

trol 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

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 Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641.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

"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. 377, §3, 55 Stat. 639; Dec. 22, 1944, ch. 665, §10, 58 Stat. 891; July 24, 1946, ch. 596, §10, 60 Stat. 643.

Executive Documents

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Power Commission, with certain reservations, to chairman of such Commission, see Reorg. Plan No. 9 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 701k. Crediting reimbursements for lost, stolen, or damaged property

Any amounts collected from any person, persons, or corporations as a reimbursement for lost, stolen, or damaged property, purchased in connection with river and harbor or flood control work prosecuted under the direction of the Secretary of the Army and the supervision of the Chief of Engineers, whether collected in cash or by deduction from amounts otherwise due such person, persons, or corporations, on and after June 20, 1938, shall be credited in each case to the appropriation that bore the cost of purchase, repair, or replacement of the lost, stolen, or damaged property.

(June 20, 1938, ch. 535, §4, 52 Stat. 805; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501.)

Editorial Notes

CODIFICATION

Section is also set out as section 571 of this title.

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.

§§ 701l, 701l-1. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 650, 656

Section 701l, act June 20, 1938, ch. 535, §5, 52 Stat. 805, related to employment of retired civil service employees. See section 3323 of Title 5, Government Organization and Employees.

Section 701l-1, act May 17, 1950, ch. 188, title II, §214, 64 Stat. 184, provided that section 947 of former Title 5, Executive Departments and Government Officers and Employees, should not be construed to prevent employment of additional personnel.

§ 701m. Insufficient Congressional authorization; preparations for and modification of project

In any case where the total authorization for a project heretofore or hereafter authorized by Congress is not sufficient to complete plans that may have been made the Chief of Engineers is authorized in his discretion to plan and make expenditures on preparations for the project, such as the purchase of lands, easements, and rights-of-way; readjustments of roads, railroads, and other utilities; removal of towns, cemeteries, and dwellings from reservoir sites; and the construction of foundations. The Chief of Engineers is also authorized in his discretion to modify the plan for any dam or other work heretofore or hereafter authorized so that such dam or work will be smaller than originally planned with a view to completing a useful improvement within an authorization: *Provided*, That the smaller structure shall be located on the chosen site so that it will be feasible at some future time to enlarge the work in order to permit the full utilization of the site for all purposes of conservation such as flood control, navigation, reclamation, the development of hydroelectric power, and the abatement of pollution.

(Aug. 18, 1941, ch. 377, §2, 55 Stat. 638.)

§ 701n. Emergency response to natural disasters

(a) Emergency fund

(1) There is authorized an emergency fund to be expended in preparation for emergency response to any natural disaster, in flood fighting and rescue operations, or in the repair or restoration of any flood control work threatened or destroyed by flood, including the strengthening, raising, extending, realigning, or other modification thereof as may be necessary in the discretion of the Chief of Engineers for the adequate functioning of the work for flood control and subject to the condition that the Chief of Engineers may include modifications to the structure or project, or in implementation of nonstructural alternatives to the repair or restoration of such flood control work if requested by the non-Federal sponsor; in the emergency protection of federally authorized hurricane or shore protection being threatened when in the discretion of the Chief of Engineers such protection is warranted to protect against imminent and substantial loss to life and property; in the repair and restoration of any federally authorized hurricane or shore protective structure or project damaged or destroyed by wind, wave, or water action of other than an ordinary nature to

