

AMENDMENTS

2020—Pub. L. 116-260 amended section generally. Prior to amendment, text read as follows: “Any discretionary appropriation for the Corps of Engineers derived from the Harbor Maintenance Trust Fund (not to exceed the total amount deposited in the Harbor Maintenance Trust Fund in the prior fiscal year) shall be subtracted from the estimate of discretionary budget authority and outlays for any estimate of an appropriations Act under the Congressional Budget and Impoundment Control Act of 1974 or the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided*, That the modifications described in this section shall not take effect until the earlier of January 1, 2021 or the date of enactment of legislation authorizing the development of water resources and shall remain in effect thereafter.”

§ 2238c. Additional measures at donor ports and energy transfer ports

(a) Definitions

In this section:

(1) Cargo container

The term “cargo container” means a cargo container that is 1 Twenty-foot Equivalent Unit.

(2) Discretionary cargo

The term “discretionary cargo” means maritime cargo for which the United States port of unloading is different than the United States port of entry.

(3) Donor port

(A) In general

The term “donor port” means a port—

(i) that is subject to the harbor maintenance fee under section 24.24 of title 19, Code of Federal Regulations (or a successor regulation);

(ii) at which the total amount of harbor maintenance taxes collected (including the estimated taxes related to domestic cargo and cruise passengers) comprise not less than \$15,000,000 annually of the total funding of the Harbor Maintenance Trust Fund on an average annual basis for the previous 3 fiscal years;

(iii) that received less than 25 percent of the total amount of harbor maintenance taxes collected (including the estimated taxes related to domestic cargo and cruise passengers) at that port in the previous 3 fiscal years; and

(iv) that is located in a State in which more than 2,000,000 cargo containers were unloaded from or loaded on to vessels on an average annual basis for the previous 3 fiscal years.

(B) Calculation

For the purpose of calculating the percentage described in subparagraph (A)(iii), payments described under subsection (c)(1) shall not be included.

(4) Energy commodity

The term “energy commodity” includes—

- (A) petroleum products;
- (B) natural gas;
- (C) coal;
- (D) wind and solar energy components; and
- (E) biofuels.

(5) Energy transfer port

The term “energy transfer port” means a port—

(A) that is subject to the harbor maintenance fee under section 24.24 of title 19, Code of Federal Regulations (or any successor regulation); and

(B)(i) at which energy commodities comprised greater than 25 percent of all commercial activity by tonnage on an average annual basis for the previous 3 fiscal years; and

(ii) through which more than 40,000,000 tons of cargo were transported on an average annual basis for the previous 3 fiscal years.

(6) Expanded uses

The term “expanded uses” has the meaning given the term in section 2238(f) of this title.

(7) Harbor maintenance tax

The term “harbor maintenance tax” has the meaning given the term in section 2238(f) of this title.

(8) Harbor maintenance trust fund

The term “Harbor Maintenance Trust Fund” means the Harbor Maintenance Trust Fund established by section 9505 of title 26.

(9) Medium-sized donor port

The term “medium-sized donor port” means a port—

(A) that is subject to the harbor maintenance fee under section 24.24 of title 19, Code of Federal Regulations (or a successor regulation);

(B) at which the total amount of harbor maintenance taxes collected (including the estimated taxes related to domestic cargo and cruise passengers) comprise annually more than \$5,000,000 but less than \$15,000,000 of the total funding of the Harbor Maintenance Trust Fund on an average annual basis for the previous 3 fiscal years;

(C) that received less than 25 percent of the total amount of harbor maintenance taxes collected (including the estimated taxes related to domestic cargo and cruise passengers) at that port in the previous 3 fiscal years; and

(D) that is located in a State in which more than 2,000,000 cargo containers were unloaded from or loaded onto vessels on an average annual basis for the previous 3 fiscal years.

(b) Authority

(1) In general

Subject to the availability of appropriations, the Secretary may provide to donor ports, medium-sized donor ports, and energy transfer ports amounts in accordance with this section.

(2) Limitations

Amounts provided under this section—

(A) for energy transfer ports shall be divided equally among all States with an energy transfer port;

(B) shall be made available to a port as either a donor port, medium-sized donor port, or an energy transfer port, and no port may receive amounts from more than 1 designation; and

(C) for donor ports and medium-sized donor ports—

(i) 50 percent of the funds shall be equally divided between the eligible donor ports as authorized by this section; and

(ii) 50 percent of the funds shall be divided between the eligible donor ports and eligible medium-sized donor ports based on the percentage of the total harbor maintenance tax revenues generated at each eligible donor port and medium-sized donor port.

(c) Use of funds

Amounts provided under this section may be used by a donor port, a medium-sized donor port, or an energy transfer port—

(1) to provide payments to importers entering cargo through that port, as calculated by the Secretary according to the value of discretionary cargo;

(2) for expanded uses; or

(3) for environmental remediation related to dredging berths and Federal navigation channels.

