

directed to allow credit in the accounts of disbursing officers of the Army for and on account of all such payments.

SEC. 9. That payments heretofore made for travel allowances to personnel in and under the jurisdiction of the War Department incident to the Ohio-Mississippi flood in 1937 are hereby ratified and validated, and the Comptroller General of the United States is hereby authorized and directed to allow credit in the accounts of disbursing officers of the Army for and on account of all such payments: *Provided*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to any person a sum equal to the amount collected from such person on account of payments which are herein validated, upon presentation of a claim therefor to the Comptroller General of the United States, who is authorized and directed to certify same to the Secretary of the Treasury for payment.

Certain Ohio-Mississippi flood payments validated.

Proviso,
Refunds.

SEC. 10. That payments heretofore made to Cornelius M. Daly (now lieutenant colonel, Cavalry) for longevity pay increases incident to his service as a cadet, United States Revenue Cutter Service, are hereby ratified and validated, and the Comptroller General of the United States is hereby authorized and directed to allow credit in the accounts of disbursing officers of the Army for and on account of all such payments.

Lt. Col. Cornelius M. Daly.
Longevity pay increases validated.

SEC. 11. That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the administrator of the estate of Captain Bigelow B. Barbee, Finance Department, the amount of \$191.73, which amount represents overpayments due to minor errors of computation of pay and allowances due former enrollees of the Civilian Conservation Corps, and was deducted by the Comptroller General of the United States from the amount authorized to be paid to the estate of Captain Barbee by the Act of June 22, 1938 (52 Stat. 1373): *Provided*, That no part of this amount shall be charged against any person other than the person erroneously paid.

Capt. Bigelow B. Barbee.
Payment to estate of.

Proviso,
Accounting.

SEC. 12. That the Comptroller General of the United States be, and he is hereby, authorized and directed to credit in the accounts of Lieutenant Colonel Walter D. Dabney, Finance Department, the amount of \$30.25, public funds for which he is accountable, which were paid to a former enrollee for final pay, and to a civilian employee for travel allowances, and disallowed by the Comptroller General of the United States.

Lt. Col. Walter D. Dabney.

Approved, June 20, 1940.

[CHAPTER 409]

AN ACT

To provide for the alteration of certain bridges over navigable waters of the United States, for the apportionment of the cost of such alterations between the United States and the owners of such bridges, and for other purposes.

June 21, 1940
[H. R. 9381]
[Public, No. 647]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. When used in this Act, unless the context indicates otherwise—

Alteration of certain bridges, etc.
Definitions.

The term "alteration" includes changes of any kind, reconstruction, or removal in whole or in part.

The term "bridge" means a lawful bridge over navigable waters of the United States, including approaches, fenders and appurtenances

thereto, used and operated for the purpose of carrying railroad traffic, or both railroad and highway traffic.

The term "bridge owner" means any corporation, association, partnership, or individual owning any bridge, and, when any bridge shall be in the possession or under the control of any trustee, receiver, trustee in bankruptcy, or lessee, said term shall include both the owner of the legal title and the person or entity in possession or control of such bridge.

The term "bridge owner" shall also mean and include all joint owners, particularly States, counties, municipalities, or other participants in ownership of bridges for both railroad and highway traffic.

The term "Secretary" means the Secretary of War acting directly or through the Chief of Engineers.

The term "United States", when used in a geographical sense, includes the Territories and possessions of the United States.

OBSTRUCTION OF NAVIGATION

Obstruction of navigation.

SEC. 2. No bridge shall at any time unreasonably obstruct the free navigation of any navigable waters of the United States.

NOTICE, HEARINGS, AND FINDINGS

Notice, hearings, and findings.