the pre-storm level of protection, to the design level of protection, or, notwithstanding the authorized dimensions of the structure or project, to a level sufficient to meet the authorized purpose of such structure or project, whichever provides greater protection, when, in the discretion of the Chief of Engineers, such repair and restoration is warranted for the adequate functioning of the structure or project for hurricane or shore protection, including to ensure the structure or project is functioning adequately to protect against projected changes in wave action or height or storm surge (including changes that result from relative sea level change over the useful life of the structure or project), subject to the condition that the Chief of Engineers may, if requested by the non-Federal sponsor, include modifications to the structure or project (including the addition of new project features) to address major deficiencies, increase resilience, increase benefits from the reduction of damages from inundation, wave action, or erosion, or implement nonstructural alternatives to the repair or restoration of the structure. The emergency fund may also be expended for emergency dredging for restoration of authorized project depths for Federal navigable channels and waterways made necessary by flood, drought, earthquake, or other natural disasters. In any case in which the Chief of Engineers is otherwise performing work under this section in an area for which the Governor of the affected State has requested a determination that an emergency exists or a declaration that a major disaster exists under the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.], the Chief of Engineers is further authorized to perform on public and private lands and waters for a period of ten days following the Governor's request any emergency work made necessary by such emergency or disaster which is essential for the preservation of life and property, including, but not limited to, channel clearance, emergency shore protection, clearance and removal of debris and wreckage endangering public health and safety, and temporary restoration of essential public facilities and services. The Chief of Engineers, in the exercise of his discretion, is further authorized to provide emergency supplies of clean water, on such terms as he determines to be advisable, to any locality which he finds is confronted with a source of contaminated water causing or likely to cause a substantial threat to the public health and welfare of the inhabitants of the locality. The appropriation of such moneys for the initial establishment of this fund and for its replenishment on an annual basis, is authorized: *Provided*, That pending the appropriation of sums to such emergency fund, the Secretary of the Army may allot, from existing flood-control appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized, such appropriations to be reimbursed from the appropriation herein authorized when made. The Chief of Engineers is authorized, in the prosecution of work in connection with rescue operations, or in conducting other flood emergency work, to acquire on a rental basis such motor vehicles, including passenger cars and buses, as in his discretion are deemed necessary.

(2) COST AND BENEFIT FEASIBILITY ASSESSMENT.—

(A) CONSIDERATION OF BENEFITS.—In preparing a cost and benefit feasibility assessment for any emergency project described in paragraph (1), the Chief of Engineers shall consider the benefits to be gained by such project for the protection of—

- (i) residential establishments;
- (ii) commercial establishments, including the protection of inventory; and
- (iii) agricultural establishments, including the protection of crops.

(B) SPECIAL CONDITIONS.—

(i) AUTHORITY TO CARRY OUT WORK.—The Chief of Engineers may carry out repair or restoration work described in paragraph (1) that does not produce benefits greater than the cost if—

(I) the non-Federal sponsor agrees to pay, or provide contributions equal to, an amount sufficient to make the remaining costs of the project equal to the estimated value of the benefits of the repair or restoration work; and

(II) the Secretary determines that—

(aa) the damage to the structure was not a result of negligent operation or maintenance; and

(bb) repair of the project could benefit another Corps project.

(ii) TREATMENT OF PAYMENTS AND CONTRIBUTIONS.—Non-Federal payments or contributions pursuant to clause (i) shall be in addition to any non-Federal payments or contributions required by the Chief of Engineers that are applicable to the remaining costs of the repair or restoration work.

(3) EXTENDED ASSISTANCE.—Upon request by a locality receiving assistance under the fourth sentence of paragraph (1), the Secretary shall, subject to the availability of appropriations, enter into an agreement with the locality to provide such assistance beyond the time period otherwise provided for by the Secretary under such sentence.

(4) NONSTRUCTURAL ALTERNATIVES DEFINED.—In this subsection, the term “nonstructural alternatives” includes efforts to restore or protect natural resources, including streams, rivers, floodplains, wetlands, or coasts, if those efforts will reduce flood risk.

(5) FEASIBILITY STUDY.—

(A) DETERMINATION.—Not later than 180 days after receiving, from a non-Federal sponsor of a project to repair or rehabilitate a flood control work described in paragraph (1), a request to initiate a feasibility study to further modify the relevant flood control work to provide for an increased level of protection, the Secretary shall provide to the non-Federal sponsor a written decision on whether the Secretary has the authority under section 549a of this title to undertake the requested feasibility study.

(B) RECOMMENDATION.—If the Secretary determines under subparagraph (A) that the Secretary does not have the authority to undertake the requested feasibility study, the Secretary shall include the request for a feasi-

bility study in the annual report submitted under section 2282d of this title.

(b) Emergency supplies of drinking water; drought; well construction and water transportation

(1) The Secretary, upon a written request for assistance under this paragraph made by any farmer, rancher, or political subdivision within a distressed area, and after a determination by the Secretary that (A) as a result of the drought such farmer, rancher, or political subdivision has an inadequate supply of water, (B) an adequate supply of water can be made available to such farmer, rancher, or political subdivision through the construction of a well, and (C) as a result of the drought such well could not be constructed by a private business, the Secretary, subject to paragraph (3) of this subsection, may enter into an agreement with such farmer, rancher, or political subdivision for the construction of such well.

