

Editorial Notes**CODIFICATION**

When originally enacted, section 5 of act June 22, 1936, which consisted of a paragraph (including a proviso) authorizing works of improvement followed by numerous headings and paragraphs describing those authorized works, was not classified to the Code. Act July 19, 1937, amended section 5 of act June 22, 1936, by inserting two additional provisos at the end of the first paragraph. The provisos inserted by the 1937 Act, as amended, form the sole basis for the text appearing in this section, with minor editorial changes to the introductory language of the provisos. Subsequent amendments to section 5 of act June 22, 1936, have generally been directed to the text of section 5 as it has appeared in the Code and have not taken into account the portion of that section that has never been set out. Those amendments have been executed as directed, to reflect the probable intent of Congress, and amendment notes below reflect such execution without further comment.

AMENDMENTS

2018—Pub. L. 115-270 inserted “*Provided further*, That the Secretary is authorized to receive and expend funds from an owner of a non-Federal reservoir to formulate, review, or revise operational documents for any non-Federal reservoir for which the Secretary is authorized to prescribe regulations for the use of storage allocated for flood control or navigation pursuant to section 709 of this title:” after “authorized purposes of the project:”.

2014—Pub. L. 113-121, § 1015(a)(4), substituted “: *Provided further*, That the term ‘non-Federal interest’ has the meaning given that term in section 1962d-5b of title 42.” for period at end.

Pub. L. 113-121, § 1015(a)(3), substituted “*Provided*, That the Secretary is authorized to receive and expend funds from a State or a political subdivision thereof, and other non-Federal interests or private entities, to operate a hurricane barrier project to support recreational activities at or in the vicinity of the project, at no cost to the Federal Government, if the Secretary determines that operation for such purpose is not inconsistent with the operation and maintenance of the project for the authorized purposes of the project: *Provided further*, That when” for “*Provided*, That when”.

Pub. L. 113-121, § 1015(a)(1), (2), inserted “and other non-Federal interests” after “States and political subdivisions thereof” in two places and inserted “, including a project for navigation on the inland waterways,” after “study or project”.

2011—Pub. L. 112-74 substituted “water resources development study or project” for “flood control or environmental restoration work” and inserted “for work, which includes planning and design,” before “to be expended” and “: *Provided further*, That the term ‘States’ means the several States, the District of Columbia, the commonwealths, territories, and possessions of the United States, and Federally recognized Indian tribes” before period at end.

1999—Pub. L. 106-53 inserted “or environmental restoration” after “flood control”.

1937—Act July 19, 1937, inserted text of section.

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.

NOTIFICATION FOR CONTRIBUTED FUNDS

Pub. L. 113-121, title I, § 1015(b), June 10, 2014, 128 Stat. 1223, provided that: “Prior to accepting funds contrib-

uted under section 5 of the Act of June 22, 1936 (33 U.S.C. 701h), the Secretary [of the Army] shall provide written notice of the funds to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives.”

§ 701h-1. Contributions by States and political subdivisions for immediate use on authorized flood-control work; repayment

Whenever any State or political subdivision thereof shall offer to advance funds for a federally authorized water resources development project, the Secretary of the Army may in his discretion, receive such funds and expend the same in the immediate prosecution of such project. The Secretary of the Army is authorized and directed to repay without interest, if appropriations are provided by Congress for such purpose, the moneys so contributed and expended: *Provided, however*, That no repayment of funds which may be contributed for the purpose of meeting any conditions of local cooperation imposed by Congress, or under the authority of section 701h of this title, shall be made. For purposes of this section, the term “State” means the several States, the District of Columbia, the commonwealths, territories, and possessions of the United States, and Indian tribes (as defined in section 5304(e) of title 25).

(Oct. 15, 1940, ch. 884, 54 Stat. 1176; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501; Pub. L. 115-270, title I, § 1166(a), Oct. 23, 2018, 132 Stat. 3797.)

Editorial Notes**AMENDMENTS**

2018—Pub. L. 115-270 substituted “a federally authorized water resources development project,” for “a flood-control project duly adopted and authorized by law”, “such project” for “such work”, and “if appropriations are provided by Congress for such purpose” for “from appropriations which may be provided by Congress for flood-control work” and inserted at end “For purposes of this Act, the term ‘State’ means the several States, the District of Columbia, the commonwealths, territories, and possessions of the United States, and Indian tribes (as defined in section 5304(e) of title 25).”