SEC. 3. Whenever any bridge shall, in the opinion of the Secretary, at any time unreasonably obstruct such navigation, it shall be the duty of the Secretary, after notice to interested parties, to hold a hearing at which the bridge owner, those interested in water navigation thereunder or therethrough, those interested in either railroad or highway traffic thereover, and any other party or parties in interest shall have full opportunity to offer evidence and be heard as to whether any alteration of such bridge is needed, and if so what alterations are needed, having due regard to the necessity of free and unobstructed water navigation and to the necessities of the rail or highway traffic. If, upon such hearing, the Secretary determines that any alterations of such bridge are necessary in order to render navigation through or under it reasonably free, easy, and unobstructed, having due regard also for the necessities of rail or highway traffic thereover, he shall so find and shall issue and cause to be served upon interested parties an order requiring such alterations of such bridge as he finds to be reasonably necessary for the purposes of navigation.

SUBMISSION AND APPROVAL OF GENERAL PLANS AND SPECIFICATIONS

Plans, etc., showing alterations.

SEC. 4. It shall be the duty of the bridge owner to prepare and submit to the Secretary, within ninety days after service of his order, general plans and specifications to provide for the alteration of such bridge in accordance with such order, and for such additional alteration of such bridge as the bridge owner may desire to meet the necessities of railroad or highway traffic, or both. The Secretary may approve or reject such general plans and specifications, in whole or in part, and may require the submission of new or additional plans and specifications, but when the Secretary shall have approved general plans and specifications, they shall be final and binding upon all parties unless changes therein be afterward approved by the Secretary and the bridge owner.

Rejection or approval.

CONTRACTS FOR PROJECT; GUARANTY OF COST

Bids.

SEC. 5. After approval of such general plans and specifications by the Secretary, and within ninety days after notification of such

approval, the bridge owner shall, in such manner as the Secretary may prescribe, take bids for the alteration of such bridge in accordance with such general plans and specifications. All bids, including any bid for all or part of the project submitted by the bridge owner, shall be submitted to the Secretary, together with a recommendation by the bridge owner as to the most competent bid or bids, and at the same time the bridge owner shall submit to the Secretary a written guaranty that the total cost of the project, including the cost of such work as is to be performed by the bridge owner and not included in the work to be performed by contract, shall not exceed the sum stated in said guaranty. The Secretary may direct the bridge owner to reject all bids and to take new bids, or may authorize the bridge owner to proceed with the project, by contract, or partly by contract and partly by the bridge owner, or wholly by the bridge owner. Upon such authorization and fixing of the proportionate shares of the cost as provided in section 6, the bridge owner shall, within a reasonable time to be prescribed by the Secretary, proceed with the work of alteration; and the cost thereof shall be borne by the United States and by the bridge owner, as hereinafter provided.

APPORTIONMENT OF COST

SEC. 6. At the time the Secretary shall authorize the bridge owner to proceed with the project, as provided in section 5, and after an opportunity to the bridge owner to be heard thereon, the Secretary shall determine and issue an order specifying the proportionate shares of the total cost of the project to be borne by the United States and by the bridge owner. Such apportionment shall be made on the following basis: The bridge owner shall bear such part of the cost as is attributable to the direct and special benefits which will accrue to the bridge owner as a result of the alteration, including the expectable savings in repair or maintenance costs; and that part of the cost attributable to the requirements of traffic by railroad or highway, or both, including any expenditure for increased carrying capacity of the bridge, and including such proportion of the actual capital cost of the old bridge or of such part of the old bridge as may be altered or changed or rebuilt, as the used service life of the whole or a part, as the case may be, bears to the total estimated service life of the whole or such part: *Provided*, That the part of the cost of alteration of any bridge for both highway and railroad traffic, attributable to the requirements of traffic by highway, shall be borne by the proprietor of the highway: *Provided further*, That in the event the alteration or relocation of any bridge may be desirable for the reason that the bridge unreasonably obstructs navigation, but also for some other reason, the Secretary may require equitable contribution from any interested person, firm, association, corporation, municipality, county, or State desiring such alteration or relocation for such other reason, as a condition precedent to the making of an order for such alteration or relocation. The United States shall bear the balance of the cost, including that part attributable to the necessities of navigation.