(2) The Secretary, upon a written request for assistance under this paragraph made by any farmer, rancher, or political subdivision within a distressed area, and after a determination by the Secretary that as a result of the drought such farmer, rancher, or political subdivision has an inadequate supply of water and water cannot be obtained by such farmer, rancher, or political subdivision, the Secretary may transport water to such farmer, rancher, or political subdivision by methods which include, but are not limited to, small-diameter emergency water lines and tank trucks, until such time as the Secretary determines that an adequate supply of water is available to such farmer, rancher, or political subdivision.

(3)(A) Any agreement entered into by the Secretary pursuant to paragraph (1) of this subsection shall require the farmer, rancher, or political subdivision for whom the well is constructed to pay to the United States the reasonable cost of such construction, with interest, over such number of years, not to exceed thirty, as the Secretary deems appropriate. The rate of interest shall be that rate which the Secretary determines would apply if the amount to be repaid was a loan made pursuant to section 636(b)(2) of title 15.

(B) The Secretary shall not construct any well pursuant to this subsection unless the farmer, rancher, or political subdivision for whom the well is being constructed has obtained, prior to construction, all necessary State and local permits.

(4) The Federal share for the transportation of water pursuant to paragraph (2) of this subsection shall be 100 per centum.

(5) For purposes of this subsection—

(A) the term “construction” includes construction, reconstruction, or repair;

(B) the term “distressed area” means an area which the Secretary determines due to drought conditions has an inadequate water supply which is causing, or is likely to cause, a substantial threat to the health and welfare of the inhabitants of the area including threat of damage or loss of property;

(C) the term “political subdivision” means a city, town, borough, county, parish, district,

association, or other public body created by or pursuant to State law and having jurisdiction over the water supply of such public body;

(D) the term “reasonable cost” means the lesser of (i) the cost to the Secretary of constructing a well pursuant to this subsection exclusive of the cost of transporting equipment used in the construction of wells, or (ii) the cost to a private business of constructing such well;

(E) the term “Secretary” means the Secretary of the Army, acting through the Chief of Engineers; and

(F) the term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(c) Eligibility

(1) Levee owner’s manual

Not later than 1 year after October 12, 1996, in accordance with chapter 5 of title 5, the Secretary of the Army shall prepare a manual describing the maintenance and upkeep responsibilities that the Corps of Engineers requires of a non-Federal interest in order for the non-Federal interest to receive Federal assistance under this section. The Secretary shall provide a copy of the manual at no cost to each non-Federal interest that is eligible to receive Federal assistance under this section.

(2) Compliance

(A) In general

Notwithstanding the status of compliance of a non-Federal interest with the requirements of a levee owner’s manual described in paragraph (1), or with any other eligibility requirement established by the Secretary related to the maintenance and upkeep responsibilities of the non-Federal interest, the Secretary shall consider the non-Federal interest to be eligible for repair and rehabilitation assistance under this section if the non-Federal interest—

(i) enters into a written agreement with the Secretary that identifies any items of deferred or inadequate maintenance and upkeep identified by the Secretary prior to the natural disaster; and

(ii) pays, during performance of the repair and rehabilitation work, all costs to address—

(I) any items of deferred or inadequate maintenance and upkeep identified by the Secretary; and

(II) any repair or rehabilitation work necessary to address damage the Secretary attributes to such deferred or inadequate maintenance or upkeep.

(B) Eligibility

The Secretary may only enter into one agreement under subparagraph (A) with any non-Federal interest.

(C) Sunset

The authority of the Secretary to enter into agreements under paragraph (2) shall terminate on the date that is 5 years after December 27, 2020.

(3) Authorization of appropriations

There is authorized to be appropriated \$1,000,000 to carry out paragraph (1).

(4) Definitions

In this subsection, the following definitions apply:

(A) Maintenance and upkeep

The term “maintenance and upkeep” means all maintenance and general upkeep of a levee performed on a regular and consistent basis that is not repair and rehabilitation.

(B) Repair and rehabilitation

The term “repair and rehabilitation”—

(i) means the repair or rebuilding of a levee or other flood control structure, after the structure has been damaged by a flood, to the level of protection provided by the structure before the flood; but

(ii) does not include—

(I) any improvement to the structure; or

(II) repair or rebuilding described in clause (i) if, in the normal course of usage, the structure becomes structurally unsound and is no longer fit to provide the level of protection for which the structure was designed.

