

112TH CONGRESS
2D SESSION

S. _____

To provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Water Resources Development Act of 2012”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

2

- Sec. 1. Short title; table of contents.
- Sec. 2. Definition of Secretary.

TITLE I—WATER RESOURCE PROJECTS

- Sec. 1001. Purposes.
- Sec. 1002. Project authorizations.
- Sec. 1003. Project review.

TITLE II—WATER RESOURCES POLICY REFORMS

- Sec. 2001. Purposes.
- Sec. 2002. Fish and wildlife mitigation.
- Sec. 2003. Independent peer review.
- Sec. 2004. Safety assurance review.
- Sec. 2005. Continuing authority programs.
- Sec. 2006. Operation and maintenance of navigation and hydroelectric facilities.
- Sec. 2007. Mitigation status report.
- Sec. 2008. Clarification of work-in-kind credit authority.
- Sec. 2009. Transfer of excess work-in-kind credit.
- Sec. 2010. Credit for in-kind contributions.
- Sec. 2011. Credit in lieu of reimbursement.
- Sec. 2012. Dam optimization.
- Sec. 2013. Implementation of biological opinions.
- Sec. 2014. Consideration of Federal land in feasibility studies.
- Sec. 2015. Planning assistance to States.
- Sec. 2016. Project acceleration.
- Sec. 2017. Vegetation management policy.
- Sec. 2018. Operation and maintenance of certain projects.
- Sec. 2019. Non-Federal project implementation pilot program.
- Sec. 2020. Tribal partnership program.
- Sec. 2021. Cooperative agreements with Columbia River Basin Indian tribes.
- Sec. 2022. Post-disaster watershed assessments.
- Sec. 2023. Levee certifications.
- Sec. 2024. Military munitions response actions at civil works shoreline protection projects.
- Sec. 2025. Beach nourishment.
- Sec. 2026. Project deauthorizations.

TITLE III—PROJECT MODIFICATIONS

- Sec. 3001. Purpose.
- Sec. 3002. **【To be supplied】**.

TITLE IV—WATER RESOURCE STUDIES

- Sec. 4001. Purpose.
- Sec. 4002. Initiation of new water resources studies.
- Sec. 4003. Applicability.

TITLE V—REGIONAL AND NONPROJECT PROVISIONS

- Sec. 5001. Purpose.
- Sec. 5002. Northeast Coastal Region ecosystem restoration.
- Sec. 5003. Improving management of flood and drought.
- Sec. 5004. Chesapeake Bay environmental restoration and protection program.

- Sec. 5005. Rio Grande environmental management program, Colorado, New Mexico, Texas.
- Sec. 5006. Lower Columbia River and Tillamook Bay ecosystem restoration, Oregon and Washington.

TITLE VI—LEVEE SAFETY

- Sec. 6001. Short title.
- Sec. 6002. Findings; purposes.
- Sec. 6003. Definitions.
- Sec. 6004. National levee safety program.
- Sec. 6005. National Levee Safety Advisory Board.
- Sec. 6006. Inventory and inspection of levees.
- Sec. 6007. Reports.
- Sec. 6008. Effect of title.
- Sec. 6009. Authorization of appropriations.

TITLE VII—INLAND WATERWAYS

- Sec. 7001. Purposes.
- Sec. 7002. Definitions.
- Sec. 7003. Project delivery process reforms.
- Sec. 7004. Major rehabilitation standards.
- Sec. 7005. Efficiency of revenue collection.

TITLE VIII—HARBOR MAINTENANCE

- Sec. 8001. Purposes.
- Sec. 8002. Funding for harbor maintenance programs.
- Sec. 8003. Harbor operation and maintenance.

TITLE IX—DAM SAFETY

- Sec. 9001. Short title.
- Sec. 9002. Purpose.
- Sec. 9003. Administrator.
- Sec. 9004. Inspection of dams.
- Sec. 9005. National Dam Safety Program.
- Sec. 9006. Public awareness and outreach for dam safety.
- Sec. 9007. Authorization of appropriations.

TITLE X—INNOVATIVE FINANCING PILOT PROJECTS

- Sec. 10001. Short title.
- Sec. 10002. Purposes.
- Sec. 10003. Definitions.
- Sec. 10004. Authority to provide assistance.
- Sec. 10005. Applications.
- Sec. 10006. Eligible entities.
- Sec. 10007. Projects eligible for assistance.
- Sec. 10008. Activities eligible for assistance.
- Sec. 10009. Determination of eligibility and project selection.
- Sec. 10010. Secured loans.
- Sec. 10011. Program administration.
- Sec. 10012. State and local permits.
- Sec. 10013. Regulations.

Sec. 10014. Funding.
Sec. 10015. Report to Congress.

1 **SEC. 2. DEFINITION OF SECRETARY.**

2 In this Act, the term “Secretary” means the Sec-
3 retary of the Army.

4 **TITLE I—WATER RESOURCE**
5 **PROJECTS**

6 **SEC. 1001. PURPOSES.**

7 The purposes of this title are—

8 (1) to authorize projects that—

9 (A) are the subject of a completed report
10 of the Chief of Engineers containing a deter-
11 mination that the relevant project—

12 (i) is in the Federal interest;

13 (ii) results in benefits that exceed the
14 costs of the project;

15 (iii) is environmentally acceptable; and

16 (iv) is technically feasible; and

17 (B) have been recommended to Congress
18 for authorization by the Assistant Secretary of
19 the Army for Civil Works; and

20 (2) to authorize the Secretary—

21 (A) to review projects that require in-
22 creased authorization; and

23 (B) to increase those authorizations
24 after—

- 1 (i) certifying that the increases are
2 necessary; and
3 (ii) submitting to Congress reports on
4 the proposed increases.

5 **SEC. 1002. PROJECT AUTHORIZATIONS.**

6 The Secretary is authorized to carry out water re-
7 sources development and conservation projects subject to
8 the conditions that—

9 (1) each project is carried out—

10 (A) substantially in accordance with the
11 plan for the project; and

12 (B) subject to any conditions described in
13 the report for the project; and

14 (2) a Report of the Chief of Engineers has been
15 completed and a referral by the Assistant Secretary
16 of the Army for Civil Works has been made to Con-
17 gress as of the date of enactment of this Act for the
18 project.

19 **SEC. 1003. PROJECT REVIEW.**

20 (a) IN GENERAL.—For a project that has been au-
21 thorized by Federal law before the date of enactment of
22 this Act and that is under construction as of the date of
23 enactment of this Act, the Secretary may modify the au-
24 thorized cost of a project by making the required certifi-

1 cation and submitting to Congress a cost recommendation
2 in accordance with subsection (b).

3 (b) REQUIREMENTS.—

4 (1) CERTIFICATION.—The certification to Con-
5 gress under subsection (a) shall include a certifi-
6 cation by the Secretary that—

7 (A) expenditures above the authorized cost
8 of the project are necessary to protect life and
9 safety, maintain critical navigation routes, or
10 restore ecosystems;

11 (B) the project provides significant na-
12 tional benefits;

13 (C) a temporary stop or delay resulting
14 from a failure to increase the authorized cost of
15 the project will increase costs to the Federal
16 Government; and

17 (D) the amount requested for the project
18 in the budget of the President or included in a
19 work plan for the expenditure of funds for the
20 fiscal year during which the certification is sub-
21 mitted will exceed the authorized cost of the
22 project.

23 (2) RECOMMENDATION.—The recommendation
24 to Congress under subsection (a) shall include, at a
25 minimum—

1 (A) a comprehensive review of the project
2 costs and reasons for exceeding the limits set
3 under section 902 of the Water Resources De-
4 velopment Act of 1986 (33 U.S.C. 2280);

5 (B) the new funding level needed to com-
6 plete the project; and

7 (C) a recommendation to increase the au-
8 thorized funding level for the project to Con-
9 gress.

10 (c) TERMINATION OF EFFECTIVENESS.—The author-
11 ity of the Secretary under this section terminates effective
12 on December 31, 2014.

13 **TITLE II—WATER RESOURCES** 14 **POLICY REFORMS**

15 **SEC. 2001. PURPOSES.**

16 The purposes of this title are—

17 (1) to reform the implementation of water re-
18 sources projects by the Corps of Engineers;

19 (2) to make other technical changes to the
20 water resources policy of the Corps of Engineers;
21 and

22 (3) to accomplish the following reforms:

23 (A) Enhance the ability of local sponsors
24 to partner with the Corps of Engineers by en-
25 suring the eligibility of the local sponsors to re-

1 ceive credit for work carried out by the spon-
2 sors and increasing flexibility of the sponsors in
3 applying that credit to a Corps of Engineers
4 project.

5 (B) Ensure continuing authority programs
6 can continue to meet important needs by in-
7 creasing the size and per-project limitations of
8 the programs.

9 (C) Encourage the continuation of efforts
10 to modernize feasibility studies and establish
11 targets for expedited completion of feasibility
12 studies.

13 (D) Seek efficiencies in the management of
14 dams and related infrastructure to reduce envi-
15 ronmental impacts while maximizing other ben-
16 efits and project purposes, such as flood con-
17 trol, water supply, and hydropower.

18 (E) Clarify mitigation requirements for
19 Corps of Engineers projects and ensure trans-
20 parency in the independent external review of
21 those projects.

22 (F) Deauthorize projects that have failed
23 to receive a minimum level of investment to en-
24 sure active projects can move forward while re-
25 ducing the backlog of authorized projects.

1 **SEC. 2002. FISH AND WILDLIFE MITIGATION.**

2 Section 906(d) of the Water Resources Development
3 Act of 1986 (33 U.S.C. 2283(d)(1)) is amended—

4 (1) in paragraph (1)—

5 (A) in the first sentence—

6 (i) by inserting “for damages to eco-
7 logical resources, including terrestrial and
8 aquatic resources, and” after “mitigate”;

9 (ii) by inserting “ecological resources
10 and” after “impact on”; and

11 (iii) by inserting “without the imple-
12 mentation of mitigation measures” before
13 the period; and

14 (B) by inserting before the last sentence
15 the following: “If the Secretary determines that
16 mitigation to in-kind conditions is not possible,
17 the Secretary shall identify in the report the
18 basis for that determination.”; and

19 (2) in paragraph (3)(A), by inserting “, at a
20 minimum,” after “complies with”.

21 **SEC. 2003. INDEPENDENT PEER REVIEW.**

22 (a) **TIMING OF PEER REVIEW.**—Section 2034(b) of
23 the Water Resources Development Act of 2007 (33 U.S.C.
24 2343(b)) is amended—

25 (1) by redesignating paragraph (3) as para-
26 graph (4); and

1 (2) by inserting after paragraph (2) the fol-
2 lowing:

3 “(3) REASONS FOR TIMING.—If the Chief of
4 Engineers does not initiate a peer review for a
5 project study at a time described in paragraph (2),
6 the Chief shall—

7 “(A) make publicly available, including on
8 the Internet, for each of those times, the rea-
9 sons for not conducting the review; and

10 “(B) include the reasons in the decision
11 document for the project study.”.

12 (b) ESTABLISHMENT OF PANELS.—Section 2034(c)
13 of the Water Resources Development Act of 2007 (33
14 U.S.C. 2343(c)) is amended by striking paragraph (4) and
15 inserting the following:

16 “(4) CONGRESSIONAL AND PUBLIC NOTIFICA-
17 TION.—Following the identification of a project
18 study for peer review under this section, but prior to
19 initiation of the review by the panel of experts, the
20 Chief of Engineers shall—

21 “(A) notify the Committee on Environment
22 and Public Works of the Senate and the Com-
23 mittee on Transportation and Infrastructure of
24 the House of Representatives of the review; and

1 “(B) make publicly available, including on
2 the Internet, information on—

3 “(i) the dates scheduled for beginning
4 and ending the review;

5 “(ii) the entity that has the contract
6 for the review; and

7 “(iii) the names and qualifications of
8 the panel of experts.”.

9 (c) RECOMMENDATIONS OF PANEL.—Section 2034(f)
10 of the Water Resources Development Act of 2007 (33
11 U.S.C. 2343(f)) is amended by striking paragraph (2) and
12 inserting the following:

13 “(2) PUBLIC AVAILABILITY AND SUBMISSION
14 TO CONGRESS.—After receiving a report on a project
15 study from a panel of experts under this section, the
16 Chief of Engineers shall make available to the pub-
17 lic, including on the Internet, and submit to the
18 Committee on Environment and Public Works of the
19 Senate and the Committee on Transportation and
20 Infrastructure of the House of Representatives—

21 “(A) a copy of the report not later than 3
22 days after the date on which the report is deliv-
23 ered to the Chief of Engineers; and

24 “(B) a copy of any written response of the
25 Chief of Engineers on recommendations con-

1 tained in the report not later than 3 days after
2 the date on which the response is delivered to
3 the Chief of Engineers.

4 “(3) INCLUSION IN PROJECT STUDY.—A report
5 on a project study from a panel of experts under
6 this section and the written response of the Chief of
7 Engineers shall be included in the final decision doc-
8 ument for the project study.”.

9 (d) APPLICABILITY.—Section 2034(h)(2) of the
10 Water Resources Development Act of 2007 (33 U.S.C.
11 2343(h)(2)) is amended by striking “7 years” and insert-
12 ing “12 years”.

13 **SEC. 2004. SAFETY ASSURANCE REVIEW.**

14 Section 2035 of the Water Resources Development
15 Act of 2007 (33 U.S.C. 2344) is amended by adding at
16 the end the following:

17 “(g) NONAPPLICABILITY OF FACCA.—The Federal
18 Advisory Committee Act (5 U.S.C. App.) shall not apply
19 to a safety assurance review conducted under this sec-
20 tion.”.