PAYMENT OF SHARE OF THE UNITED STATES

SEC. 7. When the Secretary shall have approved the general plans and specifications for the alteration of such bridge and the guaranty with respect to the cost thereof, and shall have fixed the proportionate shares thereof as between the United States and the bridge owner, he shall furnish to the Secretary of the Treasury a certified copy of his approval of such plans and specifications and guaranty,

Recommendation of owner.

Written guaranty of cost.

Rejection, etc.

Commencement of work.

Determination and issuance of order.

Basis for apportionment.
Bridge owner.

Provisos.
Proprietor of highway.

Contributions from interested persons, etc.

United States to bear balance of cost.

Setting aside of U. S. share by Secretary of Treasury.

and of his order fixing the proportionate shares of the United States and of the bridge owner, and the Secretary of the Treasury shall thereupon set aside, out of any appropriation available for such purpose, the share of the United States payable under this Act on account of the project. When the Secretary finds that such project has been completed in accordance with his order, he shall cause to be paid to the bridge owner, out of the funds so set aside, the proportionate share of the total cost of the project allocated to the United States; or he may, in his discretion, from time to time, cause payments to be made on such construction costs as the work progresses. The total payments out of Federal funds shall not exceed the proportionate share of the United States of the total cost of the project paid or incurred by the bridge owner, and, if such total cost exceeds the cost guaranteed by the bridge owner, shall not exceed the proportionate share of the United States of such guaranteed cost, except that if the cost of the work exceeds the guaranteed cost by reason of emergencies, conditions beyond the control of the owner, or unforeseen or undetermined conditions, the Secretary may, after full review of all the circumstances, provide for additional payments by the United States to help defray such excess cost to the extent he deems to be reasonable and proper, and shall certify such additional payments to the Secretary of the Treasury for payment. All payments to any bridge owner herein provided for shall be made by the Secretary of the Treasury through the Division of Disbursement upon certifications of the Secretary of War.

APPROPRIATION AUTHORIZED

Appropriation authorized.
Post, p. 1047.

SEC. 8. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

FAILURE TO COMPLY WITH ORDERS; PENALTIES; REMOVAL OF BRIDGE

Punishment for noncompliance with order.

SEC. 9. Any bridge owner who shall willfully fail or refuse to comply with any lawful order of the Secretary, made in accordance with the provisions of this Act, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished in any court of competent jurisdiction by a fine not exceeding \$5,000, and every month such bridge owner shall remain in default shall be deemed a new offense and subject such bridge owner to additional penalties therefor. In addition to the penalties above prescribed the Secretary may, upon the failure or refusal of any bridge owner to comply with any lawful order issued by the Secretary in regard thereto, cause the removal of any such bridge and accessory works at the expense of the bridge owner; and suit for such expense may be brought in the name of the United States against such bridge owner and recovery had for such expense in any court of competent jurisdiction. The removal of any bridge erected or maintained in violation of the provisions of this Act or the order or direction of the Secretary made in pursuance thereof, and compliance with any order of the Secretary made with respect to any bridge in accordance with the provisions of this Act, may be enforced by injunction, mandamus, or other summary process upon application to the district court of any district in which such bridge may, in whole or in part, exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States at the request of the Secretary.

Removal of bridge at owner's expense.

Suit for such expense.

Removal enforceable by injunction, etc.

REVIEW OF FINDINGS AND ORDERS

SEC. 10. Any order made or issued under section 6 of this Act may be reviewed by the circuit court of appeals for any judicial circuit in which the bridge in question is wholly or partly located, if a petition for such review is filed within three months after the date such order is issued. The judgment of any such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certification or certiorari, in the manner provided in sections 239 and 240 of the Judicial Code, as amended. The review by such Court shall be limited to questions of law, and the findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive. Upon such review, such Court shall have power to affirm or, if the order is not in accordance with law, to modify or to reverse the order, with or without remanding the case for a rehearing as justice may require. Proceedings under this section shall not operate as a stay of any order of the Secretary issued under provisions of this Act other than section 6, or relieve any bridge owner of any liability or penalty under such provisions.

