under subsection
19 (d), the Secretary shall promptly notify the local
20 sponsor of the disapproval in writing and provide the
21 local sponsor with information concerning the rea-
22 sons for the disapproval. Such information shall in-
23 clude all technical data, analysis, modeling, and
24 other information used by the Secretary in issuing

1 the disapproval and a description of specific correc-
2 tive changes required for approval of the application.

3 “(3) DEEMED APPROVAL.—If the Secretary
4 does not approve or disapprove an application sub-
5 mitted under subsection (d) before the last day of
6 the applicable review period specified under sub-
7 section (d), the application is deemed approved.

8 “(f) ADMINISTRATIVE APPEALS.—

9 “(1) IN GENERAL.—Not later than 90 days
10 after the date of receiving a disapproval of an appli-
11 cation from the Secretary under subsection (e), a
12 local sponsor may file with the Secretary an appeal
13 of the disapproval.

14 “(2) CONDUCT OF APPEALS.—

15 “(A) CONSIDERATION OF TECHNICAL AND
16 SCIENTIFIC DATA.—In reviewing an appeal filed
17 under paragraph (1), the Secretary shall take
18 into account any technical or scientific data
19 submitted by the local sponsor that negates or
20 contradicts the information relied upon by the
21 Secretary in issuing the disapproval.

22 “(B) METHODS TO RESOLVE APPEALS.—

23 “(i) CONSULTATION.—The Secretary
24 shall resolve an appeal filed under para-

graph (1) through consultation with the local sponsor.

“(ii) FURTHER METHODS.—If, 60 days after the local sponsor files an appeal under paragraph (1), the appeal is not resolved through consultation, the local sponsor may elect to continue the appeal process through—

“(I) an administrative hearing;

or

“(II) submission of technical and scientific data, including the data described in subparagraph (A), to an independent scientific body in accordance with subparagraph (C).

“(C) INDEPENDENT SCIENTIFIC BODY.—

“(i) MEMBERSHIP OF BODY.—Information may be submitted to an independent scientific body under subparagraph (B)(ii) only if the membership of the independent scientific body is mutually agreed upon by the Secretary and the local sponsor.

“(ii) DEADLINE FOR RECOMMENDATION.—Not later than 90 days after the

1 date on which a local sponsor elects to sub-
2 mit data to an independent scientific body
3 under subparagraph (B)(ii), the inde-
4 pendent scientific body shall make a rec-
5 ommendation to the Secretary with respect
6 to an appeal by applying the applicable
7 standard specified in subsection (b).

8 “(3) DEADLINES FOR FINAL DETERMINA-
9 TIONS.—

10 “(A) CONSULTATION.—In the case of an
11 appeal filed under paragraph (1) for which the
12 local sponsor has not elected to continue the ap-
13 peal process through an administrative hearing
14 or submission of data to an independent sci-
15 entific body, not later than 90 days after the
16 date of receiving the appeal, or on a date mutu-
17 ally agreed upon by the Secretary and the local
18 sponsor, the Secretary shall make a final deter-
19 mination with respect to the appeal.

20 “(B) ADMINISTRATIVE HEARING.—In the
21 case of an appeal filed under paragraph (1) for
22 which the local sponsor has elected to continue
23 the appeal process through an administrative
24 hearing under paragraph (3)(B)(ii), not later
25 than 120 days after the date on which the local

1 sponsor makes such election, or on a date mu-
2 tually agreed upon by the Secretary and the
3 local sponsor, the Secretary shall make a final
4 determination with respect to the appeal.

5 “(C) SUBMISSION TO INDEPENDENT SCI-
6 ENTIFIC BODY.—In the case of an appeal filed
7 under paragraph (1) for which the local sponsor
8 has elected to continue the appeal process
9 through submission of data to an independent
10 scientific body under paragraph (3)(B)(ii), not
11 later than 30 days after the date on which the
12 independent scientific body makes a rec-
13 ommendation under paragraph (3)(C)(ii), or on
14 a date mutually agreed upon by the Secretary
15 and the local sponsor, the Secretary shall make
16 a final determination with respect to the appeal.

17 “(4) REIMBURSEMENT OF EXPENSES.—If, in
18 connection with an appeal under this subsection, a
19 local sponsor incurs additional expenses for surveyor,
20 engineering, or similar services, but not including
21 legal services, and is successful in whole or in part,
22 the Secretary shall reimburse the local sponsor for
23 such expenses, subject to the availability of appro-
24 priations for that purpose.

1 “(g) JUDICIAL APPEALS.—Not later than 180 days
2 after the date of receiving a final determination by the
3 Secretary with respect to an appeal filed under subsection
4 (f), a local sponsor may appeal the determination to the
5 United States district court for the district in which the
6 flood control project that is the subject of the appeal is
7 located. The scope of review by the court shall be as pro-
8 vided by chapter 7 of title 5, United States Code.

9 “(h) PROHIBITION ON FURTHER REVIEWS.—

10 “(1) IN GENERAL.—With respect to a local
11 sponsor seeking permission under subsection (a), the
12 Secretary may not require any further review than
13 is necessary under subsection (b) or require as a
14 part of an application seeking such permission an
15 additional review by any other person, governmental
16 body, or agency unless otherwise required by State
17 or Federal law.