21 **SEC. 2005. CONTINUING AUTHORITY PROGRAMS.**

22 (a) SMALL RIVER AND HARBOR IMPROVEMENT
23 PROJECTS.—Section 107 of the River and Harbor Act of
24 1960 (33 U.S.C. 577) is amended—

1 (1) in subsection (a), by striking
2 “\$35,000,000” and inserting “\$50,000,000”; and
3 (2) in subsection (b), by striking “\$7,000,000”
4 and inserting “\$10,000,000”.

5 (b) SHORE DAMAGE PREVENTION OR MITIGATION.—
6 Section 111(c) of the River and Harbor Act of 1968 (33
7 U.S.C. 426i(c)) is amended by striking “\$5,000,000” and
8 inserting “\$10,000,000”.

9 (c) REGIONAL SEDIMENT MANAGEMENT.—Section
10 204 of the Water Resources Development Act of 1992 (33
11 U.S.C. 2326) is amended—

12 (1) in subsection (c)(1)(C), by striking
13 “\$5,000,000” and inserting “\$10,000,000”; and

14 (2) by redesignating subsection (g) as sub-
15 section (h);

16 (3) by inserting after subsection (f) the fol-
17 lowing:

18 “(g) APPLICABILITY.—This section does not apply to
19 a project authorized under the Water Resources Develop-
20 ment Act of 2007 (Public Law 110–114; 121 Stat. 1041)
21 if a report of the Chief of Engineers for the project was
22 completed prior to the date of enactment of that Act.”;
23 and

1 (4) in subsection (h) (as redesignated by para-
2 graph (2)), by striking “\$30,000,000” and inserting
3 “\$50,000,000”.

4 (d) SMALL FLOOD CONTROL PROJECTS.—Section
5 205 of the Flood Control Act of 1948 (33 U.S.C. 701s)
6 is amended in the third sentence by striking “\$7,000,000”
7 and inserting “\$10,000,000”.

8 (e) PROJECT MODIFICATIONS FOR IMPROVEMENT OF
9 ENVIRONMENT.—Section 1135(d) of the Water Resources
10 Development Act of 1986 (33 U.S.C. 2309a(d)) is amend-
11 ed—

12 (1) in the second sentence, by striking “Not
13 more than 80 percent of the non-Federal may be”
14 and inserting “The non-Federal share may be pro-
15 vided”; and

16 (2) in the third sentence, by striking
17 “\$5,000,000” and inserting “\$10,000,000”.

18 (f) AQUATIC ECOSYSTEM RESTORATION.—Section
19 206(d) of the Water Resources Development Act of 1996
20 (33 U.S.C. 2330(d)) is amended by striking “\$5,000,000”
21 and inserting “\$10,000,000”.

1 **SEC. 2006. OPERATION AND MAINTENANCE OF NAVIGATION**
2 **AND HYDROELECTRIC FACILITIES.**

3 (a) IN GENERAL.—Section 314 of the Water Re-
4 sources Development Act of 1990 (33 U.S.C. 2321) is
5 amended—

6 (1) by striking the heading and inserting the
7 following:

8 **“SEC. 314. OPERATION AND MAINTENANCE OF NAVIGATION**
9 **AND HYDROELECTRIC FACILITIES.”;**

10 (2) in the first sentence, by striking “Activities
11 currently performed” and inserting the following:

12 “(a) IN GENERAL.—Activities currently performed”;

13 (3) in the second sentence, by striking “This
14 section” and inserting the following:

15 “(b) MAJOR MAINTENANCE CONTRACTS AL-
16 LOWED.—This section”; and

17 (4) in subsection (a) (as designated by para-
18 graph (2)), by inserting “navigation or” before “hy-
19 droelectric”.

20 (b) CLERICAL AMENDMENT.—The table of contents
21 contained in section 1(b) of the Water Resources Develop-
22 ment Act of 1990 (104 Stat. 4604) is amended by striking
23 the item relating to section 314 and inserting the fol-
24 lowing:

“Sec. 314. Operation and maintenance of navigation and hydroelectric facili-
ties.”.

1 **SEC. 2007. MITIGATION STATUS REPORT.**

2 Section 2036(b) of the Water Resources Development
3 Act of 2007 (33 U.S.C. 2283a) is amended—

4 (1) by redesignating paragraph (3) as para-
5 graph (4); and

6 (2) by inserting after paragraph (2) the fol-
7 lowing:

8 “(3) INFORMATION INCLUDED.—In reporting
9 the status of all projects included in the report, the
10 Secretary shall—

11 “(A) use a uniform methodology for deter-
12 mining the status of all projects included in the
13 report;

14 “(B) use a methodology that describes
15 both a qualitative and quantitative status for all
16 projects in the report; and

17 “(C) provide specific dates for and partici-
18 pants in the consultations required under sec-
19 tion 906(d)(4)(B) of the Water Resources De-
20 velopment Act of 1986 (33 U.S.C.
21 2283(d)(4)(B)).”.

22 **SEC. 2008. CLARIFICATION OF WORK-IN-KIND CREDIT AU-**
23 **THORITY.**

24 (a) NON-FEDERAL COST SHARE.—Section 7007 of
25 the Water Resources Development Act of 2007 (121 Stat.
26 1277) is amended—

1 (1) in subsection (a)—

2 (A) by inserting “, on, or after” after “be-
3 fore”; and

4 (B) by inserting “, program,” after
5 “study” each place it appears; and

6 (2) in subsections (b), (d), and (e), by inserting
7 “, program,” after “study” each place it appears.

8 (b) EFFECTIVE DATE.—The amendments made by
9 subsection (a) take effect on November 8, 2007.

10 **SEC. 2009. TRANSFER OF EXCESS WORK-IN-KIND CREDIT.**

11 (a) IN GENERAL.—Subject to subsection (b), the Sec-
12 retary may authorize a non-Federal project sponsor to
13 earn work-in-kind credit in excess of the required cost-
14 share for a study or project and apply that credit to the
15 required non-Federal cost-share for a different water re-
16 sources study or project.

17 (b) RESTRICTIONS.—

18 (1) IN GENERAL.—Credit in excess of the non-
19 Federal cost-share for a project authorized under
20 this section shall meet all applicable requirements of
21 section 221 of the Flood Control Act of 1970 (42
22 U.S.C. 1962d–5b) (as amended by section 2010),
23 except that subsection (a)(4)(D)(i) of that section
24 shall not apply.

1 (2) CONDITIONS.—Credit in excess of the non-
2 Federal cost-share for a project may only be author-
3 ized under this section if—

4 (A) the non-Federal sponsor prepares and
5 submits a comprehensive plan to the Secretary
6 that identifies—

7 (i) the projects for which the non-Fed-
8 eral sponsor seeks to earn the excess cred-
9 it; and

10 (ii) the projects with a Federal inter-
11 est to which that credit would be trans-
12 ferred; and

13 (B) the total amount of credit in excess of
14 the non-Federal cost-share authorized does not
15 exceed the total non-Federal cost-share for the
16 projects with a Federal interest identified in the
17 comprehensive plan.

18 (c) ADDITIONAL CRITERIA.—In evaluating a request
19 to apply excess credit earned under this section to a dif-
20 ferent study or project, the Secretary shall consider wheth-
21 er the transfer of the credit will—

22 (1) help to expedite the completion of a project
23 or group of projects;

24 (2) reduce costs to the Federal Government;
25 and

1 (3) aid the completion of a project that provides
2 significant flood risk reduction or environmental
3 benefits.

4 (d) **TERMINATION OF AUTHORITY.**—The authority
5 provided in this section shall terminate 5 years after the
6 date of enactment of this Act.

7 (e) **REPORT.**—

8 (1) **DEADLINES.**—

9 (A) **IN GENERAL.**—Not later than 2 years
10 after the date of enactment of this Act, the Sec-
11 retary shall submit to the Committee on Envi-
12 ronment and Public Works of the Senate and
13 the Committee on Transportation and Infra-
14 structure of the House of Representatives an
15 interim report on the use of the authority under
16 this section.

17 (B) **FINAL REPORT.**—Not later than 5
18 years after the date of enactment of this Act,
19 the Secretary shall submit to the Committee on
20 Environment and Public Works of the Senate
21 and the Committee on Transportation and In-
22 frastructure of the House of Representatives a
23 final report on the use of the authority under
24 this section.

1 (2) INCLUSIONS.—The reports described in
2 paragraph (1) shall include—

3 (A) a description of the use of the author-
4 ity under this section during the reporting pe-
5 riod;

6 (B) an assessment of the impact of the au-
7 thority under this section on the time required
8 to complete projects; and

9 (C) an assessment of the impact of the au-
10 thority under this section on other water re-
11 sources projects.

12 **SEC. 2010. CREDIT FOR IN-KIND CONTRIBUTIONS.**

13 (a) IN GENERAL.—Section 221(a)(4) of the Flood
14 Control Act of 1970 (42 U.S.C. 1962d–5b(a)(4)) is
15 amended—

16 (1) in subparagraph (A), in the matter pre-
17 ceding clause (i) by inserting “or a project under an
18 environmental infrastructure assistance program”
19 after “law”;

20 (2) in subparagraph (C)—

21 (A) by striking “In any case” and insert-
22 ing the following:

23 “(i) IN GENERAL.—In any case”;

24 (B) in clause (i) (as so designated), by
25 striking “, and only work carried out following

1 the execution of the agreement shall be eligible
2 for credit”; and

3 (C) by adding at the end the following:

4 “(ii) **ELIGIBLE WORK.**—Only mitiga-
5 tion, construction, and construction serv-
6 ices work that is carried out pursuant to a
7 notice to proceed issued by the non-Fed-
8 eral interest following the execution of an
9 agreement under clause (i) shall be eligible
10 for credit under this subparagraph.

11 “(iii) **PLANNING, DESIGN, AND MAN-**
12 **AGEMENT COSTS.**—The costs of planning
13 (including data collection), design, and
14 management carried out for an element of
15 a project for which a non-Federal interest
16 has entered into an agreement under
17 clause (i) and for which the Secretary de-
18 termines the work to be integral to the
19 project under subparagraph (B) shall be
20 eligible for credit under this subparagraph,
21 regardless of whether the costs were in-
22 curred prior to the execution of that agree-
23 ment.

1 “(iv) COMBINATION OF CREDIT.—
2 Credit authorized under this subparagraph
3 shall be—

4 “(I) available for use by a non-
5 Federal interest on any separable ele-
6 ment of a project, including in com-
7 bination with credit authorized under
8 section 104 of the Water Resources
9 Development Act of 1986 (33 U.S.C.
10 2214) for the same separable element
11 of a project; and

12 “(II) transferable between sepa-
13 rable elements of the same project.”;

14 (3) in subparagraph (D)—

15 (A) by redesignating clauses (i) through
16 (iv) as subclauses (I) through (IV), respectively;

17 (B) by striking “Credit authorized” and
18 inserting the following:

19 “(i) IN GENERAL.—Credit author-
20 ized”;

21 (C) in subclause (II), by inserting “subject
22 to clause (ii)” before “shall not”; and

23 (D) by adding at the end the following:

24 “(ii) RESTRICTION.—If implementa-
25 tion of clause (i)(II) increases the costs of

1 the non-Federal interest for a project to an
2 amount that exceeds the non-Federal cost-
3 share otherwise required for that project
4 under applicable law, the Secretary shall
5 reimburse the non-Federal interest for the
6 portion of the cost equal to the difference
7 between—

8 “(I) the cost to the non-Federal
9 interest of carrying out the project as
10 if the credit under this paragraph is
11 not provided; and

12 “(II) the total amount the non-
13 Federal interest would be required to
14 contribute under the applicable cost-
15 sharing requirement for the project as
16 if the credit under this paragraph is
17 provided.”;

18 (4) by redesignating subparagraph (E) as sub-
19 paragraph (F);

20 (5) by inserting after subparagraph (D) the fol-
21 lowing:

22 “(E) GUIDELINES.—

23 “(i) IN GENERAL.—Not later than 1
24 year after the date of enactment of the
25 Water Resources Development Act of

1 2012, the Secretary shall issue guidelines
2 for carrying out this paragraph.

3 “(ii) INCLUSIONS.—The guidelines
4 shall include—

5 “(I) criteria and procedures for
6 determining whether work carried out
7 by non-Federal interests is integral to
8 a project under subparagraph (B);

9 “(II) a milestone in the water re-
10 sources planning process by which an
11 agreement shall be signed under sub-
12 paragraph (C)(i), which milestone
13 shall be not later than the release of
14 the draft report of the District Engi-
15 neer for the project;

16 “(III) a process by which the re-
17 quirement under subclause (II) may
18 be waived, including any criteria for
19 granting the waiver; and

20 “(IV) a requirement that the
21 Secretary consider, in analyzing the
22 costs and benefits of a proposed
23 project, the costs and benefits of any
24 flood control work carried out by the
25 non-Federal interest that the Sec-

1 retary determines to be integral to the
2 project.

3 “(iii) PUBLIC AND STAKEHOLDER
4 PARTICIPATION.—

5 “(I) IN GENERAL.—Before
6 issuing the guidelines, the Secretary
7 shall consult with non-Federal inter-
8 ests.

9 “(II) PUBLIC NOTICE.—The Sec-
10 retary shall publish the proposed
11 guidelines developed under this sub-
12 paragraph in the Federal Register
13 and provide the public with an oppor-
14 tunity to comment.

