

harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same.

(Mar. 3, 1899, ch. 425, §10, 30 Stat. 1151; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501.)

Editorial Notes

CODIFICATION

Section is from act Mar. 3, 1899, popularly known as the “Rivers and Harbors Appropriation Act of 1899”, and together with section 401 of this title effectively superseded act Sept. 19, 1890, ch. 907, §7, 26 Stat. 454, as amended generally by act July 13, 1892, ch. 158, §3, 27 Stat. 88, which prohibited the erection of obstructions to navigation, and prohibited the erection of bridges over navigable waters under State legislation before the approval of the plans by the Secretary of War, and prohibited the alteration of channels unless authorized by that Secretary.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted “Title 10, Armed Forces” which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of the Army and other offices and officers of Department of the Army under section 401 of this title to extent that they relate generally to location and clearances of bridges and causeways in navigable waters of United States transferred to and vested in Secretary of Transportation by Pub. L. 89-670 §6(g)(6)(A), Oct. 15, 1966, 80 Stat. 941. Pub. L. 97-449 amended section 401 of this title to reflect transfer made by section 6(g)(6)(A) of Pub. L. 89-670, and repealed section 6(g)(6)(A).

EXPEDITING REPAIRS AND RECOVERY FROM FLOODING

Pub. L. 116-260, div. AA, title I, §122, Dec. 27, 2020, 134 Stat. 2635, provided that:

“(a) IN GENERAL.—To the maximum extent practicable, during the 5-year period beginning on the date of enactment of this Act [Dec. 27, 2020], the Secretary [of the Army] shall prioritize and expedite the processing of applications for permits under section 10 of the Act of March 3, 1899 (33 U.S.C. 403), and section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), and permissions under section 14 of the Act of March 3, 1899 (33 U.S.C. 408), to complete repairs, reconstruction (including improvements), and upgrades to flood control infrastructure damaged by flooding events during calendar years 2017 through 2020, including flooding events caused by ice jams.

“(b) SAVINGS PROVISION.—Nothing in this section affects any obligation to comply with the requirements of any Federal law, including—

“(1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

“(2) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

“(3) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).”

Executive Documents

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary of the Army, Chief of Engineers, or other official in Corps of Engineers of the United States Army related to compliance with permits for structures in navigable waters issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(b), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§ 403a. Creation or continuance of obstruction of navigable waters

The creation of any obstruction, not affirmatively authorized by law, to the navigable capacity of any waters, in respect of which the United States has jurisdiction, is hereby prohibited. The continuance of any such obstruction, except bridges, piers, docks, and wharves, and similar structures erected for business purposes, whether heretofore or hereafter created, shall constitute an offense and each week’s continuance of any such obstruction shall be deemed a separate offense. Every person and every corporation which shall be guilty of creating or continuing any such unlawful obstruction in this act mentioned, or who shall violate the provisions of the last four preceding sections of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court, the creating or continuing of any unlawful obstruction in this act mentioned may be prevented and such obstruction may be caused to be removed by the injunction of any district court exercising jurisdiction in any district in which such obstruction may be threatened or may exist; and proper proceedings in equity to this end may be instituted under the direction of the Attorney-General of the United States.

(Sept. 19, 1890, ch. 907, §10, 26 Stat. 454; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167.)

Editorial Notes

REFERENCES IN TEXT

This act, referred to in text, is act Sept. 19, 1890, ch. 907, 26 Stat. 426. Sections 6 to 9 of the Act are not classified to the Code. For complete classification of this act to the Code, see Tables.

CODIFICATION

Text of section, which was previously omitted from the Code, was restored in view of conflicting court decisions as to whether or not section had been repealed or superseded. See *eg.* *United States v. Wishkah Boom Co.*, 136 F. 42 (9th Cir. 1905), (appeal dismissed [1906] 202 U.S. 613); *United States v. Wilson*, 235 F.2d 251 (2d Cir. 1956).

