

(Pub. L. 116-260, div. AA, title I, §152, Dec. 27, 2020, 134 Stat. 2658; Pub. L. 117-263, div. H, title LXXXI, §8380, Dec. 23, 2022, 136 Stat. 3828.)

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.

AMENDMENTS

2022—Subsec. (a). Pub. L. 117-263 substituted “a flood risk management or coastal storm risk management project in a region” for “flood risk management project that incidentally generates seismic safety benefits in regions”.

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.

§ 2214. General credit for flood control

(a) Guidelines

Within one year after November 17, 1986, the Secretary shall issue guidelines to carry out this section, consistent with the principles and guidelines on project formulation. The guidelines shall include criteria for determining whether work carried out by non-Federal interests is compatible with a project for flood control and procedures for making such determinations. The guidelines under this section shall be promulgated after notice in the Federal Register and opportunity for comment.

(b) Analysis of costs and benefits

The guidelines established under subsection (a) shall provide for the Secretary to consider, in analyzing the costs and benefits of a proposed project for flood control, the costs and benefits produced by any flood control work carried out by non-Federal interests that the Secretary determines to be compatible with the project. For purposes of the preceding sentence the Secretary may consider only work carried out after the date which is 5 years before the first obligation of funds for the reconnaissance study for such project. In no case may work which was carried out more than 5 years before November 17, 1986, be considered under this subsection, unless otherwise provided in this Act.

(c) Crediting of non-Federal share

The guidelines established under subsection (a) shall provide for crediting the cost of work carried out by the non-Federal interests against the non-Federal share of the cost of an authorized project for flood control as follows:

(1) Work which is carried out after the end of the reconnaissance study and before the submission to Congress of the final report of the Chief of Engineers on the project and which is determined by the Secretary to be compatible with the project shall be included as part of the project and shall be recommended by the Secretary in the final report for credit against the non-Federal share of the cost of the project.

(2) Work which is carried out after submission of the final report of the Chief of Engineers to Congress and which is determined by the Secretary to be compatible with the project shall be considered as part of the project and shall be credited by the Secretary against the non-Federal share of the cost of the project in accordance with the guidelines promulgated pursuant to subsection (a).

In no event may work which was carried out more than 5 years before November 17, 1986, be considered under this subsection, unless otherwise provided in this Act.

(d) Procedure for work done before November 17, 1986

The Secretary shall consider, under subsections (b) and (c), work carried out before November 17, 1986, by non-Federal interests on a project for flood control, if the non-Federal interests apply to the Secretary for consideration of such work not later than March 31, 1987. The Secretary shall make determinations under subsections (b) and (c) with respect to such work not later than 6 months after guidelines are issued under subsection (a).

(e) Procedure for work done after November 17, 1986

The Secretary shall consider work carried out after November 17, 1986, by non-Federal interests on a project for flood control under subsections (b) and (c) in accordance with the guidelines issued under subsection (a). The guidelines shall require prior approval by the Secretary of any flood control work carried out after November 17, 1986, in order to be considered under this section, taking into account the economic and environmental feasibility of the project.

(f) Limitation not applicable

Any flood control work included as part of the non-Federal share of the cost of a project under this section shall not be subject to the limitation contained in the last sentence of section 1962d-5a(a) of title 42.

(g) Cash contribution not affected

Nothing in this section affects the requirement of section 2213(a)(1)(A) of this title.

(Pub. L. 99-662, title I, §104, Nov. 17, 1986, 100 Stat. 4087.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsecs. (b) and (c), is Pub. L. 99-662, Nov. 17, 1986, 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

§ 2215. Feasibility studies; planning, engineering, and design

(a) Feasibility studies

(1) Cost sharing

(A) In general

The Secretary shall not initiate any feasibility study for a water resources project after November 17, 1986, until appropriate non-Federal interests agree, by contract, to

contribute 50 percent of the cost of the study.

(B) Payment of cost share during period of study

During the period of the study, the non-Federal share of the cost of the study payable under subparagraph (A) shall be 50 percent of the sum of—

(i) the cost estimate for the study as contained in the feasibility cost-sharing agreement; and

(ii) any excess of the cost of the study over the cost estimate if the excess results from—

(I) a change in Federal law; or

(II) a change in the scope of the study requested by the non-Federal interests.