Review of order.
By circuit court of appeals.

By U. S. Supreme Court.

28 U. S. C. §§ 346, 347; Supp. V, § 347.
Limitation.

Power of Court.

REGULATIONS AND ORDERS

SEC. 11. The Secretary is authorized to prescribe such rules and regulations, and to make and issue such orders, as may be necessary or appropriate for carrying out the provisions of this Act.

Regulations and orders.

EXISTING PROVISIONS OF LAW

SEC. 12. (a) The first sentence of section 4 of the Act entitled "An Act to regulate the construction of bridges over navigable waters", approved March 23, 1906 (U. S. C., 1934 edition, title 33, sec. 494), and section 18 of the Act entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved March 3, 1899 (U. S. C., 1934 edition, title 33, sec. 502), shall be inapplicable with respect to any bridge to which the provisions of this Act are applicable, except to the extent provided in this section.

Inapplicability of certain Acts.

24 Stat. 85.

30 Stat. 1153.

(b) Any bridge, the construction, reconstruction, or alteration of which was required by an order of the Secretary issued prior to July 1, 1939, and was not completed on such date, and in the case of which no penalties have accrued at the time of the enactment of this Act, shall be constructed, reconstructed, or altered as required by such order, and not in accordance with the provisions of this Act. In the case of any such bridge, however, the Secretary shall apportion the cost of the project between the bridge owner and the United States, and payment of the share of the United States shall be made, in the same manner as if the provisions of this Act applied to such construction, reconstruction, or alteration, subject to the following limitations:

Construction, etc., not completed on July 1, 1939.

Apportionment of cost.

Limitations.

Construction, etc., not begun on or before April 1, 1940.

(1) In case such construction, reconstruction, or alteration has not begun on or before April 1, 1940, such apportionment of cost shall be made only if (A) the construction, reconstruction, or alteration is carried out in accordance with plans and specifications, and pursuant to bids, approved by the Secretary, and (B) the bridge owner has submitted to the Secretary a written guaranty of cost as provided for in section 5.

Determination as to apportionment, etc.

(2) The Secretary's determination as to such apportionment, and as to such plans and specifications and bids, shall be final.

(3) Such apportionment shall not be made if such construction, reconstruction, or alteration is not completed within the time fixed in

Restriction.

such order of the Secretary or within such additional time as the Secretary, for good cause shown, may allow.

Construction, etc., not begun prior to July 1, 1939; exception.

(c) Any bridge (except a bridge to which subsection (b) applies) the construction, reconstruction, or alteration of which was required by an order of the Secretary issued prior to July 1, 1939, and was not begun before such date, shall be subject to the provisions of this Act as though such order had not been issued, and compliance with the provisions of this Act and with such orders as may be issued thereunder shall be considered to constitute compliance with such order issued prior to July 1, 1939, and with the provisions of law under which it was issued.

RELOCATION OF BRIDGES

Relocation, etc., of railroad bridge.

SEC. 13. If the owner of any bridge used for railroad traffic and the Secretary shall agree that in order to remove an obstruction to navigation, or for any other purpose, a relocation of such bridge or the construction of a new bridge upon a new location would be preferable to an alteration of the existing bridge, such relocation or new construction may be carried out at such new site and upon such terms as may be acceptable to the bridge owner and the Secretary, and the cost of such relocation or new construction, including also any expense of changes in and additions to rights-of-way, stations, tracks, spurs, sidings, switches, signals, and other railroad facilities and property, and relocation of shippers required for railroad connection with the bridge at the new site, shall be apportioned as between the bridge owner and the United States in the manner which is provided for in section 6 hereof in the case of an alteration and the share of the United States paid from the appropriation authorized in section 8 hereof: *Provided*, That nothing in this section shall be construed as requiring the United States to pay any part of the expense of building any bridge across a navigable stream which the Secretary of War shall not find to be, in fact, a relocation of an existing bridge.

