

114TH CONGRESS
2D SESSION

S. 2835

To amend the National Dam Safety Program Act to establish a program to provide grant assistance for the rehabilitation and repair of high hazard potential dams, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 21, 2016

Mr. REED (for himself and Mrs. CAPITO) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the National Dam Safety Program Act to establish a program to provide grant assistance for the rehabilitation and repair of high hazard potential dams, 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. REHABILITATION AND REPAIR OF HIGH HAZ-**
4 **ARD POTENTIAL DAMS.**

5 (a) DEFINITIONS.—Section 2 of the National Dam
6 Safety Program Act (33 U.S.C. 467) is amended—

7 (1) by redesignating paragraphs (4), (5), (6),
8 (7), (8), (9), (10), (11), (12), and (13) as para-

graphs (5), (6), (7), (8), (9), (11), (13), (14), (15),
and (16), respectively;

(2) by inserting after paragraph (3) the following:

“(4) ELIGIBLE HIGH HAZARD POTENTIAL
DAM.—

“(A) IN GENERAL.—The term ‘eligible
high hazard potential dam’ means a non-Federal
dam that—

“(i) is classified as ‘high hazard potential’
by the State dam safety agency in
the State in which the dam is located;

“(ii) has an emergency action plan approved
by the relevant State dam safety
agency; and

“(iii) the State in which the dam is located
determines—

“(I) fails to meet minimum dam
safety standards of the State; and

“(II) poses an unacceptable risk
to the public.

“(B) EXCLUSION.—The term ‘eligible high
hazard potential dam’ does not include—

“(i) a licensed hydroelectric dam; or

1 “(ii) a dam built under the authority
2 of the Secretary of Agriculture.”;

3 (3) by inserting after paragraph (9) (as redesignated by paragraph (1)) the following:

5 “(10) NON-FEDERAL SPONSOR.—The term
6 ‘non-Federal sponsor’, in the case of a project receiving assistance under section 8A, includes—

8 “(A) a governmental organization; and

9 “(B) a nonprofit organization.”; and

10 (4) by inserting after paragraph (11) (as redesignated by paragraph (1)) the following:

12 “(12) REHABILITATION.—The term ‘rehabilitation’ means the repair, replacement, reconstruction,
13 or removal of a dam that is carried out to meet applicable State dam safety and security standards.”.

16 (b) PROGRAM FOR REHABILITATION AND REPAIR OF
17 DEFICIENT DAMS.—The National Dam Safety Program
18 Act is amended by inserting after section 8 (33 U.S.C.
19 467f) the following:

20 **“SEC. 8A. REHABILITATION AND REPAIR OF DEFICIENT**
21 **DAMS.**

22 “(a) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish, within FEMA, a program to provide
23 technical, planning, design, and construction assistance in
24

1 the form of grants to non-Federal sponsors for rehabilita-
 2 tion of eligible high hazard potential dams.

3 “(b) ELIGIBLE ACTIVITIES.—A grant awarded under
 4 this section for a project may be used for—

5 “(1) repair;

6 “(2) removal; or

7 “(3) any other structural or nonstructural
 8 measures.

9 “(c) AWARD OF GRANTS.—

10 “(1) APPLICATION.—

11 “(A) IN GENERAL.—A non-Federal spon-
 12 sor interested in receiving a grant under this
 13 section may submit to the Administrator an ap-
 14 plication for the grant.

15 “(B) REQUIREMENTS.—An application
 16 submitted to the Administrator under this sec-
 17 tion shall be submitted at such time, be in such
 18 form, and contain such information as the Ad-
 19 ministrator may prescribe by regulation.

20 “(2) GRANT.—

21 “(A) IN GENERAL.—The Administrator
 22 may make a grant in accordance with this sec-
 23 tion for rehabilitation of a high hazard potential
 24 dam to a non-Federal sponsor that submits an

1 application for the grant in accordance with the
2 regulations prescribed by the Administrator.

3 “(B) PROJECT GRANT AGREEMENT.—The
4 Administrator shall enter into a project grant
5 agreement with the non-Federal sponsor to es-
6 tablish the terms of the grant and the project,
7 including the amount of the grant.