(C) Payment of cost share on authorization of project or termination of study

(i) Project timely authorized

Except as otherwise agreed to by the Secretary and the non-Federal interests and subject to clause (ii), the non-Federal share of any excess of the cost of the study over the cost estimate (excluding any excess cost described in subparagraph (B)(ii)) shall be payable on the date on which the Secretary and the non-Federal interests enter into an agreement pursuant to section 2211(e) or 2213(j) of this title with respect to the project.

(ii) Project not timely authorized

If the project that is the subject of the study is not authorized by the date that is 5 years after the completion of the final report of the Chief of Engineers concerning the study or the date that is 2 years after the termination of the study, the non-Federal share of any excess of the cost of the study over the cost estimate (excluding any excess cost described in subparagraph (B)(ii)) shall be payable to the United States on that date.

(D) Amendment of cost estimate

The cost estimate referred to in subparagraph (B)(i) may be amended only by agreement of the Secretary and the non-Federal interests.

(E) In-kind contributions

The non-Federal share required under this paragraph may be satisfied by the provision of services, materials, supplies, or other in-kind services necessary to prepare the feasibility report.

(2) Applicability

This subsection shall not apply to any water resources study primarily designed for the purposes of navigational improvements in the nature of dams, locks, and channels on the Nation's system of inland waterways.

(3) Detailed project reports

The requirements of this subsection that apply to a feasibility study also shall apply to a study that results in a detailed project report, except that—

(A) the first \$100,000 of the costs of a study that results in a detailed project report shall be a Federal expense; and

(B) paragraph (1)(C)(ii) shall not apply to such a study.

(b) Planning and engineering

The Secretary shall not initiate any planning or engineering for a water resources project until appropriate non-Federal interests agree, by contract, to contribute 50 percent of the cost of the planning and engineering during the period of the planning and engineering. Costs of planning and engineering of projects for which non-Federal interests contributed 50 percent of the cost of the feasibility study shall be treated as costs of construction.

(c) Design

Costs of design of a water resources project shall be shared in the same percentage as the purposes of such project.

(d) Definitions

In this section, the following definitions apply:

(1) Detailed project report

The term “detailed project report” means a report for a project not specifically authorized by Congress in law or otherwise that determines the feasibility of the project with a level of detail appropriate to the scope and complexity of the recommended solution and sufficient to proceed directly to the preparation of contract plans and specifications. The term includes any associated environmental impact statement and mitigation plan. For a project for which the Federal cost does not exceed \$1,000,000, the term includes a planning and design analysis document.

(2) Feasibility study

The term “feasibility study” means a study that results in a feasibility report under section 2282 of this title, and any associated environmental impact statement and mitigation plan, prepared by the Corps of Engineers for a water resources project. The term includes a study that results in a project implementation report prepared under title VI of the Water Resources Development Act of 2000 (114 Stat. 2680-2694), a general reevaluation report, and a limited reevaluation report.

(Pub. L. 99-662, title I, §105, Nov. 17, 1986, 100 Stat. 4088; Pub. L. 101-640, title III, §301, Nov. 28, 1990, 104 Stat. 4633; Pub. L. 104-303, title II, §203(a), Oct. 12, 1996, 110 Stat. 3677; Pub. L. 106-541, title II, §225, Dec. 11, 2000, 114 Stat. 2598; Pub. L. 110-114, title II, §2043(a), Nov. 8, 2007, 121 Stat. 1101.)

Editorial Notes

REFERENCES IN TEXT

The Water Resources Development Act of 2000, referred to in subsec. (d)(2), is Pub. L. 106-541, Dec. 11, 2000, 114 Stat. 2572. Title VI of the Act is not classified to the Code. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 2201 of this title and Tables.

AMENDMENTS

2007—Subsec. (a)(3). Pub. L. 110-114, §2043(a)(1), added par. (3).

Subsec. (b). Pub. L. 110-114, §2043(a)(2), struck out “authorized by this Act” before “for a water resources project”.