(d) Increased level of protection

In conducting repair or restoration work under subsection (a), at the request of the non-Federal sponsor, the Chief of Engineers may increase the level of protection above the level to which the system was designed, or, if the repair or restoration includes repair or restoration of a pumping station, increase the capacity of a pump, if—

(1) the Chief of Engineers determines the improvements are in the public interest, including consideration of whether—

(A) the authority under this section has been used more than once at the same location;

(B) there is an opportunity to decrease significantly the risk of loss of life and property damage; or

(C) there is an opportunity to decrease total life cycle rehabilitation costs for the project; and

(2) the non-Federal sponsor agrees to pay the difference between the cost of repair or restoration to the original design level or original capacity and the cost of achieving the higher level of protection or capacity sought by the non-Federal sponsor.

(e) Notice

The Secretary shall notify and consult with the non-Federal sponsor regarding the opportunity to request implementation of non-structural alternatives to the repair or restoration of a flood control work under subsection (a).

(Aug. 18, 1941, ch. 377, §5, 55 Stat. 650; July 24, 1946, ch. 596, §12, 60 Stat. 652; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501; June 30, 1948, ch. 771, title II, §206, 62 Stat. 1182; May 17, 1950, ch.

188, title II, §210, 64 Stat. 183; June 28, 1955, ch. 194, 69 Stat. 186; Pub. L. 87-874, title II, §206, Oct. 23, 1962, 76 Stat. 1194; Pub. L. 93-251, title I, §82, Mar. 7, 1974, 88 Stat. 34; Pub. L. 95-51, §2, June 20, 1977, 91 Stat. 233; Pub. L. 99-662, title IX, §917, Nov. 17, 1986, 100 Stat. 4192; Pub. L. 100-45, §9, May 27, 1987, 101 Stat. 323; Pub. L. 100-707, title I, §109(m), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 101-640, title III, §302, Nov. 28, 1990, 104 Stat. 4633; Pub. L. 104-303, title II, §202(e), (f), Oct. 12, 1996, 110 Stat. 3675; Pub. L. 113-121, title III, §3029(a), June 10, 2014, 128 Stat. 1305; Pub. L. 114-322, title I, §1176, Dec. 16, 2016, 130 Stat. 1673; Pub. L. 115-270, title I, §§1160, 1161(a), 1162, Oct. 23, 2018, 132 Stat. 3795, 3796; Pub. L. 116-260, div. AA, title I, §120, Dec. 27, 2020, 134 Stat. 2633; Pub. L. 117-263, div. H, title LXXXI, §8102(a), Dec. 23, 2022, 136 Stat. 3695.)

Editorial Notes

REFERENCES IN TEXT

The Disaster Relief and Emergency Assistance Act, referred to in subsec. (a)(1), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

2022—Subsec. (a)(1). Pub. L. 117-263 substituted “in the repair and restoration of any federally authorized hurricane or shore protective structure or project damaged or destroyed by wind, wave, or water action of other than an ordinary nature to the pre-storm level of protection, to the design level of protection, or, notwithstanding the authorized dimensions of the structure or project, to a level sufficient to meet the authorized purpose of such structure or project, whichever provides greater protection, when, in the discretion of the Chief of Engineers, such repair and restoration is warranted for the adequate functioning of the structure or project for hurricane or shore protection, including to ensure the structure or project is functioning adequately to protect against projected changes in wave action or height or storm surge (including changes that result from relative sea level change over the useful life of the structure or project), subject to the condition that the Chief of Engineers may, if requested by the non-Federal sponsor, include modifications to the structure or project (including the addition of new project features) to address major deficiencies, increase resilience, increase benefits from the reduction of damages from inundation, wave action, or erosion, or implement nonstructural alternatives to the repair or restoration of the structure.” for “in the repair and restoration of any federally authorized hurricane or shore protective structure or project damaged or destroyed by wind, wave, or water action of other than an ordinary nature to either the pre-storm level or the design level of protection, whichever provides greater protection, when, in the discretion of the Chief of Engineers, such repair and restoration is warranted for the adequate functioning of the structure or project for hurricane or shore protection, subject to the condition that the Chief of Engineers may include modifications to the structure or project to address major deficiencies or implement nonstructural alternatives to the repair or restoration of the structure if requested by the non-Federal sponsor.”