8 “(C) GRANT ASSURANCE.—As part of a
9 project grant agreement under subparagraph
10 (B), the Administrator shall require the non-
11 Federal sponsor to provide an assurance, with
12 respect to the dam to be rehabilitated under the
13 project, that the owner of the dam has devel-
14 oped and will carry out a plan for maintenance
15 of the dam during the expected life of the dam.

16 “(D) LIMITATION.—A grant provided
17 under this section shall not exceed the lesser
18 of—

19 “(i) 12.5 percent of the total amount
20 of funds made available to carry out this
21 section; or

22 “(ii) \$7,500,000.

23 “(d) REQUIREMENTS.—

1 “(1) APPROVAL.—A grant awarded under this
2 section for a project shall be approved by the rel-
3 evant State dam safety agency.

4 “(2) COST SHARING.—

5 “(A) IN GENERAL.—Any assistance pro-
6 vided under this section for a project shall be
7 subject to a non-Federal cost-sharing require-
8 ment of not less than 35 percent.

9 “(B) IN-KIND CONTRIBUTIONS.—The non-
10 Federal share under subparagraph (A) may be
11 provided in the form of in-kind contributions.

12 “(3) ALLOCATION OF FUNDS.—The total
13 amount of funds made available to carry out this
14 section for each fiscal year shall be distributed as
15 follows:

16 “(A) EQUAL DISTRIBUTION.— $\frac{1}{3}$ shall be
17 distributed equally among the States in which
18 the projects for which applications are sub-
19 mitted under subsection (c)(1) are located.

20 “(B) NEED-BASED.— $\frac{2}{3}$ shall be distrib-
21 uted among the States in which the projects for
22 which applications are submitted under sub-
23 section (c)(1) are located based on the propor-
24 tion that—

1 “(i) the number of eligible high haz-
2 ard potential dams in the State; bears to

3 “(ii) the number of eligible high haz-
4 ard potential dams in all States in which
5 projects for which applications are sub-
6 mitted under subsection (c)(1).

7 “(e) USE OF FUNDS.—None of the funds provided
8 in the form of a grant or otherwise made available under
9 this section shall be used—

10 “(1) to rehabilitate a Federal dam;

11 “(2) to perform routine operation or mainte-
12 nance of a dam;

13 “(3) to modify a dam to produce hydroelectric
14 power;

15 “(4) to increase water supply storage capacity;
16 or

17 “(5) to make any other modification to a dam
18 that does not also improve the safety of the dam.

19 “(f) CONTRACTUAL REQUIREMENTS.—

20 “(1) IN GENERAL.—Subject to paragraph (2),
21 as a condition on the receipt of a grant under this
22 section, a non-Federal sponsor that receives the
23 grant shall require that each contract and sub-
24 contract for program management, construction
25 management, planning studies, feasibility studies,

1 architectural services, preliminary engineering, de-
 2 sign, engineering, surveying, mapping, and related
 3 services entered into using funds from the grant be
 4 awarded in the same manner as a contract for archi-
 5 tectural and engineering services is awarded under—

6 “(A) chapter 11 of title 40, United States
 7 Code; or

8 “(B) an equivalent qualifications-based re-
 9 quirement prescribed by the relevant State.

10 “(2) NO PROPRIETARY INTEREST.—A contract
 11 awarded in accordance with paragraph (1) shall not
 12 be considered to confer a proprietary interest upon
 13 the United States.

14 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
 15 is authorized to be appropriated to carry out this section
 16 \$60,000,000 for each of fiscal years 2017 through 2027,
 17 to remain available until expended.”.

18 **SEC. 2. RULEMAKING.**

19 (a) PROPOSED RULEMAKING.—Not later than 90
 20 days after the date of enactment of this Act, the Adminis-
 21 trator of the Federal Emergency Management Agency
 22 shall issue a notice of proposed rulemaking regarding the
 23 amendments made by section 1 to the National Dam Safe-
 24 ty Program Act (33 U.S.C. 467 et seq.).

1 (b) FINAL RULE.—Not later than 150 days after the
2 date of enactment of this Act, the Administrator of the
3 Federal Emergency Management Agency shall promulgate
4 a final rule regarding the amendments described in sub-
5 section (a).

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