Subsec. (d). Pub. L. 110-114, §2043(a)(3), added subsec. (d).

2000—Subsec. (a)(1)(E). Pub. L. 106-541 substituted “The” for “Not more than ½ of the”.

1996—Subsec. (a)(1). Pub. L. 104-303, §203(a)(1), inserted heading and amended text of par. (1) generally. Prior to amendment text read as follows: “The Secretary shall not initiate any feasibility study for a water resources project after November 17, 1986, until appropriate non-Federal interests agree, by contract, to contribute 50 percent of the cost for such study during the period of such study. Not more than one-half of such non-Federal contribution may be made by the provision of services, materials, supplies, or other in-kind services necessary to prepare the feasibility report.”

Subsec. (a)(2). Pub. L. 104-303, §203(a)(2), inserted heading.

1990—Subsec. (b). Pub. L. 101-640 inserted at end “Costs of planning and engineering of projects for which non-Federal interests contributed 50 percent of the cost of the feasibility study shall be treated as costs of construction.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-303, title II, §203(b), Oct. 12, 1996, 110 Stat. 3678, provided that: “The amendments made by subsection (a) [amending this section] shall apply notwithstanding any feasibility cost-sharing agreement entered into by the Secretary and the non-Federal interests. On request of the non-Federal interest, the Secretary shall amend any feasibility cost-sharing agreements in effect on the date of the enactment of this Act [Oct. 12, 1996] so as to conform the agreements with the amendments.”

NO REQUIREMENT OF REIMBURSEMENT

Pub. L. 104-303, title II, §203(c), Oct. 12, 1996, 110 Stat. 3678, provided that: “Nothing in this section [amending this section and enacting provisions set out above] or any amendment made by this section requires the Secretary to reimburse the non-Federal interests for funds previously contributed for a study.”

§ 2216. Rate of interest

Whenever a non-Federal interest is required or elects to repay an amount under this Act over a period of time, the amount to be repaid shall include interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period, during the month preceding the fiscal year in which costs for the construction of the project are first incurred (or in the case of recalculation the fiscal year in which the recalculation is made), plus a premium of one-eighth of one percentage point for transaction costs; except that such rates for hydroelectric power shall be in accordance with existing law.

(Pub. L. 99-662, title I, §106, Nov. 17, 1986, 100 Stat. 4089.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99-662, Nov. 17, 1986, 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

§ 2217. Limitation on applicability of certain provisions in reports

If any provision in any report designated by this Act recommends that a State contribute in cash 5 percent of the construction costs allocated to non-venible project purposes and 10 percent of the construction costs allocated to venible project purposes, such provision shall not apply to the project recommended in such report.

(Pub. L. 99-662, title I, §107, Nov. 17, 1986, 100 Stat. 4089.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99-662, Nov. 17, 1986, 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

§ 2218. General applicability of cost sharing

Unless otherwise specified, the cost sharing provisions of this subchapter shall apply to all projects in this Act. The Federal share of any cost of a project authorized by this Act for which cost a Federal share is not established in this subchapter, shall be the share of such cost otherwise provided by law.

(Pub. L. 99-662, title I, §108, Nov. 17, 1986, 100 Stat. 4089.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99-662, Nov. 17, 1986, 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

§ 2219. Definitions

For purposes of this subchapter, terms shall have the meanings given by section 2241 of this title.

(Pub. L. 99-662, title I, §109, Nov. 17, 1986, 100 Stat. 4089.)

§ 2220. Rivers and harbors and other waterways projects for benefit of navigation, flood control, hurricane protection, beach erosion control, and other purposes

(a) Congressional declaration of policy; purchase of indebtedness and loans to local interests to meet contribution requirements

In the prosecution of projects for rivers and harbors and other waterways for the benefit of navigation, the control of destructive flood waters, hurricane protection, beach erosion control, and for other purposes, authorized to be prosecuted under the direction of the Secretary of the Army under the supervision of the Chief of Engineers in accordance with plans adopted and authorized by the Congress, it is hereby declared to be the policy of the Congress, that whenever such projects are located wholly or partially within an area which is eligible for financial assistance under the Public Works and