2020—Subsec. (a)(2)(B)(i)(I). Pub. L. 116-260, §120(1)(A)(i), inserted “, or provide contributions equal to,” after “pay”.

Subsec. (a)(2)(B)(ii). Pub. L. 116-260, §120(1)(A)(ii), in heading, inserted “and contributions” after “of pay-

ments” and, in text, inserted “or contributions” after “Non-Federal payments” and after “non-Federal payments”.

Subsec. (a)(5). Pub. L. 116-260, §120(1)(B), added par. (5).

Subsec. (c). Pub. L. 116-260, §120(2)(A), substituted “Eligibility” for “Levee owners manual” in heading.

Subsec. (c)(1). Pub. L. 116-260, §120(2)(B), substituted “Levee owner’s manual” for “In general” in heading.

Subsec. (c)(2) to (4). Pub. L. 116-260, §120(2)(C), (D), added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and substituted “paragraph (1)” for “this subsection” in par. (3).

2018—Subsec. (a)(1). Pub. L. 115-270, §1160, in first sentence, substituted “strengthening, raising, extending, realigning, or other modification thereof” for “strengthening, raising, extending, or other modification thereof” and “structure or project damaged or destroyed by wind, wave, or water action of other than an ordinary nature to either the pre-storm level or the design level of protection, whichever provides greater protection, when, in the discretion of the Chief of Engineers,” for “structure or project damaged or destroyed by wind, wave, or water action of other than an ordinary nature to the design level of protection when, in the discretion of the Chief of Engineers.”.

Subsec. (a)(2). Pub. L. 115-270, §1161(a), added par. (2) and struck out former par. (2) which read as follows: “In preparing a cost and benefit feasibility assessment for any emergency project described in paragraph (1), the Chief of Engineers shall consider the benefits to be gained by such project for the protection of—

“(A) residential establishments;

“(B) commercial establishments, including the protection of inventory; and

“(C) agricultural establishments, including the protection of crops.”

Subsec. (a)(3), (4). Pub. L. 115-270, §1162, added par. (3) and redesignated former par. (3) as (4).

2016—Subsec. (a)(3). Pub. L. 114-322, §1176(1), added par. (3).

Subsecs. (d), (e). Pub. L. 114-322, §1176(2), added subsecs. (d) and (e).

2014—Subsec. (a)(1). Pub. L. 113-121 inserted “and subject to the condition that the Chief of Engineers may include modifications to the structure or project” after “work for flood control” and substituted “structure or project damaged or destroyed by wind, wave, or water action of other than an ordinary nature to the design level of protection when, in the discretion of the Chief of Engineers, such repair and restoration is warranted for the adequate functioning of the structure or project for hurricane or shore protection, subject to the condition that the Chief of Engineers may include modifications to the structure or project to address major deficiencies or implement nonstructural alternatives to the repair or restoration of the structure if requested by the non-Federal sponsor” for “structure damaged or destroyed by wind, wave, or water action of other than an ordinary nature when in the discretion of the Chief of Engineers such repair and restoration is warranted for the adequate functioning of the structure for hurricane or shore protection”.

1996—Subsec. (a)(1). Pub. L. 104-303, §202(e), in first sentence, inserted “, or in implementation of non-structural alternatives to the repair or restoration of such flood control work if requested by the non-Federal sponsor”.

Subsec. (c). Pub. L. 104-303, §202(f), added subsec. (c).

1990—Subsec. (a)(1). Pub. L. 101-640 substituted “preparation for emergency response to any natural disaster” for “flood emergency preparation” and inserted provision permitting the emergency fund to be used for emergency dredging for restoration of authorized depths for Federal navigable channels and waterways made necessary by flood, drought, earthquake, or other natural disasters.

1988—Subsec. (a)(1). Pub. L. 100-707 substituted “and Emergency Assistance Act” for “Act of 1974”.

1987—Subsec. (a). Pub. L. 100-45 designated existing provisions as par. (1) and added par. (2).

1986—Subsec. (a). Pub. L. 99-662 inserted provision relating to authority of the Chief of Engineers, when the Governor of an affected State requests a determination that an emergency or major disaster exists, to perform on public and private lands and waters, for a period of ten days following the Governor’s request, any emergency work made necessary by such emergency or disaster which is essential for the preservation of life and property, and substituted “clean water” for “clean drinking water” and “contaminated water” for “contaminated drinking water”.

1977—Pub. L. 95-51 designated existing provisions as subsec. (a) and added subsec. (b).