18 “(2) NON-APPLICABILITY OF SAFETY ASSUR-
19 ANCE REVIEW.—With respect to a local sponsor
20 seeking permission under subsection (a), the Sec-
21 retary may not require review under section 2035 of
22 the Water Resources Development Act of 2007 (33
23 U.S.C. 2344).

24 “(i) GUIDELINES.—

1 “(1) IN GENERAL.—Not later than 6 months
2 after the date of enactment of this section, the Sec-
3 retary, after consultation with local sponsors that
4 operate and maintain flood control projects, shall
5 issue guidelines to facilitate and expedite the review
6 of proposed improvements to flood control projects
7 to be constructed by local sponsors.

8 “(2) CONTENTS.—The guidelines shall—

9 “(A) provide for delegation of the Sec-
10 retary’s authority to grant permission under
11 this section to—

12 “(i) the District Commander, with re-
13 spect to an improvement subject to review
14 under subsection (b)(1); and

15 “(ii) the Division Commander, with
16 respect to an improvement subject to re-
17 view under subsection (b)(2);

18 “(B) include criteria for determining
19 whether an improvement is subject to review
20 under subsection (b)(1) or (b)(2);

21 “(C) allow a local sponsor to submit an ap-
22 plication under this section for a separable
23 project element rather than an entire project, at
24 the election of the local sponsor;

1 “(D) include criteria for determining the
2 stage of project design at which an application
3 can be submitted under this section, and ensure
4 that such stage provides a local sponsor with
5 guidance as soon as practicable;

6 “(E) include a description of the required
7 content of an application submitted under this
8 section, including the data and analysis to be
9 provided by the local sponsor as part of the ap-
10 plication; and

11 “(F) address such other matters as the
12 Secretary, acting through the Chief of Engi-
13 neers and in consultation with local sponsors,
14 considers necessary.

15 “(j) PREVIOUSLY APPROVED PROJECTS.—A local
16 sponsor shall not be required to seek further permission
17 under this section with respect to any improvement to a
18 flood control project constructed by the local sponsor that
19 has been approved pursuant to Federal law before the date
20 of enactment of this section and for which construction
21 commenced before such date of enactment.

22 “(k) DEFINITIONS.—In this section, the following
23 definitions apply:

24 “(1) AUTHORIZED LEVEL OF PROTECTION.—

25 The term ‘authorized level of protection’ means the

1 level of protection specified in the authorizing stat-
2 ute for a flood control project.

3 “(2) CONSTRUCT.—The term ‘construct’ means
4 to undertake activities to provide for an improve-
5 ment to a flood control project, including construc-
6 tion, reconstruction, rehabilitation, restoration, and
7 repair activities and activities associated with inves-
8 tigations, planning, and funding.

9 “(3) EXISTING LEVEL OF PROTECTION.—The
10 term ‘existing level of protection’ means the level of
11 protection provided by a flood control project, as de-
12 termined by a registered professional engineer se-
13 lected by the local sponsor, as of the date on which
14 the local sponsor submits an application under sub-
15 section (d)(1).

16 “(4) FLOOD CONTROL PROJECT.—The term
17 ‘flood control project’ means a public work described
18 in section 14(a) that is used for flood damage reduc-
19 tion. For the purposes of this section, the boundaries
20 of a flood control project are the boundaries of the
21 right-of-way for the applicable public work, as deter-
22 mined at the time the public work was built by the
23 United States.

24 “(5) IMPROVEMENT.—

1 “(A) IN GENERAL.—The term ‘improve-
2 ment’ means an alteration or permanent or
3 temporary occupation or use.

4 “(B) EXCLUSION.—The term ‘improve-
5 ment’ does not include operation and mainte-
6 nance activities.

7 “(6) LOCAL SPONSOR.—The term ‘local spon-
8 sor’ means a State, a political subdivision of a State,
9 or a local agency with authority to—

10 “(A) operate and maintain a flood control
11 project under section 3 of the Act of June 22,
12 1936 (33 U.S.C. 701c); or

13 “(B) construct a flood control project
14 under State law.

15 “(7) OPERATION AND MAINTENANCE ACTIVI-
16 TIES.—The term ‘operation and maintenance activi-
17 ties’ means—

18 “(A) activities required to be conducted by
19 a local sponsor pursuant to section 208.10 of
20 title 33, Code of Federal Regulations (as in ef-
21 fect on the date of enactment of this section);

22 “(B) activities required to be conducted by
23 a local sponsor under the manual prepared by
24 the Secretary for the flood control project pur-
25 suant to the Operation, Maintenance, Repair,

1 Replacement, and Rehabilitation Manual for
2 Projects and Separable Elements Managed By
3 Project Sponsors (Engineer Regulation 1110–
4 2–401; September 30, 1994); and

5 “(C) such other activities as are conducted
6 by a local sponsor in the normal course of oper-
7 ating and maintaining the flood control project,
8 or as are otherwise determined by the Sec-
9 retary, acting through the Chief of Engineers,
10 to be within a local sponsor’s operation and
11 maintenance responsibilities with respect to the
12 flood control project.”.

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