15 “(III) UPDATES.—The Secretary
16 shall publish any updated version of
17 the guidelines developed under this
18 subparagraph in the Federal Register
19 and provide the public with an oppor-
20 tunity to comment.”; and

21 (6) in subparagraph (F) (as redesignated by
22 paragraph (4)), by striking clause (ii) and inserting
23 the following:

24 “(ii) AUTHORIZATION IN AD-
25 DITION TO SPECIFIC CREDIT

1 PROVISION.—In any case in
2 which a specific provision of law
3 authorizes credit for in-kind con-
4 tributions provided by a non-Fed-
5 eral interest before the date of
6 execution of a partnership agree-
7 ment, the Secretary may apply
8 the authority provided in this
9 paragraph to allow credit for in-
10 kind contributions provided by
11 the non-Federal interest on or
12 after the date of execution of the
13 partnership agreement.”.

14 (b) **EFFECTIVE DATE.**—The amendments made by
15 this section take effect on November 8, 2007.

16 **SEC. 2011. CREDIT IN LIEU OF REIMBURSEMENT.**

17 Section 211(e)(2) of the Water Resources Develop-
18 ment Act of 1996 (33 U.S.C. 701b–13(e)(2)) is amended
19 by adding at the end the following:

20 “(C) **STUDIES OR OTHER PROJECTS.**—On
21 the request of a non-Federal interest, in lieu of
22 reimbursing a non-Federal interest the amount
23 equal to the estimated Federal share of the cost
24 of an authorized flood damage reduction project
25 or a separable element of an authorized flood

1 damage reduction project under this subsection
2 that has been constructed by the non-Federal
3 interest under this section as of the date of en-
4 actment of this Act, the Secretary may provide
5 the non-Federal interest with a credit in that
6 amount, which the non-Federal interest may
7 apply to the share of the cost of the non-Fed-
8 eral interest of carrying out other flood damage
9 reduction projects or studies.”.

10 **SEC. 2012. DAM OPTIMIZATION.**

11 (a) DEFINITIONS.—In this section:

12 (1) ENVIRONMENTAL PROTECTION AND RES-
13 TINATION ACTIVITIES.—The term “environmental
14 protection and restoration activities” includes the
15 maintenance and restoration of—

16 (A) water quality, water flows, and water
17 levels;

18 (B) the health and movement of fish and
19 other aquatic species; and

20 (C) floodplains, wetlands, estuaries, and
21 other environmentally valuable areas.

22 (2) OTHER RELATED PROJECT BENEFITS.—
23 The term “other related project benefits” includes—

24 (A) enhanced water supply storage;

25 (B) increased hydropower generation;

1 (C) reduced flood risk; and

2 (D) improved recreation.

3 (b) PROGRAM.—

4 (1) IN GENERAL.—The Secretary may carry out
5 any activity that the Secretary determines to be nec-
6 essary—

7 (A) to improve the efficiency of dam oper-
8 ations and maintenance; and

9 (B) to maximize—

10 (i) authorized project purposes;

11 (ii) environmental protection and res-
12 toration activities for authorized projects;

13 and

14 (iii) other related project benefits.

15 (2) ELIGIBLE ACTIVITIES.—An activity author-
16 ized under this section is any activity that is de-
17 signed to improve environmental protection and res-
18 toration activities and other related project benefits
19 in a manner that is consistent with the authorized
20 purposes of the project, including—

21 (A) the review of project operations on a
22 regular and timely basis to determine the po-
23 tential for operational changes;

1 (B) carrying out any investigation or study
2 the Administrator determines to be necessary;
3 and

4 (C) the revision or updating of a water
5 control plan or other modification of the oper-
6 ation of a water resource project.

7 (c) POLICIES, REGULATIONS, AND GUIDANCE.—The
8 Secretary shall carry out a review of, and as necessary
9 modify, the policies, regulations, and guidance of the Sec-
10 retary to carry out the activities described in subsection
11 (b)(1).

12 (d) COORDINATION.—The Secretary shall coordinate
13 all planning and activities carried out under this section
14 with appropriate Federal, State, and local agencies and
15 those public and private entities that the Secretary deter-
16 mines may be affected by those plans or activities.

17 (e) REPORTS.—

18 (1) IN GENERAL.—Not later than 1 year after
19 the date of enactment of this Act, the Secretary
20 shall submit to Congress a report detailing any rec-
21 ommendations of the Secretary on changes that the
22 Secretary determines to be necessary—

23 (A) to carry out existing projection author-
24 izations, including the deauthorization of any
25 water resource project that the Secretary deter-

1 mines could more effectively be achieved
2 through other means;

3 (B) to improve the efficiency of dam oper-
4 ations; and

5 (C) to maximize authorized project pur-
6 poses, environmental protection and restoration
7 activities, and other related project benefits.

8 (2) UPDATED REPORT.—

9 (A) IN GENERAL.—Not later than 1 year
10 after the date of enactment of this Act, the Sec-
11 retary shall update the report entitled “Author-
12 ized and Operating Purposes of Corps of Engi-
13 neers Reservoirs” and dated July 1992, which
14 was produced pursuant to section 311 of the
15 Water Resources Development Act of 1990
16 (104 Stat. 4639).

17 (B) INCLUSIONS.—The updated report de-
18 scribed in subparagraph (A) shall include—

19 (i) the date on which the most recent
20 dam operations review was conducted and
21 any recommendations of the Secretary re-
22 lating to that review the Secretary deter-
23 mines to be significant;

1 (ii) the dates on which the rec-
2 ommendations described in clause (i) were
3 carried out; and

4 (iii) a schedule detailing a subsequent
5 operations review.

6 (f) FUNDING.—

7 (1) IN GENERAL.—Notwithstanding any other
8 provision of law, the Secretary may use to carry out
9 this section amounts made available to the Secretary
10 from—

11 (A) any account or program, including
12 continuing authority programs;

13 (B) the general purposes and expenses ac-
14 count;

15 (C) the operations and maintenance ac-
16 count; and

17 (D) any other amounts that are appro-
18 priated to carry out this section.

19 (2) FUNDING FROM OTHER SOURCES.—The
20 Secretary may accept and expend amounts from
21 non-Federal entities and other Federal agencies to
22 carry out this section.

23 (3) TRANSFER OF FUNDING.—The Secretary
24 may transfer amounts made available to the Sec-

1 ronmental challenges,” after “of such State”;
2 and
3 (2) in subsection (c)(1), by striking
4 “\$10,000,000” and inserting “\$30,000,000”.

5 **SEC. 2016. PROJECT ACCELERATION.**

6 (a) SENSE OF CONGRESS.—It is the sense of Con-
7 gress that—

8 (1) delays in the completion of feasibility stud-
9 ies—

10 (A) increase costs for the Federal Govern-
11 ment as well as State and local governments;
12 and

13 (B) delay the implementation of water re-
14 sources projects that provide critical benefits,
15 including reducing flood risk, maintaining com-
16 mercially important flood risk, and restoring
17 vital ecosystems;

18 (2) the efforts undertaken by the Corps of En-
19 gineers through the establishment of the “3-3-3”
20 planning process should be continued; and

21 (3) the Corps of Engineers—

22 (A) to the maximum extent practicable,
23 shall seek to complete new feasibility studies in
24 the 18 month-period beginning on the date of
25 enactment of this Act; and

1 (B) shall complete the new feasibility stud-
2 ies not later than 3 years after the date of en-
3 actment of this Act.

4 (b) REPORT.—Not later than 18 months after the
5 date of enactment of this Act and each year thereafter,
6 the Secretary shall submit to the Committee on Environ-
7 ment and Public Works of the Senate and the Committee
8 on Transportation and Infrastructure of the House of
9 Representatives a report that describes—

10 (1) the status of the implementation of the “3-
11 3-3” planning process, including the number of par-
12 ticipating projects;

13 (2) the amount of time taken to complete all
14 studies participating in the “3-3-3” planning pro-
15 cess; and

16 (3) any recommendations for additional author-
17 ity necessary to support efforts to expedite the feasi-
18 bility study process for water resource projects.

19 **SEC. 2017. VEGETATION MANAGEMENT POLICY.**

20 (a) REVIEW.—Not later than 180 days after the date
21 of enactment of this Act, the Secretary shall carry out a
22 comprehensive review of the Corps of Engineers policy
23 guidelines on vegetation management for levees (referred
24 to in this section as “national guidelines”) in order to de-
25 termine whether current Federal policy relating to levee

1 vegetation is appropriate for all regions of the United
2 States.

3 (b) FACTORS.—

4 (1) IN GENERAL.—In carrying out the review,
5 the Secretary shall examine the national guidelines
6 in view of—

7 (A) the varied interests and responsibilities
8 in managing flood risks, including the need to
9 provide the greatest levee safety benefit with
10 limited resources;

11 (B) preserving, protecting, and enhancing
12 natural resources, including the potential ben-
13 efit that vegetation on levees can have in pro-
14 viding habitat for species of concern;

15 (C) protecting the rights of Indian tribes
16 pursuant to treaties and statutes; and

17 (D) other factors relating to the factors de-
18 scribed in subparagraphs (A) through (C) that
19 the Secretary determines to be appropriate.

20 (2) REGIONAL AND WATERSHED VARIANCE
21 CONSIDERATIONS.—

22 (A) IN GENERAL.—In carrying out the re-
23 view, the Secretary shall specifically consider
24 whether the national guidelines can be amended
25 to promote and allow for consideration of poten-

1 tial variances from national guidelines on a re-
2 gional or watershed basis, including on factors
3 such as—

4 (i) regional or watershed soil condi-
5 tions;

6 (ii) hydrologic factors;

7 (iii) vegetation patterns and charac-
8 teristics;

9 (iv) environmental resources;

10 (v) levee performance history;

11 (vi) institutional considerations; and

12 (vii) other relevant factors.

13 (B) SCOPE.—The scope of a variance ap-
14 proved by the Secretary may include a complete
15 exemption to national guidelines, as the Sec-
16 retary determines to be necessary.

17 (c) COOPERATION AND CONSULTATION; REC-
18 COMMENDATIONS.—

19 (1) IN GENERAL.—The Secretary shall carry
20 out the review under this section in consultation
21 with other applicable Federal agencies, representa-
22 tives of State, local, and tribal governments, appro-
23 priate nongovernmental organizations, and the pub-
24 lic.

1 (2) RECOMMENDATIONS.—The Chief of Engi-
2 neers shall submit to the Secretary any rec-
3 ommendations for vegetation management policies
4 for levees that conform with Federal and State laws
5 developed by the Chief of Engineers in consultation
6 with the Corps of Engineers Regional Integration
7 Teams and Federal, State, tribal, and local re-
8 sources agencies.

9 (d) PEER REVIEW.—

10 (1) IN GENERAL.—As part of the review, the
11 Secretary shall solicit and consider the views of the
12 National Academy of Engineering on the engineer-
13 ing, environmental, and institutional considerations
14 underlying the national guidelines.

15 (2) AVAILABILITY OF VIEWS.—The views of the
16 National Academy of Engineering obtained under
17 paragraph (1) shall be—

18 (A) made available to the public; and

19 (B) included in supporting materials issued
20 in connection with the revised national guide-
21 lines required under subsection (e).

22 (e) REVISION OF NATIONAL GUIDELINES.—

23 (1) IN GENERAL.—Not later than 2 years after
24 the date of enactment of this Act, the Secretary
25 shall—

1 (A) revise the national guidelines based on
2 the results of the review, including the results
3 of the peer review conducted under subsection
4 (d); and

5 (B) submit to Congress a report that con-
6 tains a summary of the activities of the Sec-
7 retary and a description of the findings of the
8 Secretary under this section.

9 (2) CONTENT; INCORPORATION INTO MAN-
10 UAL.—The revised national guidelines shall—

11 (A) provide a practical process for approv-
12 ing regional or watershed variances from the
13 national guidelines, reflecting due consideration
14 of measures to maximize public safety benefits
15 with limited resources, regional climatic vari-
16 ations, environmental quality, implementation
17 challenges, and allocation of responsibilities;
18 and

19 (B) be incorporated into the manual pro-
20 posed under section 5(c) of the Act entitled “An
21 Act authorizing the construction of certain pub-
22 lic works on rivers and harbors for flood con-
23 trol, and for other purposes”, approved August
24 18, 1941 (33 U.S.C. 701n(c)).

1 (f) CONTINUATION OF WORK.—Concurrent with the
2 completion of the requirements of this section, the Sec-
3 retary shall proceed without interruption or delay with
4 those ongoing or programmed projects and studies, or ele-
5 ments of projects or studies, that are not directly related
6 to vegetation variance policy.

7 **SEC. 2018. OPERATION AND MAINTENANCE OF CERTAIN**
8 **PROJECTS.**

9 The Secretary may assume operation and mainte-
10 nance activities for a navigation channel that is deepened
11 by a non-Federal interest prior to December 31, 2012,
12 if—

13 (1) the Secretary determines that the require-
14 ments under paragraphs (2) and (3) of section
15 204(f) of the Water Resources Development Act of
16 1986 (33 U.S.C. 2232(f)) are met;

17 (2) the Secretary determines that the activities
18 carried out by the non-Federal interest in deepening
19 the navigation channel are economically justified and
20 environmentally acceptable; and

21 (3) the deepening activities have been carried
22 out on a Federal navigation channel that—

23 (A) exists as of the date of enactment of
24 this Act; and

25 (B) has been authorized by Congress.

1 **SEC. 2019. NON-FEDERAL PROJECT IMPLEMENTATION**
2 **PILOT PROGRAM.**

3 (a) **IN GENERAL.**—The Secretary shall establish a
4 pilot program to evaluate the cost-effectiveness and
5 project delivery efficiency of allowing non-Federal inter-
6 ests to carry out authorized flood damage reduction, hurri-
7 cane and storm damage reduction, and navigation
8 projects.