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§ 701h-2. No adverse effect on processes

In implementing any provision of law that authorizes a non-Federal interest to provide, advance, or contribute funds to the Secretary for the development or implementation of a water resources development project (including sections 2231 and 2232 of this title, section 701h of this title, and section 701h-1 of this title), the

Secretary shall ensure, to the maximum extent practicable, that the use by a non-Federal interest of such authorities does not adversely affect—

(1) the process or timeline for development and implementation of other water resources development projects by other non-Federal entities that do not use such authorities; or

(2) the process for including such projects in the President's annual budget submission to Congress under section 1105(a) of title 31.

(Pub. L. 115–270, title I, §1166(b), Oct. 23, 2018, 132 Stat. 3797.)

Statutory Notes and Related Subsidiaries

“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.

§ 701h–3. State contribution of funds for certain operation and maintenance costs

In carrying out eligible operations and maintenance activities within the Great Lakes Navigation System pursuant to section 2238 of this title in a State that has implemented any additional State limitation on the disposal of dredged material in the open waters of such State, the Secretary may, pursuant to section 701h of this title, receive from such State, and expend, such funds as may be contributed by the State to cover the additional costs for operations and maintenance activities for a harbor or inland harbor within such State that result from such limitation.

(Pub. L. 116–260, div. AA, title I, §107, Dec. 27, 2020, 134 Stat. 2623.)

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.

§ 701h–4. Acceptance of funds for harbor dredging

The Secretary is authorized, in accordance with section 701h of this title, to accept and expend funds contributed by a State or other non-Federal interest—

(1) to dredge a non-Federal harbor or channel, or a marina or berthing area located adjacent to, or accessible by, such harbor or channel; or

(2) to provide technical assistance related to the planning and design of dredging activities described in paragraph (1).

(Pub. L. 116–260, div. AA, title I, §144, Dec. 27, 2020, 134 Stat. 2653.)

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.

§ 701i. Elimination from protection of areas subject to evacuation

In any case where the construction cost of levees or flood walls included in any authorized project can be substantially reduced by the evacuation of a portion or all of the area proposed to be protected and by the elimination of that portion or all of the area from the protection to be afforded by the project, the Chief of Engineers may modify the plan of said project so as to eliminate said portion or all of the area: *Provided*, That a sum not substantially exceeding the amount thus saved in construction cost may be expended by the Chief of Engineers, or in his discretion may be transferred to any other appropriate Federal agency for expenditure, toward the evacuation of the locality eliminated from protection and the rehabilitation of the persons so evacuated: *And provided further*, That the Chief of Engineers may, if he so desires, enter into agreement with States, local agencies, or the individuals concerned for the accomplishment by them, of such evacuation and rehabilitation and for their reimbursement from said sum for expenditures actually incurred by them for this purpose.

(June 28, 1938, ch. 795, §3, 52 Stat. 1216.)

§ 701j. Installation in dams of facilities for future development of hydroelectric power

Penstocks or other similar facilities adapted to possible future use in the development of hydroelectric power shall be installed in any dam herein authorized when approved by the Secretary of the Army upon the recommendation of the Chief of Engineers and of the Secretary of Energy.

(June 28, 1938, ch. 795, §4, 52 Stat. 1216; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501; Pub. L. 95–91, title III, §301(b), Aug. 4, 1977, 91 Stat. 578.)

Editorial Notes

REFERENCES IN TEXT

Herein, referred to in text, means act June 28, 1938, ch. 795, 52 Stat. 1215, popularly known as the Flood Control Act of June 28, 1938, which to the extent classified to the Code enacted sections 701b, 701b–1, 701b–2, 701c–1, 701f–1, 701i, 701j, 702a–1½, 702a–11, and 706 of this title. For complete classification of this Act to the Code, see Tables.

Statutory Notes and Related Subsidiaries

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TRANSFER OF FUNCTIONS

“Secretary of Energy” substituted in text for “Federal Power Commission” on authority of Pub. L. 95–91, title III, §301(b), which is classified to section 7151(b) of Title 42, The Public Health and Welfare.

SIMILAR PROVISIONS

Similar provisions with reference to dams authorized in such acts were contained in acts Aug. 18, 1941, ch.