1974—Pub. L. 93-251 struck out limitation of emergency fund to \$15,000,000, provided for emergency supplies of clean drinking water to localities confronted with source of contaminated drinking water, and substituted in proviso “of sums to such emergency fund” for “of said sum”.

1962—Pub. L. 87-874 authorized expenditures from the emergency fund for the protection of federally authorized hurricane or shore protection being threatened when such is warranted to protect against imminent and substantial loss to life and property, and for the repair and restoration of any such federally authorized hurricane or shore protective structure damaged or destroyed by wind or water action of an extraordinary nature when such is warranted for the adequate functioning of the structure for hurricane or shore protection.

1955—Act June 28, 1955, authorized expenditure for flood emergency preparation and eliminated the requirement of maintenance of flood control works threatened by flood.

1950—Act May 17, 1950, expanded scope of work considered under emergency repairs to flood-control structures, and substituted “\$15,000,000” for “\$2,000,000”.

1948—Act June 30, 1948, inserted provisions relating to the strengthening, extending, or modification of flood-control works.

1946—Act July 24, 1946, substituted “\$2,000,000” for “\$1,000,000”.

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.

GREAT LAKES ADVANCE MEASURES ASSISTANCE

Pub. L. 117-263, div. H, title LXXXI, §8102(b), Dec. 23, 2022, 136 Stat. 3696, provided that:

“(1) IN GENERAL.—The Secretary [of the Army] shall not deny a request from the Governor of a Great Lakes State to provide advance measures assistance pursuant to section 5(a) of the Act of August 18, 1941 (33 U.S.C. 701n(a)) to reduce the risk of damage from rising water levels in the Great Lakes solely on the basis that the damage is caused by erosion.

“(2) FEDERAL SHARE.—Assistance provided by the Secretary pursuant to a request described in paragraph (1) shall be at Federal expense if the assistance is for the construction of advance measures to a temporary construction standard.

“(3) GREAT LAKES STATE DEFINED.—In this subsection, the term ‘Great Lakes State’ means the State of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, or Wisconsin.”

TECHNICAL ASSISTANCE FOR LEVEE INSPECTIONS

Pub. L. 117-263, div. H, title LXXXI, §8120, Dec. 23, 2022, 136 Stat. 3711, provided that: “In any instance

where the Secretary [of the Army] requires, as a condition of eligibility for Federal assistance under section 5 of the Act of August 18, 1941 (33 U.S.C. 701n), that a non-Federal sponsor of a flood control project undertake an electronic inspection of the portion of such project that is under normal circumstances submerged, the Secretary shall provide to the non-Federal sponsor credit or reimbursement for the cost of carrying out such inspection against the non-Federal share of the cost of repair or restoration of such project carried out under such section.”

CONTINUED ELIGIBILITY

Pub. L. 115-270, title I, §1161(b), Oct. 23, 2018, 132 Stat. 3796, as amended by Pub. L. 116-260, div. AA, title I, §121, Dec. 27, 2020, 134 Stat. 2634, provided that: “Notwithstanding a non-Federal flood control work’s status in the Rehabilitation and Inspection Program carried out pursuant to section 5 of the Act of August 18, 1941 (33 U.S.C. 701n), any unconstructed emergency project for the non-Federal flood control work that was formulated during the five fiscal years preceding the fiscal year in which this Act was enacted [Oct. 23, 2018] but that was determined to not produce benefits greater than costs shall remain eligible for assistance under such section 5 until the last day of the fifth fiscal year following the fiscal year in which this Act was enacted if—

“(1) the non-Federal sponsor agrees, in accordance with such section 5, as amended by this Act, to pay, or provide contributions equal to, an amount sufficient to make the remaining costs of the project equal to the estimated value of the benefits of the repair or restoration work; and

“(2) the Secretary [of the Army] determines that the damage to the structure was not as a result of negligent operation or maintenance.”

SYSTEMWIDE IMPROVEMENT FRAMEWORK

Pub. L. 113-121, title III, §3011, June 10, 2014, 128 Stat. 1284, provided that: “A levee system shall remain eligible for rehabilitation assistance under the authority provided by section 5 of the Act of August 18, 1941 (33 U.S.C. 701n) as long as the levee system sponsor continues to make satisfactory progress, as determined by the Secretary [of the Army], on an approved system-wide improvement framework or letter of intent.”

VEGETATION MANAGEMENT GUIDELINES

Pub. L. 113-121, title III, §3013, June 10, 2014, 128 Stat. 1284, provided that:

“(a) DEFINITION OF GUIDELINES.—In this section, the term ‘guidelines’ means the Corps of Engineers policy guidelines for management of vegetation on levees, including—

“(1) Engineering Technical Letter 1110-2-571 entitled ‘Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures’ and adopted April 10, 2009; and

“(2) the draft policy guidance letter entitled ‘Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls’ (77 Fed. Reg. 9637 (Feb. 17, 2012)).

“(b) REVIEW.—The Secretary [of the Army] shall carry out a comprehensive review of the guidelines in order to determine whether current Federal policy relating to levee vegetation is appropriate for all regions of the United States.

“(c) FACTORS.—

“(1) IN GENERAL.—In carrying out the review, the Secretary shall consider—

“(A) the varied interests and responsibilities in managing flood risks, including the need—

“(i) to provide the greatest benefits for public safety with limited resources; and

“(ii) to ensure that levee safety investments minimize environmental impacts and provide corresponding public safety benefits;

“(B) the levee safety benefits that can be provided by woody vegetation;

“(C) the preservation, protection, and enhancement of natural resources, including—

“(i) the benefit of vegetation on levees in providing habitat for species of concern, including endangered, threatened, and candidate species; and

“(ii) the impact of removing levee vegetation on compliance with other regulatory requirements;

“(D) protecting the rights of Indian tribes pursuant to treaties and statutes;

“(E) determining how vegetation impacts the performance of a levee or levee system during a storm or flood event;

“(F) the available science and the historical record regarding the link between vegetation on levees and flood risk;

“(G) the avoidance of actions requiring significant economic costs and environmental impacts; and

“(H) other factors relating to the factors described in subparagraphs (A) through (F) identified in public comments that the Secretary determines to be appropriate.

“(2) VARIANCE CONSIDERATIONS.—

“(A) IN GENERAL.—In carrying out the review, the Secretary shall specifically consider factors that promote and allow for consideration of variances from guidelines on a Statewide, tribal, regional, or watershed basis, including variances based on—

“(i) regional or watershed soil conditions;

“(ii) hydrologic factors;

“(iii) vegetation patterns and characteristics;

“(iv) environmental resources, including endangered, threatened, or candidate species and related regulatory requirements;

“(v) levee performance history, including historical information on original construction and subsequent operation and maintenance activities;

“(vi) any effects on water supply;

“(vii) any scientific evidence on the link between levee vegetation and levee safety;

“(viii) institutional considerations, including implementation challenges and conflicts with or violations of Federal or State environmental laws;

“(ix) the availability of limited funds for levee construction and rehabilitation;

“(x) the economic and environmental costs of removing woody vegetation on levees; and

“(xi) other relevant factors identified in public comments that the Secretary determines to be appropriate.

“(B) SCOPE.—The scope of a variance approved by the Secretary may include a complete exemption to guidelines, if appropriate.

“(d) COOPERATION AND CONSULTATION; RECOMMENDATIONS.—

“(1) IN GENERAL.—The Secretary shall carry out the review under this section in consultation with other applicable Federal agencies, representatives of State, regional, local, and tribal governments, appropriate nongovernmental organizations, and the public.

“(2) RECOMMENDATIONS.—

“(A) REGIONAL INTEGRATION TEAMS.—Corps of Engineers Regional Integration Teams, representing districts, divisions, and headquarters, in consultation with State and Federal resource agencies, and with participation by local agencies, shall submit to the Secretary any recommendations for vegetation management policies for levees that conform with Federal and State laws and other applicable requirements, including recommendations relating to the review of guidelines under subsection (b) and the consideration of variances under subsection (c)(2).

“(B) STATE, TRIBAL, REGIONAL, AND LOCAL ENTITIES.—The Secretary shall consider and accept rec-

ommendations from any State, tribal, regional, or local entity for vegetation management policies for levees that conform with Federal and State laws and other applicable requirements, including recommendations relating to the review of guidelines under subsection (b) and the consideration of variances under subsection (c)(2).

“(e) INDEPENDENT CONSULTATION.—

“(1) IN GENERAL.—As part of the review, the Secretary shall solicit and consider the views of independent experts on the engineering, environmental, and institutional considerations underlying the guidelines, including the factors described in subsection (c) and any information obtained by the Secretary under subsection (d).

“(2) AVAILABILITY OF VIEWS.—The views of the independent experts obtained under paragraph (1) shall be—

“(A) made available to the public; and

“(B) included in supporting materials issued in connection with the revised guidelines required under subsection (f).

“(f) REVISION OF GUIDELINES.—

“(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act [June 10, 2014], the Secretary shall—

“(A) revise the guidelines based on the results of the review, including—

“(i) recommendations received as part of the consultation described in subsection (d)(1); and

“(ii) the views received under subsection (e);

“(B) provide the public not less than 30 days to review and comment on draft guidelines before issuing final guidelines; and

“(C) submit to Congress and make publicly available a report that contains a summary of the activities of the Secretary and a description of the findings of the Secretary under this section.

“(2) CONTENT; INCORPORATION INTO MANUAL.—The revised guidelines shall—

“(A) provide a practical, flexible process for approving Statewide, tribal, regional, or watershed variances from the guidelines that—

“(i) reflect due consideration of the factors described in subsection (c); and

“(ii) incorporate State, tribal, and regional vegetation management guidelines for specific areas that—

“(I) are consistent with the guidelines; and

“(II) have been adopted through a formal public process; and

“(B) be incorporated into the manual proposed under section 5(c) of the Act of August 18, 1941 (33 U.S.C. 701n(c)).

“(3) FAILURE TO MEET DEADLINES.—If the Secretary fails to submit a report by the required deadline under this subsection, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a detailed explanation of—

“(A) why the deadline was missed;

“(B) solutions needed to meet the deadline; and

“(C) a projected date for submission of the report.

“(g) INTERIM ACTIONS.—

“(1) IN GENERAL.—Until the date on which revisions to the guidelines are adopted in accordance with subsection (f), the Secretary shall not require the removal of existing vegetation as a condition or requirement for any approval or funding of a project, or any other action, unless the specific vegetation has been demonstrated to present an unacceptable safety risk.

“(2) REVISIONS.—Beginning on the date on which the revisions to the guidelines are adopted in accordance with subsection (f), the Secretary shall reconsider, on request of an affected entity, any previous action of the Corps of Engineers in which the outcome was affected by the former guidelines.”

Pub. L. 104-303, title II, § 202(g), Oct. 12, 1996, 110 Stat. 3676, provided that:

“(1) REVIEW.—The Secretary shall undertake a comprehensive review of the current policy guidelines on vegetation management for levees. The review shall examine current policies in view of the varied interests in providing flood control, preserving, protecting, and enhancing natural resources, protecting the rights of Native Americans pursuant to treaty and statute, and such other factors as the Secretary considers appropriate.

“(2) COOPERATION AND CONSULTATION.—The review under this section [subsection] shall be undertaken in cooperation with interested Federal agencies and in consultation with interested representatives of State and local governments and the public.

“(3) REVISION OF GUIDELINES.—Based upon the results of the review, the Secretary shall revise, not later than 270 days after the date of the enactment of this Act [Oct. 12, 1996], the policy guidelines so as to provide a coherent and coordinated policy for vegetation management for levees. Such revised guidelines shall address regional variations in levee management and resource needs and shall be incorporated in the manual proposed under section 5(c) of such Act of August 18, 1941 (33 U.S.C. 701n[(c)]).”

Executive Documents

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 701n-1. Biennial report to Congress

(A) In general

Not later than 2 years after June 10, 2014, and every 2 years thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report detailing the amounts expended in the previous 5 fiscal years to carry out Corps of Engineers projects under section 701n of this title.

(B) Inclusions

A report under subparagraph (A) shall, at a minimum, include a description of—

(i) each structure, feature, or project for which amounts are expended, including the type of structure, feature, or project and cost of the work; and

(ii) how the Secretary has repaired, restored, replaced, or modified each structure, feature, or project or intends to restore the structure, feature, or project to the design level of protection for the structure, feature, or project.

(Pub. L. 113-121, title III, § 3029(c)(1), June 10, 2014, 128 Stat. 1307.)

Statutory Notes and Related Subsidiaries

“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.

§ 701n-2. Monthly report to Congress

In fiscal year 2018, and each fiscal year thereafter, the Chief of Engineers of the U.S. Army Corps of Engineers shall transmit to the Congress, after reasonable opportunity for comment, but without change, by the Assistant Sec-