§ 403b. Lighting at docks and boat launching facilities

Whenever the Secretary considers a permit application for a dock or a boat launching facility under section 403 of this title, the Secretary shall consider the needs of such facility for lighting from sunset to sunrise to make such facility's presence known within a reasonable distance.

(Pub. L. 99-662, title IX, §946, Nov. 17, 1986, 100 Stat. 4200.)

Statutory Notes and Related Subsidiaries

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2201 of this title.

§ 404. Establishment of harbor lines; conditions to grants for extension of piers, etc.

Where it is made manifest to the Secretary of the Army that the establishment of harbor lines is essential to the preservation and protection of harbors he may, and is, authorized to cause such lines to be established, beyond which no piers, wharves, bulkheads, or other works shall be extended or deposits made, except under such regulations as may be prescribed from time to time by him: *Provided*, That, whenever the Secretary of the Army grants to any person or persons permission to extend piers, wharves, bulkheads, or other works, or to make deposits in any tidal harbor or river of the United States beyond any harbor lines established under authority of the United States, he shall cause to be ascertained the amount of tidewater displaced by any such structure or by any such deposits, and he shall, if he deem it necessary, require the parties to whom the permission is given to make compensation for such displacement either by excavating in some part of the harbor, including tidewater channels between high and low water mark, to such an extent as to create a basin for as much tidewater as may be displaced by such structure or by such deposits, or in any other mode that may be satisfactory to him.

(Mar. 3, 1899, ch. 425, §11, 30 Stat. 1151; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501.)

Editorial Notes

CODIFICATION

Section is from act Mar. 3, 1899, popularly known as the “Rivers and Harbors Appropriation Act of 1899”.

PRIOR PROVISIONS

This section and section 406 of this title, superseded act Aug. 11, 1888, ch. 860, §12, 25 Stat. 425, as amended by act Sept. 19, 1890, ch. 907, §12, 26 Stat. 455, which authorized the establishment of harbor lines, and prescribed a penalty for a violation of the section or any rule made in pursuance of it.

Section also superseded act Aug. 18, 1894, ch. 299, §9, 28 Stat. 364, which contained provisions for compensa-

tion for tide water displaced similar to the proviso in this section.

Act Aug. 5, 1886, ch. 929, §2, 24 Stat. 329, which was probably omitted from the Code as superseded by this section, provided that: “In places where harbor-lines have not been established, and where deposits of débris of mines or stamp works can be made without injury to navigation, within lines to be established by the Secretary of War, said officer may, and is hereby authorized to, cause such lines to be established; and within such lines such deposits may be made, under regulations to be from time to time prescribed by him.”

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

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TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of the Army and other offices and officers of Department of the Army under section 401 of this title to extent that they relate generally to location and clearances of bridges and causeways in navigable waters of United States transferred to and vested in Secretary of Transportation by Pub. L. 89-670, §6(g)(6)(A), Oct. 15, 1966, 80 Stat. 941. Pub. L. 97-449 amended section 401 of this title to reflect transfer made by section 6(g)(6)(A) of Pub. L. 89-670, and repealed section 6(g)(6)(A).

§ 405. Establishment and modification of harbor lines on Potomac and Anacostia Rivers

The provisions of section 404 of this title are made applicable to the Potomac and Anacostia Rivers, and after July 25, 1912, harbor lines in the District of Columbia, or elsewhere on said rivers, shall be established or modified as therein provided.

(July 25, 1912, ch. 253, §1, 37 Stat. 206.)

Editorial Notes

CODIFICATION

Section is from part of section 1 of act July 25, 1912, popularly known as the “Rivers and Harbors Appropriation Act of 1912”.

§ 406. Penalty for wrongful construction of bridges, piers, etc.; removal of structures

Every person and every corporation that shall violate any of the provisions of sections 401, 403, and 404 of this title or any rule or regulation made by the Secretary of the Army in pursuance of the provisions of section 404 of this title shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$2,500 nor less than \$500, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court. And further, the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any district court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted