

ica's Water Infrastructure Act of 2018, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

### Statutory Notes and Related Subsidiaries

#### NON-FEDERAL INTEREST ADVISORY COMMITTEE

Pub. L. 117-263, div. H, title LXXXI, § 8150, Dec. 23, 2022, 136 Stat. 3731, provided that:

“(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Dec. 23, 2022], the Secretary [of the Army] shall establish a committee, to be known as the ‘Non-Federal Interest Advisory Committee’ and referred to in this section as the ‘Committee’, to develop and make recommendations to the Secretary and the Chief of Engineers on activities and actions that should be undertaken by the Corps of Engineers to ensure more effective and efficient delivery of water resources development projects, programs, and other assistance.

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The Committee shall be composed of the members described in paragraph (2), who shall—

“(A) be appointed by the Secretary; and

“(B) have the requisite experiential or technical knowledge needed to address issues related to water resources needs and challenges.

“(2) REPRESENTATIVES.—The members of the Committee shall include the following:

“(A) 1 representative of each of the following:

“(i) A non-Federal interest for a project for navigation for an inland harbor.

“(ii) A non-Federal interest for a project for navigation for a harbor.

“(iii) A non-Federal interest for a project for flood risk management.

“(iv) A non-Federal interest for a project for coastal storm risk management.

“(v) A non-Federal interest for a project for aquatic ecosystem restoration.

“(B) 1 representative of each of the following:

“(i) A non-Federal stakeholder with respect to inland waterborne transportation.

“(ii) A non-Federal stakeholder with respect to water supply.

“(iii) A non-Federal stakeholder with respect to recreation.

“(iv) A non-Federal stakeholder with respect to hydropower.

“(v) A non-Federal stakeholder with respect to emergency preparedness, including coastal protection.

“(C) 1 representative of each of the following:

“(i) An organization with expertise in conservation.

“(ii) An organization with expertise in environmental policy.

“(iii) An organization with expertise in rural water resources.

“(c) DUTIES.—

“(1) RECOMMENDATIONS.—The Committee shall provide advice and make recommendations to the Secretary and the Chief of Engineers to assist the Corps of Engineers in—

“(A) efficiently and effectively delivering water resources development projects;

“(B) improving the capability and capacity of the workforce of the Corps of Engineers to deliver such projects and other assistance;

“(C) improving the capacity and effectiveness of Corps of Engineers consultation and liaison roles in communicating water resources needs and solutions, including regionally specific recommendations; and

“(D) strengthening partnerships with non-Federal interests to advance water resources solutions.

“(2) MEETINGS.—The Committee shall meet as appropriate to develop and make recommendations under paragraph (1).

“(3) REPORT.—Recommendations made under paragraph (1) shall be—

“(A) included in a report submitted to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives; and

“(B) made publicly available, including on a publicly available website.

“(d) INDEPENDENT JUDGMENT.—Any recommendation made by the Committee to the Secretary and the Chief of Engineers under subsection (c)(1) shall reflect the independent judgment of the Committee.

“(e) ADMINISTRATION.—

“(1) COMPENSATION.—Except as provided in paragraph (2), the members of the Committee shall serve without compensation.

“(2) TRAVEL EXPENSES.—The members of the Committee shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

“(3) TREATMENT.—The members of the Committee shall not be considered to be Federal employees, and the meetings and reports of the Committee shall not be considered a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”

#### IMPLEMENTATION GUIDANCE

Pub. L. 116-260, div. AA, title II, § 223(d), Dec. 27, 2020, 134 Stat. 2696, provided that: “The Secretary [of the Army] shall expeditiously issue any guidance necessary to implement any provision of this Act [div. AA of Pub. L. 116-260, see Tables for classification], including any amendments made by this Act, in accordance with section 1105 of the Water Resources Development Act of 2018 (33 U.S.C. 2202).”

#### “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 102 of Pub. L. 115-270, set out as a note under section 2201 of this title.

## § 2203. Review of contracting policies

### (a) Review of contractual agreements

#### (1) In general

Not later than 180 days after December 27, 2020, the Secretary shall complete a review of the policies, guidelines, and regulations of the Corps of Engineers for the development of contractual agreements between the Secretary and non-Federal interests and utilities associated with the construction of water resources development projects.

#### (2) Report

Not later than 90 days after completing the review under subsection (a)(1), the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, and make publicly available, a report that includes—

(A) a summary of the results of the review; and

(B) public guidance on best practices for a non-Federal interest to use when writing or developing contractual agreements with the Secretary and utilities.

#### (3) Provision of guidance

The Secretary shall provide the best practices guidance included under paragraph (2)(A) to non-Federal interests prior to the develop-

ment of contractual agreements with such non-Federal interests.

**(b) Sense of Congress**

It is the sense of Congress that the Secretary should maximize use of nonprice tradeoff procedures in competitive acquisitions for carrying out emergency work in an area with respect to which the President has declared a major disaster under section 5170 of title 42.

(Pub. L. 116-260, div. AA, title I, § 136, Dec. 27, 2020, 134 Stat. 2649.)

**Editorial Notes**

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

**Statutory Notes and Related Subsidiaries**

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116-260, set out as a note under section 2201 of this title.

SUBCHAPTER I—COST SHARING

**§ 2211. 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 June 10, 2014, 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 in excess of 20 feet but not in excess of 55 feet; plus

(C) 50 percent of the cost of construction of the portion of the project which has a depth in excess of 55 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 2216 of this title. 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 2283(c) of this title, 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 2232 of this title, 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 October 12, 1996.

**(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 November 17, 1986, 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 55 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 October 12, 1996, 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 caus-