(d) Administration of payments

(1) In general

If a donor port, a medium-sized donor port, or an energy transfer port elects to provide payments to importers under subsection (c), the Secretary shall transfer to the Commissioner of U.S. Customs and Border Protection an amount equal to those payments that would otherwise be provided to the port under this section to provide the payments to the importers of the discretionary cargo that is—

(A) shipped through the port; and

(B) most at risk of diversion to seaports outside of the United States.

(2) Requirement

The Secretary, in consultation with a port electing to provide payments under subsection (c), shall determine the top importers at the port, as ranked by the value of discretionary cargo, and payments shall be limited to those top importers.

(e) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section—

(A) \$56,000,000 for fiscal year 2023;

(B) \$58,000,000 for fiscal year 2024;

(C) \$60,000,000 for fiscal year 2025;

(D) \$62,000,000 for fiscal year 2026;

(E) \$64,000,000 for fiscal year 2027;

(F) \$66,000,000 for fiscal year 2028;

(G) \$68,000,000 for fiscal year 2029; and

(H) \$70,000,000 for fiscal year 2030.

(2) Division between donor ports, medium-sized donor ports, and energy transfer ports

For each fiscal year, amounts made available to carry out this section shall be provided in equal amounts to—

(A) donor ports and medium-sized donor ports; and

(B) energy transfer ports.

(f) Savings clause

Nothing in this section waives any statutory requirement related to the transportation of

merchandise as authorized under chapter 551 of title 46.

(Pub. L. 113–121, title II, § 2106, June 10, 2014, 128 Stat. 1280; Pub. L. 114–322, title I, § 1110, Dec. 16, 2016, 130 Stat. 1634; Pub. L. 116–260, div. AA, title I, § 104(a)–(b)(2), Dec. 27, 2020, 134 Stat. 2621, 2622.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2020—Subsec. (a)(3)(A)(ii). Pub. L. 116–260, § 104(b)(1)(A)(i), amended cl. (ii) generally. Prior to amendment, text read as follows: “at which the total amount of harbor maintenance taxes collected comprise not less than \$15,000,000 annually of the total funding of the Harbor Maintenance Trust Fund established under section 9505 of title 26;”.

Subsec. (a)(3)(A)(iii). Pub. L. 116–260, § 104(b)(1)(A)(ii), inserted “(including the estimated taxes related to domestic cargo and cruise passengers)” after “taxes collected” and substituted “3 fiscal years” for “5 fiscal years”.

Subsec. (a)(3)(A)(iv). Pub. L. 116–260, § 104(b)(1)(A)(iii), substituted “on an average annual basis for the previous 3 fiscal years” for “in fiscal year 2012”.

Subsec. (a)(5)(B). Pub. L. 116–260, § 104(b)(1)(B), substituted “on an average annual basis for the previous 3 fiscal years” for “in fiscal year 2012” in two places.

Subsec. (a)(8), (9). Pub. L. 116–260, § 104(b)(1)(C), added par. (8) and redesignated former par. (8) as (9).

Subsec. (a)(9)(B). Pub. L. 116–260, § 104(b)(1)(D)(i), amended subpar. (B) generally. Prior to amendment, text read as follows: “at which the total amount of harbor maintenance taxes collected comprise annually more than \$5,000,000 but less than \$15,000,000 of the total funding of the Harbor Maintenance Trust Fund established under section 9505 of title 26;”.

Subsec. (a)(9)(C). Pub. L. 116–260, § 104(b)(1)(D)(ii), inserted “(including the estimated taxes related to domestic cargo and cruise passengers)” after “taxes collected” and substituted “3 fiscal years” for “5 fiscal years”.

Subsec. (a)(9)(D). Pub. L. 116–260, § 104(b)(1)(D)(iii), substituted “on an average annual basis for the previous 3 fiscal years” for “in fiscal year 2012”.

Subsec. (e). Pub. L. 116–260, § 104(b)(2)(A), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to report to Congress.

Subsec. (e)(1). Pub. L. 116–260, § 104(b)(2)(B), amended par. (1) generally. Prior to amendment, text read as follows: “There is authorized to be appropriated to carry out this section \$50,000,000 for each of fiscal years 2015 through 2020.”

Subsec. (f). Pub. L. 116–260, § 104(b)(2)(A), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (f)(1). Pub. L. 116–260, § 104(a)(1), substituted “2022” for “2020”.

Subsec. (f)(3). Pub. L. 116–260, § 104(a)(2), struck out par. (3). Prior to amendment, text read as follows: “If the target total budget resources under subparagraphs (A) through (D) of section 2238b(b)(1) of this title are met for each of fiscal years 2016 through 2020, there is authorized to be appropriated to carry out this section \$50,000,000 for each of fiscal years 2021 through 2025.”

Subsec. (g). Pub. L. 116–260, § 104(b)(2)(A), redesignated subsec. (g) as (f).

2016—Subsec. (a)(2). Pub. L. 114–322, § 1110(1)(B), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 114–322, § 1110(1)(C), designated existing provisions as subpar. (A) and inserted heading, redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (A), and added subpar. (B).

Pub. L. 114-322, §1110(1)(A), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 114-322, §1110(1)(A), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 114-322, §1110(1)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (a)(5)(A). Pub. L. 114-322, §1110(1)(D), substituted “Code of Federal Regulations” for “Code of Federal Regulation”.

Subsec. (a)(6), (7). Pub. L. 114-322, §1110(1)(A), redesignated pars. (5) and (6) as (6) and (7), respectively.

Subsec. (a)(8). Pub. L. 114-322, §1110(1)(E), added par. (8).

Subsec. (b)(1). Pub. L. 114-322, §1110(2)(A), substituted “donor ports, medium-sized donor ports,” for “donor ports”.

Subsec. (b)(2)(B), (C). Pub. L. 114-322, §1110(2)(B), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: “shall be made available to a port as either a donor port or an energy transfer port and no port may receive amounts as both a donor port and an energy transfer port.”

Subsec. (c). Pub. L. 114-322, §1110(3)(A), substituted “donor port, a medium-sized donor port,” for “donor port” in introductory provisions.

Subsec. (c)(1). Pub. L. 114-322, §1110(3)(B), struck out “or shippers transporting cargo” after “entering cargo” and substituted “the Secretary” for “U.S. Customs and Border Protection” and “value of discretionary cargo” for “amount of harbor maintenance taxes collected”.

Subsec. (d). Pub. L. 114-322, §1110(4), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: “If a donor port or an energy transfer port elects to provide payments to importers or shippers under subsection (c), the Secretary shall transfer the amount that would otherwise be provided to the port under this section that is equal to those payments to the Commissioner of U.S. Customs and Border Protection to provide the payments to the importers or shippers.”

Subsec. (f)(1). Pub. L. 114-322, §1110(5)(A), substituted “2020” for “2018”.

Subsec. (f)(2). Pub. L. 114-322, §1110(5)(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “For each fiscal year, amounts made available to carry out this section shall be provided in equal amounts to donor ports and energy transfer ports.”

Subsec. (f)(3). Pub. L. 114-322, §1110(5)(C), substituted “2016 through 2020” for “2015 through 2018” and “2021 through 2025” for “2019 through 2022”.

Subsec. (g). Pub. L. 114-322, §1110(6), added subsec. (g).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. AA, title I, §104(b)(3), Dec. 27, 2020, 134 Stat. 2622, provided that: “The amendments made by this subsection [amending this section] shall take effect on October 1, 2022.”

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113-121, set out as a note under section 2201 of this title.

§ 2238d. Maintenance of harbors of refuge

The Secretary is authorized to maintain federally authorized harbors of refuge to restore and maintain the authorized dimensions of the harbors.

(Pub. L. 114-322, title I, §1109, Dec. 16, 2016, 130 Stat. 1634.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water

Infrastructure Improvements for the Nation Act, also known as the WIIN Act, 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 1002 of Pub. L. 114-322, set out as a note under section 2201 of this title.

§ 2238e. Additional projects for underserved community harbors

(a) In general

Subject to the availability of appropriations designated by statute as being for the purpose of carrying out this section, the Secretary may carry out projects for underserved community harbors for purposes of sustaining water-dependent commercial and recreational activities at such harbors and for purposes of contributing to ecosystem restoration.

(b) Beneficial use

(1) Justification

The Secretary may carry out a project under this section involving a disposal option for the beneficial use of dredged material that is not the least cost disposal option if the Secretary determines that the incremental cost of the disposal option is reasonable pursuant to the standard described in section 2326(d)(1) of this title.

(2) Cost share

The non-Federal share of the incremental cost of a project carried out under this section involving a disposal option for the beneficial use of dredged material that is not the least cost disposal option shall be determined as provided under subsections (a) through (d) of section 2213 of this title.

(c) Prioritization

The Secretary shall prioritize carrying out projects using funds made available under this section based on an assessment of—

(1) the local or regional economic benefits of the project;

(2) the environmental benefits of the project, including the benefits to the aquatic environment to be derived from the creation of wetland and control of shoreline erosion; and

(3) other social effects of the project, including protection against loss of life and contributions to local or regional cultural heritage.

(d) Clarification

The Secretary shall not require the non-Federal interest for a project carried out under this section to perform additional operation and maintenance activities at the beneficial use placement site or the disposal site for such project as a condition of receiving assistance under this section.

(e) Federal participation limit

The Federal share of the cost of a project under this section shall not exceed \$10,000,000.

(f) Statutory construction

Projects carried out under this section shall be in addition to operation and maintenance ac-