

“(c) REQUIREMENTS.—For each project authorized to begin preconstruction engineering and design under subsection (b)—

“(1) the project shall conform to the feasibility study and the environmental impact statement approved by the Secretary; and

“(2) the Secretary and the non-Federal sponsor shall jointly agree to the construction design of the project.

“(d) SECRETARY REVIEW OF POTENTIAL ADVERSE IMPACTS.—When reviewing the feasibility study and the environmental impact statement for a project under subsection (b), the Secretary shall follow current USACE Policy, Regulations, and Guidance, to assess potential adverse downstream impacts to the Pearl River Basin. Upon completion of the Secretary’s determination under subsection (b), the non-Federal sponsor shall design the project in a manner that addresses any potential adverse impacts or that provides mitigation in accordance with section 906 of the Water Resources Development Act of 1986 (33 U.S.C. 2283).

“(e) SUNSET.—The authority to carry out the demonstration program under this section shall terminate on the date that is 5 years after the date of enactment of this Act [Oct. 23, 2018].

“(f) SAVINGS PROVISION.—Nothing in this section supersedes, precludes, or affects any applicable requirements for a project under subsection (b) under—

“(1) section 906 of the Water Resources Development Act of 1986 (33 U.S.C. 2283); or

“(2) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).”

NAVIGATION SAFETY

Pub. L. 114-322, title I, §1102, Dec. 16, 2016, 130 Stat. 1633, provided that: “The Secretary [of the Army] shall use section 5 of the Act of March 4, 1915 (38 Stat. 1053, chapter 142; 33 U.S.C. 562), to carry out navigation safety activities at those projects eligible for operation and maintenance under section 204(f) of the Water Resources Development Act of 1986 (33 U.S.C. 2232(f)).”

OPERATION AND MAINTENANCE OF CERTAIN PROJECTS

Pub. L. 113-121, title I, §1016, June 10, 2014, 128 Stat. 1223, provided that: “The Secretary [of the Army] may assume responsibility for operation and maintenance in accordance with section 101(b) of the Water Resources Development Act of 1986 (33 U.S.C. 2211(b)) (as amended by section 2102(b)) for improvements to a federally authorized harbor or inland harbor that are carried out by a non-Federal interest prior to December 31, 2014, if the Secretary determines that the requirements under paragraphs (2) and (3) of section 204(f) of the Water Resources Development Act of 1986 (33 U.S.C. 2232(f)) are met.”

DEMONSTRATION OF CONSTRUCTION OF FEDERAL PROJECT BY NON-FEDERAL INTERESTS

Pub. L. 101-640, title IV, §404, Nov. 28, 1990, 104 Stat. 4646, which related to the demonstration of safety benefits and economic efficiencies of non-Federal management of harbor improvement projects, was repealed by Pub. L. 113-121, title I, §1014(c)(1), June 10, 2014, 128 Stat. 1222.

§ 2233. Coordination and scheduling of Federal, State, and local actions

(a) Notice of intent

The Secretary, on request from an appropriate non-Federal interest in the form of a written notice of intent to construct a navigation project for a harbor or inland harbor under section 2232 of this title or this section, shall initiate procedures to establish a schedule for consolidating Federal, State, and local agency environmental assessments, project reviews, and issuance of all

permits for the construction of the project, including associated access channels, berthing areas, and onshore port-related facilities, before the initiation of construction. The non-Federal interest shall submit, with the notice of intent, studies and documentation, including environmental reviews, that may be required by Federal law for decisionmaking on the proposed project. A State shall not be required to participate in carrying out this section.

(b) Procedural requirements

Within 15 days after receipt of notice under subsection (a), the Secretary shall publish such notice in the Federal Register. The Secretary also shall provide written notification of the receipt of a notice under subsection (a) to all State and local agencies that may be required to issue permits for the construction of the project or related activities. The Secretary shall solicit the cooperation of those agencies and request their entry into a memorandum of agreement described in subsection (c). Within 30 days after publication of the notice in the Federal Register, State and local agencies that intend to enter into the memorandum of agreement shall notify the Secretary of their intent in writing.

(c) Scheduling agreement

Within 90 days after receipt of notice under subsection (a), the Secretary of the Interior, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and any State or local agencies that have notified the Secretary under subsection (b) shall enter into an agreement with the Secretary establishing a schedule of decisionmaking for approval of the project and permits associated with it and with related activities. Such schedule may not exceed two and one-half years from the date of the agreement.

(d) Contents of agreement

The agreement entered into under subsection (c), to the extent practicable, shall consolidate hearing and comment periods, procedures for data collection and report preparation, and the environmental review and permitting processes associated with the project and related activities. The agreement shall detail, to the extent possible, the non-Federal interest’s responsibilities for data development and information that may be necessary to process each permit, including a schedule when the information and data will be provided to the appropriate Federal, State, or local agency.

(e) Preliminary decision

The agreement shall include a date by which the Secretary, taking into consideration the views of all affected Federal agencies, shall provide to the non-Federal interest in writing a preliminary determination whether the project and Federal permits associated with it are reasonably likely to receive approval.

(f) Revision of agreement

The Secretary may revise the agreement once to extend the schedule to allow the non-Federal interest the minimum amount of additional time necessary to revise its original application to meet the objections of a Federal, State, or local agency which is a party to the agreement.

(g) Progress reports

Six months before the final date of the schedule, the Secretary shall provide to Congress a written progress report for each navigation project for a harbor or inland harbor subject to this section. The Secretary shall transmit the report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. The report shall summarize all work completed under the agreement and shall include a detailed work program that will assure completion of all remaining work under the agreement.

(h) Final decision

Not later than the final day of the schedule, the Secretary shall notify the non-Federal interest of the final decision on the project and whether the permit or permits have been issued.

(i) Report on timesavings methods

Not later than one year after November 17, 1986, the Secretary shall prepare and transmit to Congress a report estimating the time required for the issuance of all Federal, State, and local permits for the construction of navigation projects for harbors or inland harbors and associated activities. The Secretary shall include in that report recommendations for further reducing the amount of time required for the issuance of those permits, including any proposed changes in existing law.

(Pub. L. 99-662, title II, §205, Nov. 17, 1986, 100 Stat. 4101.)

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 2234. Nonapplicability to Saint Lawrence Seaway

Sections 2231, 2232, and 2233 of this title do not apply to any harbor or inland harbor project for that portion of the Saint Lawrence Seaway administered by the Great Lakes St. Lawrence Seaway Development Corporation.

(Pub. L. 99-662, title II, §206, Nov. 17, 1986, 100 Stat. 4102; Pub. L. 116-260, div. AA, title V, §512(c)(5)(A), Dec. 27, 2020, 134 Stat. 2756.)

Editorial Notes

AMENDMENTS

2020—Pub. L. 116-260 substituted “Great Lakes St. Lawrence Seaway Development Corporation” for “Saint Lawrence Seaway Development Corporation”.

§ 2235. Construction in usable increments

Any navigation project for a harbor or inland harbor authorized by this subchapter or any other provision of law enacted before, on, or after November 17, 1986, may be constructed in usable increments.

(Pub. L. 99-662, title II, §207, Nov. 17, 1986, 100 Stat. 4102.)

§ 2236. Port or harbor dues**(a) Consent of Congress**

Subject to the following conditions, a non-Federal interest may levy port or harbor dues (in the form of tonnage duties or fees) on a vessel engaged in trade entering or departing from a harbor and on cargo loaded on or unloaded from that vessel under clauses 2 and 3 of section 10, and under clause 3 of section 8, of Article 1 of the Constitution:

(1) Purposes

Port or harbor dues may be levied only in conjunction with a harbor navigation project whose construction is complete (including a usable increment of the project) and for the following purposes and in amounts not to exceed those necessary to carry out those purposes:

(A)(i) to finance the non-Federal share of construction and operation and maintenance costs of a navigation project for a harbor under the requirements of section 2211 of this title; or

(ii) to finance the cost of construction and operation and maintenance of a navigation project for a harbor under section 2232 or 2233 of this title; and

(B) provide emergency response services in the harbor, including contingency planning, necessary personnel training, and the procurement of equipment and facilities.

(2) Limitation on port or harbor dues for emergency service

Port or harbor dues may not be levied for the purposes described in paragraph (1)(B) of this subsection after the dues cease to be levied for the purposes described in paragraph (1)(A) of this subsection.

(3) General limitations

(A) Port or harbor dues may not be levied under this section in conjunction with a deepening feature of a navigation improvement project on any vessel if that vessel, based on its design draft, could have utilized the project at mean low water before construction. In the case of project features which solely—

(i) widen channels or harbors,

(ii) create or enlarge bend easings, turning basins or anchorage areas, or provide protected areas, or

(iii) remove obstructions to navigation,

only vessels at least comparable in size to those used to justify these features may be charged under this section.

(B) In developing port or harbor dues that may be charged under this section on vessels for project features constructed under this subchapter, the non-Federal interest may consider such criteria as: elapsed time of passage, safety of passage, vessel economy of scale, under keel clearance, vessel draft, vessel squat, vessel speed, sinkage, and trim.

(C) Port or harbor dues authorized by this section shall not be imposed on—

(i) vessels owned and operated by the United States Government, a foreign country, a State, or a political subdivision of a country or State, unless engaged in commercial services;