9 (b) **PURPOSES.**—The purposes of the pilot program
10 are—

11 (1) to identify project delivery and cost-saving
12 alternatives that reduce the backlog of authorized
13 Corps of Engineers projects;

14 (2) to evaluate the technical, financial, and or-
15 ganizational efficiencies of a non-Federal interest
16 carrying out the design, execution, management, and
17 construction of 1 or more projects; and

18 (3) to evaluate alternatives for the decentraliza-
19 tion of the project planning, management, and oper-
20 ational decisionmaking process of the Corps of Engi-
21 neers.

22 (c) **ADMINISTRATION.**—

23 (1) **IN GENERAL.**—In carrying out the pilot
24 program, the Secretary shall—

25 (A) identify a total of not more than 12
26 flood damage reduction, hurricane and storm

1 damage reduction, and navigation projects, in-
2 cluding levees, floodwalls, flood control chan-
3 nels, water control structures, and navigation
4 locks and channels, authorized for construction
5 that—

6 (i) have received Federal funds and
7 have experienced delays or missed sched-
8 uled deadlines in the 5 fiscal years prior to
9 the date of enactment of this Act; or

10 (ii) for more than 2 consecutive fiscal
11 years, have an unobligated funding balance
12 for that project in the Corps of Engineers
13 construction account;

14 (B) notify the Committee on Environment
15 and Public Works of the Senate and the Com-
16 mittee on Transportation and Infrastructure of
17 the House of Representatives on the identifica-
18 tion of each project under the pilot program;

19 (C) in consultation with the non-Federal
20 interest, develop a detailed project management
21 plan for each identified project that outlines the
22 scope, budget, design, and construction resource
23 requirements necessary for the non-Federal in-
24 terest to execute the project, or a separable ele-
25 ment of the project;

1 (D) on the request of the non-Federal in-
2 terest, enter into a project partnership agree-
3 ment with the non-Federal interest for the non-
4 Federal interest to provide full project manage-
5 ment control for construction of the project, or
6 a separable element of the project, in accord-
7 ance with plans approved by the Secretary;

8 (E) following execution of the project part-
9 nership agreement, transfer to the non-Federal
10 interest to carry out construction of the project,
11 or a separable element of the project—

12 (i) if applicable, the balance of the un-
13 obligated amounts appropriated for the
14 project, except that the Secretary shall re-
15 tain sufficient amounts for the Corps of
16 Engineers to carry out any responsibilities
17 of the Corps of Engineers relating to the
18 project and pilot program; and

19 (ii) additional amounts, as determined
20 by the Secretary, from amounts made
21 available under subsection (h), except that
22 the total amount transferred to the non-
23 Federal interest shall not exceed the esti-
24 mate of the Federal share of the cost of

1 construction, including any required de-
2 sign; and

3 (F) regularly monitor and audit each
4 project being constructed by a non-Federal in-
5 terest under this section to ensure that the con-
6 struction activities are carried out in compli-
7 ance with the plans approved by the Secretary
8 and that the construction costs are reasonable.

9 (2) TECHNICAL ASSISTANCE.—On the request
10 of a non-Federal interest, the Secretary may provide
11 technical assistance to the non-Federal interest, if
12 the non-Federal interest contracts with the Sec-
13 retary for the technical assistance and compensates
14 the Secretary for the technical assistance, relating
15 to—

16 (A) any study, engineering activity, and
17 design activity for construction carried out by
18 the non-Federal interest under this section; and

19 (B) obtaining any permits necessary for
20 the project.

21 (d) COST SHARE.—Nothing in this section affects the
22 cost-sharing requirement applicable on the day before the
23 date of enactment of this Act to a project carried out
24 under this section.

25 (e) REPORT.—

1 (1) IN GENERAL.—Not later than 2 years after
2 the date of enactment of this Act, the Secretary
3 shall submit to the Committee on Environment and
4 Public Works of the Senate and the Committee on
5 Transportation and Infrastructure of the House of
6 Representatives a report detailing the results of the
7 pilot program carried out under this section, includ-
8 ing any recommendations of the Secretary con-
9 cerning whether the program or any component of
10 the program should be implemented on a national
11 basis.

12 (2) UPDATE.—Not later than 5 years after the
13 date of enactment of this Act, the Secretary shall
14 submit to the Committee on Environment and Pub-
15 lic Works of the Senate and the Committee on
16 Transportation and Infrastructure of the House of
17 Representatives an update of the report described in
18 paragraph (1).

19 (f) ADMINISTRATION.—All laws and regulations that
20 would apply to the Secretary if the Secretary were car-
21 rying out the project shall apply to a non-Federal interest
22 carrying out a project under this section.

23 (g) TERMINATION OF AUTHORITY.—The authority to
24 commence a project under this section terminates on the

1 date that is 5 years after the date of enactment of this
2 Act.

3 (h) AUTHORIZATION OF APPROPRIATIONS.—In addi-
4 tion to any amounts appropriated for a specific project,
5 there is authorized to be appropriated to the Secretary to
6 carry out the pilot program under this section
7 \$25,000,000 for each of fiscal years 2013 through 2017.

8 **SEC. 2020. TRIBAL PARTNERSHIP PROGRAM.**

9 Section 203 of the Water Resources Act of 2000 (33
10 U.S.C. 2269) is amended—

11 (1) in subsection (d)(1)(B)—

12 (A) by striking “The ability” and inserting
13 the following:

14 “(i) IN GENERAL.—The ability”; and

15 (B) by adding at the end the following:

16 “(ii) DETERMINATION.—Not later
17 than 180 days after the date of enactment
18 of the Water Resources Development Act
19 of 2012, the Secretary shall issue guidance
20 on the procedures described in clause (i).”;
21 and

22 (2) in subsection (e), by striking “2012” and
23 inserting “2017”.

1 **SEC. 2021. COOPERATIVE AGREEMENTS WITH COLUMBIA**
2 **RIVER BASIN INDIAN TRIBES.**

3 The Secretary may enter into a cooperative agree-
4 ment with 1 or more federally recognized Indian tribes (or
5 a designated representative of the Indian tribes) that are
6 located, in whole or in part, within the boundaries of the
7 Columbia River Basin to carry out activities within the
8 Columbia River Basin to protect fish, wildlife, water qual-
9 ity, and cultural resources.

10 **SEC. 2022. POST-DISASTER WATERSHED ASSESSMENTS.**

11 (a) IN GENERAL.—In an area that the President has
12 declared a major disaster in accordance with section 401
13 of the Robert T. Stafford Disaster Relief and Emergency
14 Assistance Act (42 U.S.C. 5170), the Secretary may carry
15 out a watershed assessment to identify appropriate flood
16 risk reduction, hurricane and storm damage reduction, or
17 ecosystem restoration projects to rehabilitate damaged in-
18 frastructure and reduce risks from future natural disas-
19 ters.

20 (b) PROJECTS.—The Secretary may carry out 1 or
21 more small projects identified in a watershed assessment
22 under subsection (a) that the Secretary would otherwise
23 be authorized to carry out under—

24 (1) section 205 of the Flood Control Act of
25 1948 (33 U.S.C. 701s);

1 (2) section 111 of the River and Harbor Act of
2 1968 (33 U.S.C. 426i);

3 (3) section 206 of the Water Resources Devel-
4 opment Act of 1996 (33 U.S.C. 2330); or

5 (4) section 1135 of the Water Resources Devel-
6 opment Act of 1986 (33 U.S.C. 2309a).

7 (c) REQUIREMENTS.—All requirements applicable to
8 a project under the Acts described in subsection (b) shall
9 apply to the project, except that the Federal share of the
10 cost of carrying out a project under this section shall not
11 exceed \$5,000,000.

12 (d) LIMITATIONS ON ASSESSMENTS.—

13 (1) IN GENERAL.—A watershed assessment
14 under subsection (a) shall be initiated not later than
15 2 years after the date on which the major disaster
16 declaration is issued.

17 (2) FEDERAL SHARE.—The Federal share of
18 the cost of carrying out a watershed assessment
19 under subsection (a) shall not exceed \$1,000,000.

20 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
21 authorized to be appropriated to carry out this section
22 \$25,000,000 for each of fiscal years 2013 through 2017.

23 **SEC. 2023. LEVEE CERTIFICATIONS.**

24 (a) IN GENERAL.—On receipt of a request from a
25 non-Federal interest, the Secretary may carry out a levee

1 system evaluation and certification of a federally author-
2 ized levee for purposes of the national flood insurance pro-
3 gram established under chapter 1 of the National Flood
4 Insurance Act of 1968 (42 U.S.C. 4011 et seq.).

5 (b) REQUIREMENTS.—A levee system evaluation and
6 certification under subsection (a) shall—

7 (1) at a minimum, comply with section 65.10 of
8 title 44, Code of Federal Regulations (as in effect on
9 the date of enactment of this Act); and

10 (2) be carried out in accordance with such pro-
11 cedures as the Secretary, in consultation with the
12 Director of the Federal Emergency Management
13 Agency, may establish.

14 (c) COST SHARING.—

15 (1) NON-FEDERAL SHARE.—Subject to para-
16 graph (2), the non-Federal share of the cost of car-
17 rying out a levee system evaluation and certification
18 under this section shall be 35 percent.

19 (2) ADJUSTMENT.—The Secretary shall adjust
20 the non-Federal share of the cost of carrying out a
21 levee system evaluation and certification under this
22 section in accordance with section 103(m) of the
23 Water Resources Development Act of 1986 (33
24 U.S.C. 2213(m)).

1 **SEC. 2024. MILITARY MUNITIONS RESPONSE ACTIONS AT**
2 **CIVIL WORKS SHORELINE PROTECTION**
3 **PROJECTS.**

4 (a) IN GENERAL.—The Secretary may implement
5 any response action the Secretary determines to be nec-
6 essary at a site where—

7 (1) the Secretary has carried out a project
8 under civil works authority of the Secretary that in-
9 cludes placing sand on a beach;

10 (2) as a result of the project described in para-
11 graph (1), military munitions that were originally re-
12 leased as a result of Department of Defense activi-
13 ties are deposited on the beach, posing a threat to
14 human health or the environment.

15 (b) RESPONSE ACTION FUNDING.—A response action
16 described in subsection (a) shall be funded from amounts
17 made available to the agency within the Department of
18 Defense responsible for the original release of the muni-
19 tions.

20 **SEC. 2025. BEACH NOURISHMENT.**

21 Section 156 of the Water Resources Development Act
22 of 1976 (42 U.S.C. 1962d–5f) is amended to read as fol-
23 lows:

24 **“SEC. 156. BEACH NOURISHMENT.**

25 “(a) IN GENERAL.—The Secretary of the Army, act-
26 ing through the Chief of Engineers, may provide periodic

1 beach nourishment for each water resources development
2 project for which that nourishment has been authorized
3 for an additional period of time, as determined by the Sec-
4 retary, subject to the condition that the additional period
5 shall not exceed the later of—

6 “(1) 50 years after the date on which the con-
7 struction of the project is initiated; or

8 “(2) the date on which the last estimated peri-
9 odic nourishment for the project is to be carried out,
10 as recommended in the applicable report of the Chief
11 of Engineers.

12 “(b) EXTENSION.—Before the end of the 50-year pe-
13 riod referred to in subsection (a)(1), the Secretary of the
14 Army, acting through the Chief of Engineers—

15 “(1) may, at the request of the non-Federal in-
16 terest and subject to the availability of appropria-
17 tions, carry out a review of a nourishment project
18 carried out under subsection (a) to evaluate the fea-
19 sibility of continuing Federal participation in the
20 project for a period not to exceed 15 years; and

21 “(2) shall submit to Congress any recommenda-
22 tions of the Secretary relating to the review.”.

23 **SEC. 2026. PROJECT DEAUTHORIZATIONS.**

24 Section 1001(b) of the Water Resources Development
25 Act of 1986 (33 U.S.C. 579a(b)) is amended—

1 (1) by striking paragraph (2) and inserting the
2 following:

3 “(2) LIST OF PROJECTS.—

4 “(A) IN GENERAL.—Notwithstanding sec-
5 tion 3003 of Public Law 104–66 (31 U.S.C.
6 1113 note; 109 Stat. 734), each year, after the
7 submission of the list under paragraph (1), the
8 Secretary shall submit to Congress a list of
9 projects or separable elements of projects that
10 have been authorized but that have received no
11 obligations during the 5 full fiscal years pre-
12 ceding the submission of that list.

13 “(B) ADDITIONAL NOTIFICATION.—On
14 submission of the list under subparagraph (A)
15 to Congress, the Secretary shall notify—

16 “(i) each Senator in whose State and
17 each Member of the House of Representa-
18 tives in whose district a project (including
19 any part of a project) on that list would be
20 located; and

21 “(ii) each applicable non-Federal in-
22 terest associated with a project (including
23 any part of a project) on that list.

24 “(C) DEAUTHORIZATION.—A project or
25 separable element included in the list under

1 subparagraph (A) is not authorized after the
2 last date of the fiscal year following the fiscal
3 year in which the list is submitted to Congress,
4 if funding has not been obligated for the plan-
5 ning, design, or construction of the project or
6 element of the project during that period.”; and
7 (2) by adding at the end the following:

8 “(3) MINIMUM FUNDING LIST.—At the end of
9 each fiscal year, the Secretary shall submit to Con-
10 gress a list of projects or separable elements of
11 projects authorized for construction under this Act
12 for which funding has been obligated in the 5 pre-
13 vious fiscal years.”.

14 **TITLE III—PROJECT** 15 **MODIFICATIONS**

16 **SEC. 3001. PURPOSE.**

17 The purpose of this title is to modify existing water
18 resource project authorizations, subject to the condition
19 that the modifications result in no additional cost.

20 **SEC. 3002. [TO BE SUPPLIED].**

21 **TITLE IV—WATER RESOURCE** 22 **STUDIES**

23 **SEC. 4001. PURPOSE.**

24 The purpose of this title is to direct the Corps of En-
25 gineers to study and recommend solutions for water re-

1 source issues relating to flood risk and storm damage re-
2 duction, navigation, and ecosystem restoration.

3 **SEC. 4002. INITIATION OF NEW WATER RESOURCES STUD-**
4 **IES.**

5 (a) IN GENERAL.—At the request of a non-Federal
6 interest, the Secretary may initiate a study—

7 (1) to determine the feasibility of carrying out
8 1 or more projects for flood risk management, storm
9 damage reduction, ecosystem restoration, navigation,
10 hydropower, water supply, or recreation; or

11 (2) to comprehensively evaluate multiple water
12 resource issues in a watershed.

13 (b) CRITERIA.—The Secretary shall develop criteria
14 for determining when to initiate a study under subsection

15 (a), which, at a minimum, shall require that—

16 (1) the study is for an area that is likely to in-
17 clude a project to be carried out by a Federal inter-
18 est; and

19 (2)(A) the study addresses a high priority water
20 resource issue for which local support exists for ad-
21 dressing the water resource issue; and

22 (B) a non-Federal sponsor is likely to partici-
23 pate in the implementation of a solution to the water
24 resource issue.

1 (c) LIMITATION.—Subsection (a) shall not apply to
2 a project for which a study has been authorized prior to
3 the date of enactment of this Act.

4 (d) TERMINATION.—The authority under subsection
5 (a) expires on the date that is 2 years after the date of
6 enactment of this Act.

7 **SEC. 4003. APPLICABILITY.**

8 (a) IN GENERAL.—Nothing in this title authorizes
9 the construction of a water resources project.

10 (b) NEW AUTHORIZATION REQUIRED.—New author-
11 ization from Congress is required before any project evalu-
12 ated in a study under this title is constructed.

13 **TITLE V—REGIONAL AND**
14 **NONPROJECT PROVISIONS**

15 **SEC. 5001. PURPOSE.**

16 The purpose of this title is to authorize regional,
17 multistate authorities to address water resource needs and
18 other non-project provisions that do not have additional
19 costs.

20 **SEC. 5002. NORTHEAST COASTAL REGION ECOSYSTEM RES-**
21 **TORATION.**

22 (a) IN GENERAL.—The Secretary shall plan, design,
23 and construct projects for aquatic ecosystem restoration
24 within the coastal waters of the Northeastern United
25 States from the State of Virginia to the State of Maine,

1 including associated bays, estuaries, and critical riverine
2 areas.

3 (b) GENERAL COASTAL MANAGEMENT PLAN.—

4 (1) ASSESSMENT.—The Secretary, in coordina-
5 tion with the Administrator of the Environmental
6 Protection Agency, the heads of other appropriate
7 Federal agencies, the Governors of the coastal
8 States from Virginia to Maine, nonprofit organiza-
9 tions, and other interested parties, shall assess the
10 needs regarding, and opportunities for, aquatic eco-
11 system restoration within the coastal waters of the
12 Northeastern United States.

13 (2) PLAN.—The Secretary shall develop a gen-
14 eral coastal management plan based on the assess-
15 ment carried out under paragraph (1), maximizing
16 the use of existing plans and investigation, which
17 plan shall include—

18 (A) an inventory and evaluation of coastal
19 habitats;

20 (B) identification of aquatic resources in
21 need of improvement;

22 (C) identification and prioritization of po-
23 tential aquatic habitat restoration projects; and

24 (D) identification of geographical and eco-
25 logical areas of concern, including—

- 1 (i) finfish habitats;
- 2 (ii) diadromous fisheries migratory
- 3 corridors;
- 4 (iii) shellfish habitats;
- 5 (iv) submerged aquatic vegetation;
- 6 (v) wetland; and
- 7 (vi) beach dune complexes and other
- 8 similar habitats.

9 (c) ELIGIBLE PROJECTS.—The Secretary may carry
10 out an aquatic ecosystem restoration project under this
11 section if the project—

12 (1) is consistent with the management plan de-
13 veloped under subsection (b); and

14 (2) provides for—

15 (A) the restoration of degraded aquatic
16 habitat (including coastal, saltmarsh, benthic,
17 and riverine habitat);

18 (B) the restoration of geographical or eco-
19 logical areas of concern, including the restora-
20 tion of natural river and stream characteristics;

21 (C) the improvement of water quality; or

22 (D) other projects or activities determined
23 to be appropriate by the Secretary.

24 (d) COST SHARING.—

1 address and mitigate flood and drought impacts on
2 a national basis;

3 (2) whether a reevaluation of existing manage-
4 ment approaches of the Corps of Engineers could re-
5 sult in greater efficiencies in water management that
6 would enable the Corps of Engineers to better re-
7 spond to flood and drought conditions; and

8 (3) any recommendations for improving the
9 planning processes of the Corps of Engineers to
10 evaluate opportunities for comprehensive manage-
11 ment of water resources that increases efficiency and
12 improves response to flood and drought conditions.

13 **SEC. 5004. CHESAPEAKE BAY ENVIRONMENTAL RESTORA-**
14 **TION AND PROTECTION PROGRAM.**

15 Section 510 of the Water Resources Development Act
16 of 1996 (Public Law 104–303; 110 Stat. 3759; 121 Stat.
17 1202) is amended—

18 (1) in subsection (a)—

19 (A) in paragraph (1)—

20 (i) by striking “pilot program” and
21 inserting “program”; and

22 (ii) by inserting “across the basin
23 States described in subsection (f) and the
24 District of Columbia” after “interests”;
25 and

1 (B) by striking paragraph (2) and insert-
2 ing the following:

3 “(2) FORM.—The assistance under paragraph
4 (1) shall be in the form of a comprehensive environ-
5 mental restoration and protection plan and design
6 and construction assistance for water-related re-
7 source protection and restoration projects affecting
8 the Chesapeake Bay estuary, including projects
9 for—

10 “(A) sediment and erosion control;

11 “(B) low-impact development;

12 “(C) restoration and protection of water
13 quality and quantity;

14 “(D) protection of eroding shorelines;

15 “(E) protection of essential public works;

16 “(F) beneficial uses of dredged material;

17 “(G) restoration of submerged aquatic
18 vegetation; and

19 “(H) other related projects that may en-
20 hance the living resources of the estuary.”;

21 (2) by striking subsection (b) and inserting the
22 following:

23 “(b) COMPREHENSIVE PLAN.—

24 “(1) IN GENERAL.—Not later than 2 years
25 after the date of enactment of the Water Resources

1 Development Act of 2012, the Secretary, in coopera-
2 tion with State and local governmental officials and
3 affected stakeholders, shall design and implement a
4 comprehensive Chesapeake Bay restoration plan.

5 “(2) COORDINATION.—A project identified in
6 the restoration plan described in paragraph (1) shall
7 be designed to take advantage of any ongoing or
8 planned actions of other Federal, State, and local
9 agencies and nonprofit, nongovernmental organiza-
10 tions.

11 “(3) ADMINISTRATION.—The Federal share of
12 the costs of carrying out paragraph (1) shall be 100
13 percent.”;

14 (3) in subsection (c)—

15 (A) in paragraph (1), by striking “to pro-
16 vide” and all that follows through the period at
17 the end and inserting “for the design and con-
18 struction of a project identified in the com-
19 prehensive Chesapeake Bay restoration plan de-
20 scribed in subsection (b).”;

21 (B) in paragraph (2)(A), by striking “fa-
22 cilities or resource protection and development
23 plan” and inserting “resource protection and
24 restoration plan”; and

25 (C) by adding at the end the following:

1 “(3) PROJECTS ON FEDERAL LAND.—A project
2 identified in the comprehensive Chesapeake Bay res-
3 toration plan described in subsection (b) that is lo-
4 cated on Federal land shall be carried out in accord-
5 ance with a Memorandum of Agreement that—

6 “(A) is signed by all applicable Federal
7 agencies;

8 “(B) defines for each signatory to the
9 Memorandum of Agreement the responsibilities
10 of the signatory and any financial support re-
11 quired of the signatory; and

12 “(C) describes any Chesapeake Bay res-
13 toration benefits to be realized as a result of
14 the project.”;

15 (4) in subsection (d)—

16 (A) in paragraph (1)—

17 (i) by striking “Except as provided in
18 paragraph (2)(B),” and inserting the fol-
19 lowing:

20 “(A) IN GENERAL.—Except as provided in
21 subparagraphs (B) and (C) of paragraph (2),”;

22 and

23 (ii) by adding at the end the fol-
24 lowing:

1 “(B) CONTRIBUTIONS BY OTHER FEDERAL
2 AGENCIES.—The Federal share, or a portion of
3 the Federal share, required under subparagraph
4 (A) may be provided by other Federal agen-
5 cies.”; and

6 (B) in paragraph (2)—

7 (i) in subparagraph (B), by striking
8 “The non-Federal share” and inserting
9 “Except as provided in subparagraph (C),
10 the non-Federal share”; and

11 (ii) by adding at the end the fol-
12 lowing:

13 “(C) PROJECTS ON FEDERAL LAND.—For
14 a project that is carried out on Federal land
15 under this section, the Federal share of the
16 costs of carrying out the project shall be 100
17 percent.”;

18 (5) in subsection (e)—

19 (A) in paragraph (3), by striking “and”
20 after the semicolon;

21 (B) in paragraph (4), by striking the pe-
22 riod at the end and inserting “; and”; and

23 (C) by adding at the end the following:

24 “(5) the Chesapeake Bay Commission.”;

1 (6) by striking subsection (f) and inserting the
2 following:

3 “(f) PROJECTS.—The Secretary shall establish, to
4 the maximum extent practicable, at least 1 project under
5 this section in—

6 “(1) each of the basin States of Delaware,
7 Maryland, New York, Pennsylvania, Virginia, and
8 West Virginia; and

9 “(2) the District of Columbia.”;

10 (7) by striking subsection (h); and

11 (8) by redesignating subsection (i) as subsection
12 (h).

13 **SEC. 5005. RIO GRANDE ENVIRONMENTAL MANAGEMENT**
14 **PROGRAM, COLORADO, NEW MEXICO, TEXAS.**

15 Section 5056 of the Water Resources Development
16 Act of 2007 (121 Stat. 1213) is amended—

17 (1) in subsection (b)(2)—

18 (A) in the matter preceding subparagraph
19 (A), by striking “2008” and inserting “2013”;
20 and

21 (B) in subparagraph (C), by inserting
22 “and an assessment of needs for other related
23 purposes in the Rio Grande Basin, including
24 flood damage reduction” after “assessment”;

25 (2) in subsection (c)(2)—

1 (A) by striking “an interagency agreement
2 with” and inserting “1 or more interagency
3 agreements with the Secretary of State and”;
4 and

5 (B) by inserting “or the U.S. Section of
6 the International Boundary and Water Com-
7 mission” after “the Department of the Inte-
8 rior”; and

9 (3) in subsection (f), by striking “2011” and
10 inserting “2021”.

11 **SEC. 5006. LOWER COLUMBIA RIVER AND TILLAMOOK BAY**
12 **ECOSYSTEM RESTORATION, OREGON AND**
13 **WASHINGTON.**

14 Section 536(g) of the Water Resources Development
15 Act of 2000 (114 Stat. 2661) is amended by striking
16 “\$30,000,000” and inserting “\$75,000,000”.

17 **TITLE VI—LEVEE SAFETY**

18 **SEC. 6001. SHORT TITLE.**

19 This title may be cited as the “National Levee Safety
20 Program Act”.

21 **SEC. 6002. FINDINGS; PURPOSES.**

22 (a) FINDINGS.—Congress finds that—

23 (1) there is a need to establish a national levee
24 safety program to provide national leadership and

1 encourage the establishment of State and tribal levee
2 safety programs;

3 (2) according to the National Committee on
4 Levee Safety, “the level of protection and robustness
5 of design and construction [of levees] vary consider-
6 ably across the country”;

7 (3) knowing the location, condition, and owner-
8 ship of levees, as well as understanding the popu-
9 lation and infrastructure at risk in leveed areas, is
10 necessary for identification and prioritization of ac-
11 tivities associated with levees;

12 (4) States and Indian tribes—

13 (A) are uniquely positioned to oversee, co-
14 ordinate, and regulate local and regional levee
15 systems; and

16 (B) should be encouraged to participate in
17 a national levee safety program by establishing
18 individual levee safety programs; and

19 (5) States, Indian tribes, and local governments
20 that do not invest in protecting the individuals and
21 property located behind levees place those individuals
22 and property at risk.

23 (b) PURPOSES.—The purposes of this Act are—

1 (1) to promote sound technical practices in
2 levee design, construction, operation, inspection, as-
3 sessment, security, and maintenance;

4 (2) to ensure effective public education and
5 awareness of risks involving levees;

6 (3) to establish and maintain a national levee
7 safety program that emphasizes the protection of
8 human life and property; and

9 (4) to implement solutions and incentives that
10 encourage the establishment of effective State and
11 tribal levee safety programs.

12 **SEC. 6003. DEFINITIONS.**

13 In this Act:

14 (1) BOARD.—The term “Board” means the Na-
15 tional Levee Safety Advisory Board established
16 under section 6005.

17 (2) CANAL STRUCTURE.—

18 (A) IN GENERAL.—The term “canal struc-
19 ture” means an embankment, wall, or structure
20 along a canal or manmade watercourse that—

21 (i) constrains water flows; and

22 (ii) is subject to frequent water load-
23 ing.

1 (B) EXCLUSION.—The term “canal struc-
2 ture” does not include a barrier across a water-
3 course.

4 (3) FEDERAL AGENCY.—The term “Federal
5 agency” means a Federal agency that designs, fi-
6 nances, constructs, owns, operates, maintains, or
7 regulates the construction, operation, or mainte-
8 nance of a levee.

9 (4) FLOOD DAMAGE REDUCTION SYSTEM.—The
10 term “flood damage reduction system” means a sys-
11 tem designed and constructed to have appreciable
12 and dependable effects in reducing damage by flood-
13 waters.

14 (5) FLOOD MITIGATION.—The term “flood miti-
15 gation” means any structural or nonstructural meas-
16 ure that reduces risks of flood damage by reducing
17 the probability of flooding, the consequences of
18 flooding, or both.

19 (6) INDIAN TRIBE.—The term “Indian tribe”
20 has the meaning given the term in section 4 of the
21 Indian Self-Determination and Education Assistance
22 Act (25 U.S.C. 450b).

23 (7) LEVEE.—

1 (A) IN GENERAL.—The term “levee”
2 means a manmade barrier (such as an embank-
3 ment, floodwall, or other structure)—

4 (i) the primary purpose of which is to
5 provide hurricane, storm, or flood protec-
6 tion relating to seasonal high water, storm
7 surges, precipitation, or other weather
8 events; and

9 (ii) that is normally subject to water
10 loading for only a few days or weeks dur-
11 ing a calendar year.

12 (B) INCLUSIONS.—The term “levee” in-
13 cludes a levee system, including—

14 (i) levees and canal structures that—

15 (I) constrain water flows;

16 (II) are subject to more frequent
17 water loading; and

18 (III) do not constitute a barrier
19 across a watercourse; and

20 (ii) roadway and railroad embank-
21 ments, but only to the extent that the em-
22 bankments are integral to the performance
23 of a flood damage reduction system.

24 (C) EXCLUSIONS.—The term “levee” does
25 not include—

1 (i) a roadway or railroad embankment
2 that is not integral to the performance of
3 a flood damage reduction system;

4 (ii) a canal constructed completely
5 within natural ground without any man-
6 made structure (such as an embankment
7 or retaining wall to retain water or a case
8 in which water is retained only by natural
9 ground);

10 (iii) a canal regulated by a Federal
11 agency in a manner that ensures that ap-
12 plicable Federal safety criteria meet or ex-
13 ceed the levee safety guidelines;

14 (iv) a levee or canal structure—

15 (I) that is not a part of a Fed-
16 eral flood damage reduction system;

17 (II) that is not recognized under
18 the National Flood Insurance Pro-
19 gram as providing protection from the
20 1-percent-annual-chance or greater
21 flood;

22 (III) that is not greater than 3
23 feet high;

1 (IV) the population in the leveed
2 area of which is less than 50 individ-
3 uals; and

4 (V) the leveed area of which is
5 less than 1,000 acres; or

6 (v) any shoreline protection or river
7 bank protection system (such as revet-
8 ments or barrier islands).

9 (8) **LEVEE FEATURE.**—The term “levee fea-
10 ture” means a structure that is critical to the func-
11 tioning of a levee, including—

12 (A) an embankment section;

13 (B) a floodwall section;

14 (C) a closure structure;

15 (D) a pumping station;

16 (E) an interior drainage work; and

17 (F) a flood damage reduction channel.

18 (9) **LEVEE SAFETY GUIDELINES.**—The term
19 “levee safety guidelines” means the guidelines estab-
20 lished by the Secretary under section 6004(c)(1).

21 (10) **LEVEE SEGMENT.**—The term “levee seg-
22 ment” means a discrete portion of a levee system
23 that is owned, operated, and maintained by a single
24 entity or discrete set of entities.

1 (11) LEVEE SYSTEM.—The term “levee sys-
2 tem” means 1 or more levee segments, including all
3 levee features that are interconnected and necessary
4 to ensure protection of the associated leveed areas—

5 (A) that collectively provide flood damage
6 reduction to a defined area; and

7 (B) the failure of 1 of which may result in
8 the failure of the entire system.

9 (12) LEVEED AREA.—The term “leveed area”
10 means the land from which flood water in the adja-
11 cent watercourse is excluded by the levee system.

12 (13) NATIONAL LEVEE DATABASE.—The term
13 “national levee database” means the levee database
14 established under section 9004 of the Water Re-
15 sources Development Act of 2007 (33 U.S.C. 3303).

16 (14) PARTICIPATING PROGRAM.—The term
17 “participating program” means a levee safety pro-
18 gram developed by a State or Indian tribe that in-
19 cludes the minimum components necessary for rec-
20 ognition by the Secretary.

21 (15) RISK.—The term “risk” means a measure
22 of the probability and severity of undesirable con-
23 sequences.

1 (16) SECRETARY.—The term “Secretary”
2 means the Secretary of the Army, acting through
3 the Chief of Engineers.

4 (17) STATE.—The term “State” means—

5 (A) each of the several States of the
6 United States;

7 (B) the District of Columbia;

8 (C) the Commonwealth of Puerto Rico;

9 (D) Guam;

10 (E) American Samoa;

11 (F) the Commonwealth of the Northern
12 Mariana Islands;

13 (G) the Federated States of Micronesia;

14 (H) the Republic of the Marshall Islands;

15 (I) the Republic of Palau; and

16 (J) the United States Virgin Islands.

17 **SEC. 6004. NATIONAL LEVEE SAFETY PROGRAM.**

18 (a) ESTABLISHMENT.—The Secretary, in consulta-
19 tion with the Administrator of the Federal Emergency
20 Management Agency, shall establish a national levee safe-
21 ty program to provide national leadership and consistent
22 approaches to levee safety, including—

23 (1) a national levee database;

24 (2) an inventory and inspection of Federal and
25 non-Federal levees;

1 (3) national levee safety standards;

2 (4) a hazard potential classification system for
3 Federal and non-Federal levees;

4 (5) research and development;

5 (6) a national public education and awareness
6 program, with an emphasis on communication re-
7 garding the risk associated with levees;

8 (7) coordination of levee safety, floodplain man-
9 agement, and environmental protection activities;

10 (8) development of State and tribal levee safety
11 programs; and

12 (9) the provision of technical assistance and
13 materials to States and Indian tribes relating to—

14 (A) developing levee safety programs; and

15 (B) rehabilitating, improving, replacing,
16 and removing levees.

17 (b) MANAGEMENT.—

18 (1) IN GENERAL.—The Secretary shall ap-
19 point—

20 (A) an administrator of the national levee
21 safety program; and

22 (B) such staff as is necessary to implement
23 the program.

24 (2) ADMINISTRATOR.—The sole duty of the ad-
25 ministrator appointed under paragraph (1)(A) shall

1 be the management of the national levee safety pro-
2 gram.

3 (c) LEVEE SAFETY GUIDELINES.—

4 (1) ESTABLISHMENT.—Not later than 1 year
5 after the date of enactment of this Act, the Sec-
6 retary shall establish a set of voluntary, comprehen-
7 sive, national levee safety guidelines that—

8 (A) are available for common, uniform use
9 by all Federal, State, tribal, and local agencies;
10 and

11 (B) incorporate policies, procedures, stand-
12 ards, and criteria for a range of levee types,
13 canal structures, and related facilities and fea-
14 tures.

15 (2) REQUIREMENT.—The policies, procedures,
16 standards, and criteria under paragraph (1)(B) shall
17 be developed taking into consideration the levee haz-
18 ard potential classification system established under
19 subsection (d).

20 (3) ADOPTION BY FEDERAL AGENCIES.—All
21 Federal agencies shall consider the levee safety
22 guidelines in activities relating to the management
23 of levees.

24 (d) HAZARD POTENTIAL CLASSIFICATION SYSTEM.—

1 (1) ESTABLISHMENT.—The Secretary shall es-
2 tablish a hazard potential classification system for
3 use under the national levee safety program and
4 participating programs.

5 (2) REVISION.—The Secretary shall review and,
6 as necessary, revise the hazard potential classifica-
7 tion system not less frequently than once every 5
8 years.

9 (3) CONSISTENCY.—The hazard potential clas-
10 sification system established pursuant to this sub-
11 section shall be consistent with and incorporated
12 into the Levee Safety Action Classification tool de-
13 veloped by the Corps of Engineers.

14 (e) TECHNICAL ASSISTANCE AND MATERIALS.—

15 (1) ESTABLISHMENT.—The Secretary, in co-
16 ordination with the Board, shall establish a national
17 levee safety training program to develop and deliver
18 technical support and technical assistance materials,
19 curricula, and training in order to promote levee
20 safety and the voluntary development of State levee
21 safety programs.

22 (2) USE OF SERVICES.—In establishing the na-
23 tional levee safety training program under para-
24 graph (1), the Secretary may use the services of—

25 (A) the Corps of Engineers;

1 (B) the Federal Emergency Management
2 Agency;

3 (C) the Bureau of Reclamation; and

4 (D) other appropriate Federal agencies.

5 (f) COMPREHENSIVE NATIONAL PUBLIC EDUCATION
6 AND AWARENESS CAMPAIGN.—

7 (1) ESTABLISHMENT.—The Secretary, in co-
8 ordination with the Administrator of the Federal
9 Emergency Management Agency and the Board,
10 shall establish a national public education and
11 awareness campaign relating to the national levee
12 safety program.

13 (2) PURPOSES.—The purposes of the campaign
14 under paragraph (1) are—

15 (A) to educate individuals living in leveed
16 areas regarding the risks of living in those
17 areas;

18 (B) to promote consistency in the trans-
19 mission of information regarding levees among
20 government agencies; and

21 (C) to provide national leadership regard-
22 ing risk communication for implementation at
23 the State and local levels.

24 (g) COORDINATION OF LEVEE SAFETY, FLOODPLAIN
25 MANAGEMENT, AND ENVIRONMENTAL CONCERNS.—The

1 Secretary, in coordination with the Board, shall evaluate
2 opportunities to coordinate—

3 (1) public safety, floodplain management, and
4 environmental protection activities relating to levees;
5 and

6 (2) environmental permitting processes for op-
7 eration and maintenance activities at existing levee
8 projects in compliance with all applicable laws.

9 (h) LEVEE INSPECTION.—

10 (1) IN GENERAL.—The Secretary shall carry
11 out a one-time inventory and inspection of all levees
12 identified in the national levee database.

13 (2) NO FEDERAL INTEREST.—The inventory
14 and inspection under paragraph (1) does not create
15 a Federal interest in the construction, operation, or
16 maintenance any levee that is included in the inven-
17 tory or inspected under this subsection.

18 (3) INSPECTION CRITERIA.—In carrying out the
19 inventory and inspection, the Secretary shall use the
20 Levee Safety Action Classification criteria to deter-
21 mine whether a levee should be classified in the in-
22 ventory as requiring a more comprehensive inspec-
23 tion.

24 (i) STATE AND TRIBAL LEVEE SAFETY PROGRAM.—

25 (1) GUIDELINES.—

1 (A) IN GENERAL.—Not later than 1 year
2 after the date of enactment of this Act, in co-
3 ordination with the Board, the Secretary shall
4 issue guidelines that establish the minimum
5 components necessary for recognition of a State
6 or tribal levee safety program as a participating
7 program.

8 (B) GUIDELINE CONTENTS.—The guide-
9 lines under subparagraph (A) shall include pro-
10 visions and procedures requiring each partici-
11 pating State and Indian tribe to certify to the
12 Secretary that the State or Indian tribe, as ap-
13 plicable—

14 (i) has the authority to participate in
15 the national levee safety program;

16 (ii) can receive funds under this Act;

17 (iii) has adopted any national levee
18 safety guidelines developed under this Act;

19 (iv) will carry out levee inspections;

20 (v) will carry out, consistent with ap-
21 plicable requirements, any emergency ac-
22 tion planning procedures the Secretary de-
23 termines to be necessary relating to levees;
24 and

1 (vi) will collect and share information
2 regarding the location and condition of lev-
3 ees.

4 (2) GRANT PROGRAM.—

5 (A) ESTABLISHMENT.—The Secretary
6 shall establish a program under which the Sec-
7 retary shall provide grants to assist States and
8 Indian tribes in establishing participating pro-
9 grams, conducting levee inventories, and car-
10 rying out this Act.

11 (B) REQUIREMENTS.—To be eligible to re-
12 ceive grants under this section, a State or In-
13 dian tribe shall—

14 (i) meet the requirements of a partici-
15 pating program established by the guide-
16 lines issued under paragraph (1);

17 (ii) use not less than 25 percent of
18 any amounts received to identify and as-
19 sess non-Federal levees within the State or
20 on land of the Indian tribe; and

21 (iii) submit to the Secretary any infor-
22 mation collected by the State or Indian
23 tribe in carrying out this subsection for in-
24 clusion in the national levee safety data-
25 base.

