

116TH CONGRESS
2D SESSION

S. 3403

To establish a lower Missouri River flood prevention program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2020

Mr. BLUNT (for himself, Mr. GRASSLEY, Mr. ROBERTS, Mr. MORAN, Mrs. FISCHER, Mr. HAWLEY, Ms. ERNST, and Mr. SASSE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To establish a lower Missouri River flood prevention program, 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. LOWER MISSOURI RIVER FLOOD PREVENTION**

4 **PROGRAM.**

5 (a) DEFINITIONS.—In this section:

6 (1) AFFECTED COMMUNITY.—The term “af-
7 fected community” means a legally constituted pub-
8 lic body (as that term is used in section 221(b) of
9 the Flood Control Act of 1970 (42 U.S.C. 1962d—

1 5b(b)) the jurisdiction of which has been subject to
 2 flooding from the lower Missouri River or a tribu-
 3 tary of the lower Missouri River in not less than 2
 4 events during any 10-year period beginning on or
 5 after January 1, 2000, notwithstanding the provi-
 6 sion of emergency flood fighting assistance under
 7 section 5 of the Act of August 18, 1941 (commonly
 8 known as the “Flood Control Act of 1941”) (55
 9 Stat. 650, chapter 377; 33 U.S.C. 701n), from the
 10 Corps of Engineers during those flooding events.

11 (2) LOWER MISSOURI RIVER.—The term “lower
 12 Missouri River” means—

13 (A) the lower 735 miles of the Missouri
 14 River from Sioux City, Iowa, to the mouth of
 15 the Missouri River; and

16 (B) the tributaries of the portion of the
 17 Missouri River described in subparagraph (A).

18 (3) MISSOURI RIVER PROJECT.—The term
 19 “Missouri River project” means—

20 (A) a project constructed as part of—

21 (i) the Pick-Sloan Missouri River
 22 Basin Program authorized by section 9(b)
 23 of the Act of December 22, 1944 (com-
 24 monly known as the “Flood Control Act of
 25 1944”) (58 Stat. 891, chapter 665); or

1 (ii) the Missouri River Bank Stabiliza-
2 tion and Navigation Project authorized by
3 section 2 of the Act of March 2, 1945
4 (commonly known as the “River and Har-
5 bor Act of 1945”) (59 Stat. 19, chapter
6 19); and

7 (B) a locally owned levee system, as identi-
8 fied by the Secretary for participation under the
9 program under subsection (b).

10 (4) SECRETARY.—The term “Secretary” means
11 the Secretary of the Army.

12 (b) PROGRAM.—

13 (1) IN GENERAL.—The Secretary shall carry
14 out a program to study, design, and construct water
15 resources development projects, and modifications to
16 completed water resources development projects, to
17 provide flood protection to affected communities.

18 (2) PRELIMINARY TECHNICAL EVALUATIONS.—
19 The Secretary shall carry out, at full Federal ex-
20 pense, any technical evaluations or analyses of a
21 Missouri River project determined by the Secretary
22 to be necessary to formulate flood protection rec-
23 ommendations for affected communities that avoid
24 or minimize—

1 (A) the potential for flood risk transfer;
2 and

3 (B) adverse impacts to navigation and
4 other authorized purposes of the applicable Mis-
5 souri River project.

6 (3) SYSTEM PLAN.—

7 (A) IN GENERAL.—A preliminary technical
8 evaluation under paragraph (2) shall include
9 development of a system plan for reducing flood
10 risk and improving resiliency that shall be used
11 in recommending projects for construction.

12 (B) CONSIDERATIONS.—In developing a
13 system plan under subparagraph (A), the Sec-
14 retary shall consider—

15 (i) recommendations of the Pick-Sloan
16 Missouri River Basin Program authorized
17 by section 9(b) of the Act of December 22,
18 1944 (commonly known as the “Flood
19 Control Act of 1944”) (58 Stat. 891, chap-
20 ter 665), and subsequent relevant engi-
21 neering observations and reports; and

22 (ii) the use of both structural and
23 nonstructural measures, including the set-
24 ting back of levees and removing struc-
25 tures from areas of recurring flood vulner-

1 ability where advantageous to reduce sys-
2 tem flood risk and damages, and where lo-
3 cally acceptable.

4 (4) CONSULTATION.—The Secretary shall carry
5 out the program under this subsection in consulta-
6 tion with applicable Federal and State agencies, In-
7 dian Tribes, and other stakeholders.

8 (5) CONSTRUCTION.—

9 (A) FEASIBILITY REPORT.—For each
10 project recommended for construction under
11 this subsection, the District Commander of the
12 district in which the project is located shall de-
13 velop a feasibility report for approval by the
14 Commander of the Northwestern Division of
15 the Corps of Engineers that includes project
16 features, costs, cooperation requirements, and
17 justification.

18 (B) CONSTRUCTION OF PROJECTS.—After
19 approval of a feasibility report under subpara-
20 graph (A) and subject to paragraph (6), the
21 Secretary shall construct the project.

22 (C) TIMELINESS.—The Secretary shall
23 carry out feasibility studies and construction
24 phase activities under this subsection as expedi-
25 tiously as possible, including by concurrently

conducting project planning and construction activities where advisable.

(6) COST.—

(A) IN GENERAL.—Except as provided under subparagraph (B), not more than \$75,000,000 may be used for the Federal costs of construction of a project under this subsection.

(B) SPECIFIC AUTHORIZATION.—The Secretary may carry out a project under this subsection for which the Federal share of the cost of the project exceeds \$75,000,000 if Congress provides a specific authorization for the project prior to construction.

(7) COST-SHARE.—

(A) IN GENERAL.—Notwithstanding any other provision of law and subject to subparagraph (C), the Federal share of the cost of a feasibility study or project carried out under this subsection shall be 80 percent.

(B) INCLUSIONS.—Costs of a project carried out under this subsection shall include the costs of—

(i) design;

(ii) design-related activities and data gathering;

(iii) all land, easements, right-of-way acquisitions, and borrow and disposal areas, including related administrative costs, required for construction and maintenance of the project;

(iv) costs to relocate compensable public and private utilities; and

(v) construction and construction management.

(C) ABILITY TO PAY.—

(i) IN GENERAL.—A cost-sharing agreement for a project under this subsection shall be subject to the ability of the affected community to pay.

(ii) DETERMINATION.—The ability of an affected community to pay shall be determined by the Secretary, in accordance with procedures established by the Secretary.

(iii) TREATMENT.—Any reduction in the share of the affected community of the cost of a project under this subsection in accordance with clause (i) shall not be in-

1 cluded for purposes of the amount de-
2 scribed in paragraph (6)(A).

3 (8) TRANSFER.—On completion of a project
4 under this subsection, the Secretary shall transfer
5 ownership (including operation and maintenance re-
6 sponsibility) of the project, including any permanent
7 land and easements acquired for the project, to the
8 non-Federal interest.

9 (9) AUTHORIZATION OF APPROPRIATIONS.—
10 There is authorized to be appropriated for planning,
11 design, and construction under this section
12 \$500,000,000, to remain available until expended.

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