Apportionment of cost.

Provido.
Restriction on payments by U. S.

WM B. BANKHEAD

Speaker of the House of Representatives.

JNO N GARNER

Vice President of the United States and

President of the Senate.

IN THE HOUSE OF REPRESENTATIVES, U. S.,

June 19, 1940.

Certificate of House of Representatives.

The House of Representatives having proceeded to reconsider the bill (H. R. 9381) entitled "An Act to provide for the alteration of certain bridges over navigable waters of the United States, for the apportionment of the cost of such alterations between the United States and the owners of such bridges, and for other purposes", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

SOUTH TRIMBLE

Clerk.

Certificate of origin.

I certify that this Act originated in the House of Representatives.

SOUTH TRIMBLE

Clerk.

IN THE SENATE OF THE UNITED STATES,

June 21, 1940.

The Senate having proceeded to reconsider the bill (H. R. 9381) entitled "An Act to provide for the alteration of certain bridges over navigable waters of the United States, for the apportionment of the cost of such alterations between the United States and the owners of such bridges, and for other purposes", returned by the President of the United States to the House of Representatives, in which it originated, with his objections, and passed by the House on a reconsideration of the same, it was

Resolved, That the said bill pass, two-thirds of the Senators present having voted in the affirmative.

Attest:

EDWIN A. HALSEY
Secretary.

Certificate of Senate.

[CHAPTER 410]

AN ACT

Authorizing a grant to the city of Fargo, North Dakota, of an easement in connection with the construction of water and sewer systems.

June 24, 1940

[S. 2059]

[Public, No. 648]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Administrator of the Civil Aeronautics Authority is authorized and directed to grant to the city of Fargo, North Dakota, a permanent easement authorizing such city to construct and maintain a system of interceptor or trunk sewer lines and water mains under the west sixty feet of a tract of land owned by the United States and located north of such city of Fargo, in Cass County, North Dakota, such tract of land being now used as the site of an airways radio and range station and is more specifically described as follows: Beginning at the northwest corner southeast quarter of section 30, township 140 north, range 48 west, fifth principal meridian; thence north along the north and south quarter line seventy-five feet to a point; thence east parallel to the east and west quarter line eight hundred and eighty feet to a point; thence south seven hundred and twenty feet to a point; thence west parallel to the east and west quarter line eight hundred and eighty feet to a point on the north and south quarter line; thence north along the north and south quarter line six hundred and forty-five feet to the point of beginning, containing fourteen and fifty-five one-hundredths acres, more or less. The easement authorized to be granted by this Act shall be in lieu of the license revocable at the will of the Secretary of Commerce, granted to such city by a certain instrument dated December 20, 1934, and executed by Ewing Y. Mitchell, Assistant Secretary of Commerce, as amended by a certain instrument dated March 12, 1935, and executed by the said Ewing Y. Mitchell.

Fargo, N. Dak.
Granting of easement under certain U. S. land.

Description.

Easement to be in lieu of license.

Conditions.

SEC. 2. Such easement shall be granted subject to the following condition:

(1) The grantee shall not use any machines or erect any temporary structures on said land that will extend more than ten feet above the surface of the immediately surrounding area without permission of the operator in charge of the station or erect any permanent structures above the ground;

Restriction on machines and height of structures.

(2) None of the operations of the city in the exercise of any of the privileges granted by this easement shall interfere in any way with any wires, cables, conduits, pipes, sewers, or other structures of any kind or character now installed in or across such tract or hereafter installed in such tract by the Government or by any subsequent owner of any part of the tract;

No interference with installed wires, etc.