1 **SEC. 6005. NATIONAL LEVEE SAFETY ADVISORY BOARD.**

2 (a) ESTABLISHMENT.—The Secretary, in coordina-
3 tion with the Administrator of the Federal Emergency
4 Management Agency, shall establish a board, to be known
5 as the “National Levee Safety Advisory Board”—

6 (1) to advise the Secretary and Congress re-
7 garding consistent approaches to levee safety;

8 (2) to monitor the safety of levees in the United
9 States; and

10 (3) to assess the effectiveness of the national
11 levee safety program.

12 (b) MEMBERSHIP.—

13 (1) VOTING MEMBERS.—The Board shall be
14 composed of the following 14 voting members, who
15 shall be appointed by the Secretary:

16 (A) 8 representatives of State levee safety
17 agencies, 1 from each of the civil works divi-
18 sions of the Corps of Engineers.

19 (B) 2 representatives of the private sector
20 who have expertise in levee safety.

21 (C) 2 representatives of local and regional
22 governmental agencies who have expertise in
23 levee safety.

24 (D) 2 representatives of Indian tribes who
25 have expertise in levee safety.

1 (2) NONVOTING MEMBERS.—The Secretary (or
2 a designee of the Secretary), the Administrator of
3 the Federal Emergency Management Agency (or a
4 designee of the Administrator), and the adminis-
5 trator of the national levee safety program appointed
6 under section 6004(b)(1)(A) shall serve as nonvoting
7 members of the Board.

8 (3) CHAIRPERSON.—The voting members of the
9 Board shall appoint a chairperson from among the
10 voting members of the Board, to serve a term of not
11 more than 2 years.

12 (c) QUALIFICATIONS.—

13 (1) INDIVIDUALS.—Each voting member of the
14 Board shall be knowledgeable in the fields of water
15 resources and risk management.

16 (2) AS A WHOLE.—The membership of the
17 Board, considered as a whole, shall represent the di-
18 versity of skills required to advise the Secretary re-
19 garding levee issues relating to—

20 (A) engineering;

21 (B) public communications;

22 (C) program development and oversight;

23 and

24 (D) public safety and the environment.

25 (d) TERMS OF SERVICE.—

1 (1) IN GENERAL.—A voting member of the
2 Board shall be appointed for a term of 3 years, ex-
3 cept that, of the members first appointed—

4 (A) 5 shall be appointed for a term of 1
5 year;

6 (B) 5 shall be appointed for a term of 2
7 years; and

8 (C) 4 shall be appointed for a term of 3
9 years.

10 (2) REAPPOINTMENT.—A voting member of the
11 Board may be reappointed to the Board, as the Sec-
12 retary determines to be appropriate.

13 (3) VACANCIES.—A vacancy on the Board shall
14 be filled in the same manner as the original appoint-
15 ment was made.

16 (e) STANDING COMMITTEES.—

17 (1) IN GENERAL.—The Board shall be sup-
18 ported by Standing Committees, which shall be com-
19 prised of volunteers from all levels of government
20 and the private sector, to advise the Board regard-
21 ing the national levee safety program.

22 (2) ESTABLISHMENT.—The Standing Commit-
23 tees of the Board shall include—

1 (A) the Standing Committee on Partici-
2 pating Programs, which shall advise the Board
3 regarding—

4 (i) the development and implementa-
5 tion of State and tribal levee safety pro-
6 grams; and

7 (ii) appropriate incentives (including
8 financial assistance) to be provided to
9 States, Indian tribes, and local and re-
10 gional entities;

11 (B) the Standing Committee on Technical
12 Issues, which shall advise the Board regard-
13 ing—

14 (i) the management of the national
15 levee database;

16 (ii) the development and maintenance
17 of levee safety guidelines;

18 (iii) processes and materials for devel-
19 oping levee-related technical assistance and
20 training; and

21 (iv) research and development activi-
22 ties relating to levee safety;

23 (C) the Standing Committee on Public
24 Education and Awareness, which shall advise
25 the Board regarding the development, imple-

1 mentation, and evaluation of targeted public
2 outreach programs—

3 (i) to gather public input;

4 (ii) to educate and raise awareness in
5 leveed areas of levee risks;

6 (iii) to communicate information re-
7 garding participating programs; and

8 (iv) to track the effectiveness of public
9 education efforts relating to levee risks;

10 (D) the Standing Committee on Safety and
11 Environment, which shall advise the Board re-
12 garding—

13 (i) operation and maintenance activi-
14 ties for existing levee projects;

15 (ii) opportunities to coordinate public
16 safety, floodplain management, and envi-
17 ronmental protection activities relating to
18 levees;

19 (iii) opportunities to coordinate envi-
20 ronmental permitting processes for oper-
21 ation and maintenance activities at existing
22 levee projects in compliance with all appli-
23 cable laws; and

24 (iv) opportunities for collaboration by
25 environmental protection and public safety

1 interests in leveed areas and adjacent
2 areas; and

3 (E) such other standing committees as the
4 Secretary determines to be necessary.

5 (3) MEMBERSHIP.—

6 (A) IN GENERAL.—The Board shall rec-
7 ommend to the Secretary for approval individ-
8 uals for membership on the Standing Commit-
9 tees.

10 (B) QUALIFICATIONS.—

11 (i) INDIVIDUALS.—Each member of a
12 Standing Committee shall be knowledge-
13 able in the issue areas for which the Com-
14 mittee is charged with advising the Board.

15 (ii) AS A WHOLE.—The membership
16 of each Standing Committee, considered as
17 a whole, shall represent, to the maximum
18 extent practicable, broad geographical di-
19 versity.

20 (C) LIMITATION.—Each Standing Com-
21 mittee shall be comprised of not more than 10
22 members.

23 (f) DUTIES AND POWERS.—The Board—

24 (1) shall submit to the Secretary and Congress
25 an annual report regarding the effectiveness of the

1 national levee safety program in accordance with
2 section 6007; and

3 (2) may secure from other Federal agencies
4 such services, and enter into such contracts, as the
5 Board determines to be necessary to carry out this
6 subsection.

7 (g) TASK FORCE COORDINATION.—The Board shall,
8 to the maximum extent practicable, coordinate the activi-
9 ties of the Board with the Federal Interagency Floodplain
10 Management Task Force.

11 (h) COMPENSATION.—

12 (1) FEDERAL EMPLOYEES.—Each member of
13 the Board who is an officer or employee of the
14 United States shall serve without compensation in
15 addition to compensation received for the services of
16 the member as an officer or employee of the United
17 States, but shall be allowed a per diem allowance for
18 travel expenses, at rates authorized for an employee
19 of an agency under subchapter I of chapter 57 of
20 title 5, United States Code, while away from the
21 home or regular place of business of the member in
22 the performance of the duties of the Board.

23 (2) NON-FEDERAL EMPLOYEES.—To the extent
24 amounts are made available to carry out this section
25 in appropriations Acts, the Secretary shall provide to

1 each member of the Board who is not an officer or
2 employee of the United States a stipend and a per
3 diem allowance for travel expenses, at rates author-
4 ized for an employee of an agency under subchapter
5 I of chapter 57 of title 5, United States Code, while
6 away from the home or regular place of business of
7 the member in performance of services for the
8 Board.

9 (3) **STANDING COMMITTEE MEMBERS.**—Each
10 member of a Standing Committee shall—

11 (A) serve in a voluntary capacity; but

12 (B) receive a per diem allowance for travel
13 expenses, at rates authorized for an employee of
14 an agency under subchapter I of chapter 57 of
15 title 5, United States Code, while away from
16 the home or regular place of business of the
17 member in performance of services for the
18 Board.

19 (i) **NONAPPLICABILITY OF FACCA.**—The Federal Ad-
20 visory Committee Act (5 U.S.C. App.) shall not apply to
21 the Board or the Standing Committees.

22 **SEC. 6006. INVENTORY AND INSPECTION OF LEVEES.**

23 Section 9004(a)(2)(A) of the Water Resources Devel-
24 opment Act of 2007 (33 U.S.C. 3303(a)(2)(A)) is amend-
25 ed by striking “and, for non-Federal levees, such informa-

1 tion on levee location as is provided to the Secretary by
2 State and local governmental agencies” and inserting
3 “and updated levee information provided by States, Indian
4 tribes, Federal agencies, and other entities”.

5 **SEC. 6007. REPORTS.**

6 (a) STATE OF LEVEES.—

7 (1) IN GENERAL.—Not later than 1 year after
8 the date of enactment of this Act, and biennially
9 thereafter, the Secretary in coordination with the
10 Board, shall submit to Congress a report describing
11 the state of levees in the United States and the ef-
12 fectiveness of the national levee safety program, in-
13 cluding—

14 (A) progress achieved in implementing the
15 national levee safety program;

16 (B) State and tribal participation in the
17 national levee safety program;

18 (C) recommendations to improve coordina-
19 tion of levee safety, floodplain management, and
20 environmental protection concerns, including—

21 (i) identifying and evaluating opportu-
22 nities to coordinate public safety, flood-
23 plain management, and environmental pro-
24 tection activities relating to levees; and

1 (ii) evaluating opportunities to coordi-
2 nate environmental permitting processes
3 for operation and maintenance activities at
4 existing levee projects in compliance with
5 all applicable laws; and

6 (D) any recommendations for legislation
7 and other congressional actions necessary to en-
8 sure national levee safety.

9 (2) INCLUSION.—Each report under paragraph
10 (1) shall include a report of the Board that describes
11 the independent recommendations of the Board for
12 the implementation of the national levee safety pro-
13 gram.

14 (b) NATIONAL DAM AND LEVEE SAFETY PRO-
15 GRAM.—Not later than 3 years after the date of enactment
16 of this Act, to the maximum extent practicable, the Sec-
17 retary, in coordination with the Board, shall submit to
18 Congress a report that includes recommendations regard-
19 ing the advisability and feasibility of, and potential ap-
20 proaches for, establishing a joint national dam and levee
21 safety program.

22 (c) ALIGNMENT OF FEDERAL PROGRAMS TO PRO-
23 VIDE ADDITIONAL INCENTIVES AND DISINCENTIVES RE-
24 LATING TO LEVEES.—Not later than 2 years after the
25 date of enactment of this Act, the Comptroller General

1 shall submit to Congress a report on opportunities for
2 alignment of Federal programs to provide incentives and
3 disincentives to State, tribal, and local governments and
4 individuals and entities—

5 (1) to promote shared responsibility for levee
6 safety; and

7 (2) to encourage the development of strong
8 State and tribal levee safety programs.

9 (d) **LIABILITY FOR CERTAIN LEVEE ENGINEERING**
10 **PROJECTS.**—Not later than 1 year after the date of enact-
11 ment of this Act, the Secretary shall submit to Congress
12 a report that includes recommendations that identify and
13 address any legal liability associated with levee engineer-
14 ing projects that prevent—

15 (1) levee owners from obtaining needed levee
16 engineering services; or

17 (2) development and implementation of a State
18 or tribal levee safety program.

19 **SEC. 6008. EFFECT OF TITLE.**

20 Nothing in this title—

21 (1) establishes any liability of the United States
22 or any officer or employee of the United States (in-
23 cluding the Board and the Standing Committees of
24 the Board) for any damages caused by any action or
25 failure to act; or

1 (2) relieves an owner or operator of a levee of
2 any legal duty, obligation, or liability incident to the
3 ownership or operation of the levee.

4 **SEC. 6009. AUTHORIZATION OF APPROPRIATIONS.**

5 There are authorized to be appropriated to the Sec-
6 retary to carry out this title—

7 (1) for funding the administration and staff of
8 the national levee safety program, the Board, the
9 Standing Committees of the Board, and partici-
10 pating programs, \$7,500,000 for each of fiscal years
11 2013 and 2014;

12 (2) for technical programs, including the devel-
13 opment of levee safety guidelines, publications, train-
14 ing, and technical assistance—

15 (A) \$5,000,000 for each of fiscal years
16 2013 and 2014; and

17 (B) \$15,000,000 for each of fiscal years
18 2015 through 2017;

19 (3) for public involvement and education pro-
20 grams, \$3,000,000 for each of fiscal years 2013
21 through 2017;

22 (4) to carry out the levee inventory and inspec-
23 tions under section 9004 of the Water Resources
24 Development Act of 2007 (33 U.S.C. 3303),

1 \$30,000,000 for each of fiscal years 2013 through
2 2017; and

3 (5) for grants to State and tribal levee safety
4 programs, \$50,000,000 for each of fiscal years 2013
5 through 2017.

6 **TITLE VII—INLAND WATERWAYS**

7 **SEC. 7001. PURPOSES.**

8 The purposes of this title are—

9 (1) to improve program and project manage-
10 ment relating to the construction and major rehabili-
11 tation of navigation projects on inland waterways;

12 (2) to optimize inland waterways navigation
13 system reliability;

14 (3) to minimize the size and scope of inland wa-
15 terways navigation project completion schedules;

16 (4) to eliminate preventable delays in inland
17 waterways navigation project completion schedules;

18 and

19 (5) to make inland waterways navigation capital
20 investments through the use of prioritization criteria
21 that seek to maximize systemwide benefits and mini-
22 mize overall system risk.

23 **SEC. 7002. DEFINITIONS.**

24 In this title:

1 (1) INLAND WATERWAYS TRUST FUND.—The
2 term “Inland Waterways Trust Fund” means the
3 Inland Waterways Trust Fund established by section
4 9506(a) of the Internal Revenue Code of 1986.

5 (2) QUALIFYING PROJECT.—The term “quali-
6 fying project” means any construction or major re-
7 habilitation project for navigation infrastructure of
8 the inland and intracoastal waterways that is—

9 (A) authorized before, on, or after the date
10 of enactment of this Act;

11 (B) not completed on the date of enact-
12 ment of this Act; and

13 (C) funded at least in part from the Inland
14 Waterways Trust Fund.

15 (3) SECRETARY.—The term “Secretary” means
16 the Secretary of the Army, acting through the Chief
17 of Engineers.

18 **SEC. 7003. PROJECT DELIVERY PROCESS REFORMS.**

19 (a) REQUIREMENTS FOR QUALIFYING PROJECTS.—
20 With respect to each qualifying project, the Secretary shall
21 require—

22 (1) formal project management training and
23 certification for each project manager;

24 (2) assignment as project manager only of per-
25 sonnel fully certified by the Chief of Engineers; and

- 1 (3) for an applicable cost estimation, that—
- 2 (A) the estimation—
- 3 (i) is risk-based; and
- 4 (ii) has a confidence level of at least
- 5 80 percent; and
- 6 (B) a risk-based cost estimate shall be im-
- 7 plemented—
- 8 (i) for a qualified project that requires
- 9 an increase in the authorized amount in
- 10 accordance with section 902 of the Water
- 11 Resources Development Act of 1986 (Pub-
- 12 lic Law 99–662; 100 Stat. 4183), during
- 13 the preparation of a post-authorization
- 14 change report or other similar decision
- 15 document;
- 16 (ii) for a qualified project for which
- 17 the first construction contract has not been
- 18 awarded, prior to the award of the first
- 19 construction contract;
- 20 (iii) for a qualified project without a
- 21 completed Chief of Engineers report, prior
- 22 to the completion of such a report; and
- 23 (iv) for a qualified project with a com-
- 24 pleted Chief of Engineers report that has

1 not yet been authorized, during design for
2 the qualified project.

3 (b) ADDITIONAL PROJECT DELIVERY PROCESS RE-
4 FORMS.—Not later than 18 months after the date of en-
5 actment of this Act, the Secretary shall—

6 (1) establish a system to identify and apply on
7 a continuing basis lessons learned from prior or on-
8 going qualifying projects to improve the likelihood of
9 on-time and on-budget completion of qualifying
10 projects;

11 (2) evaluate early contractor involvement acqui-
12 sition procedures to improve on-time and on-budget
13 project delivery performance; and

14 (3) implement any additional measures that the
15 Secretary determines will achieve the purposes of
16 this title and the amendments made by this title, in-
17 cluding, as the Secretary determines to be appro-
18 priate—

19 (A) the implementation of applicable prac-
20 tices and procedures developed pursuant to
21 management by the Secretary of an applicable
22 military construction program;

23 (B) the establishment of 1 or more centers
24 of expertise for the design and review of quali-
25 fying projects;

1 (C) the development and use of a portfolio
2 of standard designs for inland navigation locks;

3 (D) the use of full-funding contracts or
4 formulation of a revised continuing contracts
5 clause; and

6 (E) the establishment of procedures for
7 recommending new project construction starts
8 using a capital projects business model.

9 (c) PILOT PROJECTS.—

10 (1) IN GENERAL.—Subject to paragraph (2),
11 the Secretary may carry out 1 or more pilot projects
12 to evaluate processes or procedures for the study,
13 design, or construction of qualifying projects.

14 (2) INCLUSIONS.—At a minimum, the Secretary
15 shall carry out pilot projects under this subsection to
16 evaluate—

17 (A) early contractor involvement in the de-
18 velopment of features and components;

19 (B) an appropriate use of continuing con-
20 tracts for the construction of features and com-
21 ponents; and

22 (C) applicable principles, procedures, and
23 processes used for military construction
24 projects.

1 (d) INLAND WATERWAYS USER BOARD.—Section
2 302 of the Water Resources Development Act of 1986 (33
3 U.S.C. 2251) is amended—

4 (1) by striking subsection (b) and inserting the
5 following:

6 “(b) DUTIES OF USERS BOARD.—

7 “(1) IN GENERAL.—The Users Board shall
8 meet not less frequently than semiannually to de-
9 velop and make recommendations to the Secretary
10 and Congress regarding the inland waterways and
11 inland harbors of the United States.

12 “(2) ADVICE AND RECOMMENDATIONS.—For
13 commercial navigation features and components of
14 the inland waterways and inland harbors of the
15 United States, the Users Board shall provide—

16 “(A) prior to the development of the budg-
17 et proposal of the President for a given fiscal
18 year, advice and recommendations to the Sec-
19 retary regarding construction and rehabilitation
20 priorities and spending levels;

21 “(B) advice and recommendations to Con-
22 gress regarding any report of the Chief of Engi-
23 neers relating to those features and compo-
24 nents;

1 “(C) advice and recommendations to Con-
2 gress regarding an increase in the authorized
3 cost of those features and components;

4 “(D) not later than 60 days after the date
5 of the submission of the budget proposal of the
6 President to Congress, advice and recommenda-
7 tions to Congress regarding construction and
8 rehabilitation priorities and spending levels; and

9 “(E) a long-term capital investment pro-
10 gram in accordance with subsection (d).

11 “(3) PROJECT DEVELOPMENT TEAMS.—The
12 chairperson of the Users Board shall appoint a rep-
13 resentative of the Users Board to serve on the
14 project development team for a qualifying project or
15 the study or design of a commercial navigation fea-
16 ture or component of the inland waterways and in-
17 land harbors of the United States.

18 “(4) INDEPENDENT JUDGMENT.—Any advice or
19 recommendation made by the Users Board to the
20 Secretary shall reflect the independent judgment of
21 the Users Board.”;

22 (2) by redesignating subsection (c) as sub-
23 section (f); and

24 (3) by inserting after subsection (b) the fol-
25 lowing:

1 “(c) DUTIES OF SECRETARY.—The Secretary shall—

2 “(1) communicate not less than once each quar-
3 ter to the Users Board the status of the study, de-
4 sign, or construction of all commercial navigation
5 features or components of the inland waterways or
6 inland harbors of the United States; and

7 “(2) submit to the Users Board a courtesy copy
8 of all reports of the Chief of Engineers relating to
9 a commercial navigation feature or component of the
10 inland waterways or inland harbors of the United
11 States.

12 “(d) CAPITAL INVESTMENT PROGRAM.—

13 “(1) IN GENERAL.—Not later than 1 year after
14 the date of enactment of this subsection, the Sec-
15 retary, in coordination with the Users Board, shall
16 develop, and submit to Congress a report describing,
17 a 20-year program for making capital investments
18 on the inland and intracoastal waterways, based on
19 the application of objective, national project selection
20 prioritization criteria.

21 “(2) CONSIDERATION.—In developing the pro-
22 gram under paragraph (1), the Secretary shall take
23 into consideration the 20-year capital investment
24 strategy contained in the Inland Marine Transpor-
25 tation System (IMTS) Capital Projects Business

1 Model, Final Report published on April 13, 2010, as
2 approved by the Users Board.

3 “(3) CRITERIA.—In developing the plan and
4 prioritization criteria under paragraph (1), the Sec-
5 retary shall ensure, to the maximum extent prac-
6 ticable, that investments made under the 20-year
7 program described in paragraph (1)—

8 “(A) are made in all geographical areas of
9 the inland waterways system; and

10 “(B) ensure efficient funding of inland wa-
11 terways projects.

12 “(4) STRATEGIC REVIEW AND UPDATE.—Not
13 later than 5 years after the date of enactment of
14 this subsection, and not less frequently than once
15 every 5 years thereafter, the Secretary, in conjunc-
16 tion with the Users Board, shall—

17 “(A) submit to Congress a strategic review
18 of the 20-year program in effect under this sub-
19 section, which shall identify and explain any
20 changes to the project-specific recommendations
21 contained in the previous 20-year program (in-
22 cluding any changes to the prioritization cri-
23 teria used to develop the updated recommenda-
24 tions); and

1 “(B) make such revisions to the program
2 as the Secretary and Users Board jointly con-
3 sider to be appropriate.

4 “(e) PROJECT MANAGEMENT PLANS.—The chair-
5 person of the Users Board and the project development
6 team member appointed by the chairperson under sub-
7 section (b)(3) shall sign the project management plan for
8 the qualifying project or the study or design of a commer-
9 cial navigation feature or component of the inland water-
10 ways and inland harbors of the United States.”.

11 **SEC. 7004. MAJOR REHABILITATION STANDARDS.**

12 (a) IN GENERAL.—The Secretary shall develop a
13 methodology for applying standard accounting principles
14 when classifying activities as major rehabilitation projects.

15 (b) EVALUATIONS.—The Secretary shall evaluate the
16 effect of applying the methodology developed under sub-
17 section (a) to not less than 3 qualifying projects.

18 (c) REPORT.—The Secretary shall submit to Con-
19 gress a report on the evaluation under subsection (b).

20 **SEC. 7005. EFFICIENCY OF REVENUE COLLECTION.**

21 Not later than 2 years after the date of enactment
22 of this Act, the Comptroller General shall prepare a report
23 on the efficiency of collecting the fuel tax for the Inland
24 Waterways Trust Fund, which shall include—

1 (1) an evaluation of whether current methods of
2 collection of the fuel tax result in full compliance
3 with requirements of the law;

4 (2) whether alternative methods of collection
5 would result in increased revenues into the Inland
6 Waterways Trust Fund; and

7 (3) an evaluation of alternative collection op-
8 tions.

9 **TITLE VIII—HARBOR** 10 **MAINTENANCE**

11 **SEC. 8001. PURPOSES.**

12 The purposes of this title are—

13 (1) to ensure revenues collected into the Harbor
14 Maintenance Trust Fund are used for the intended
15 purposes of the revenues;

16 (2) to increase investment in the operation and
17 maintenance of United States ports, which are crit-
18 ical for the economic competitiveness of the nation;

19 (3) to promote equity among ports nationwide;
20 and

21 (4) to ensure United States ports are prepared
22 to meet modern shipping needs, including the capa-
23 bility to receive large ships that require deeper
24 drafts.

1 **SEC. 8002. FUNDING FOR HARBOR MAINTENANCE PRO-**
2 **GRAMS.**

3 (a) DEFINITIONS.—In this section:

4 (1) HARBOR MAINTENANCE PROGRAMS.—The
5 term “harbor maintenance programs” means ex-
6 penditures under section 9505(c)(1) of the Internal
7 Revenue Code of 1986 (relating to expenditures
8 from the Harbor Maintenance Trust Fund).

9 (2) LEVEL OF RECEIPTS FOR HARBOR MAINTENANCE.—The term “level of receipts for harbor
10 maintenance” means the amount of taxes credited to
11 the Harbor Maintenance Trust Fund under section
12 9505(a)(1) of the Internal Revenue Code of 1986
13 for a fiscal year as set forth in the President’s budg-
14 et baseline projection as defined in section 257 of
15 the Balanced Budget and Emergency Deficit Control
16 Act of 1985 (2 U.S.C. 907) for that fiscal year sub-
17 mitted under section 1105 of title 31, United States
18 Code, reduced by the amount requested in the Presi-
19 dent’s budget for payments described in section
20 9505(c)(3) of the Internal Revenue Code of 1986.

22 (3) TOTAL BUDGET RESOURCES.—The term
23 “total budget resources” means the total amount
24 made available by appropriations Acts from the Har-
25 bor Maintenance Trust Fund for a fiscal year for

1 making expenditures under section 9505(c)(1) of the
2 Internal Revenue Code of 1986.

3 (b) HARBOR MAINTENANCE TRUST FUND GUAR-
4 ANTEE.—

5 (1) IN GENERAL.—Subject to paragraph (2),
6 the total budget resources for a fiscal year shall be
7 equal to the level of receipts for harbor maintenance
8 for that fiscal year, which amounts shall be used
9 only for harbor maintenance programs.

10 (2) RESTRICTION.—Paragraph (1) shall only
11 apply for a fiscal year if the guarantee under that
12 paragraph does not result in a reduction in the total
13 amounts made available under appropriations Acts
14 for that fiscal year for all programs, projects, and
15 activities of the Civil Works Program of the Corps
16 of Engineers other than the harbor maintenance
17 programs.

18 **SEC. 8003. HARBOR OPERATION AND MAINTENANCE.**

19 Section 101(b) of the Water Resources Development
20 Act of 1986 (33 U.S.C. 2211(b)) is amended—

21 (1) in paragraph (1), by striking “45 feet” and
22 inserting “50 feet”; and

23 (2) by adding at the end the following:

24 “(3) OPERATION AND MAINTENANCE ACTIVI-
25 TIES DEFINED.—

1 “(A) SCOPE OF OPERATION AND MAINTEN-
2 NANCE ACTIVITIES.—Notwithstanding any
3 other provision of law (including regulations
4 and guidelines) and subject to subparagraph
5 (B), for purposes of this subsection, operation
6 and maintenance activities that are eligible for
7 the Federal cost share under paragraph (1)
8 shall include—

9 “(i) the dredging of berths in a har-
10 bor that is accessible to a Federal channel,
11 if the Federal channel has been con-
12 structed to a depth equal to the authorized
13 depth of the channel; and

14 “(ii) the dredging and disposal of leg-
15 acy-contaminated sediments and sediments
16 unsuitable for ocean disposal that—

17 “(I) are located in or affect the
18 maintenance of Federal navigation
19 channels; or

20 “(II) are located in berths that
21 are accessible to Federal channels.

22 “(B) LIMITATIONS.—

23 “(i) IN GENERAL.—For each fiscal
24 year, subparagraph (A) shall only apply if
25 all operation and maintenance activities

1 that are eligible for the Federal cost share
2 under paragraph (1) in a State described
3 in clause (ii) have been funded.

4 “(ii) STATE LIMITATION.—For each
5 fiscal year, the operation and maintenance
6 activities described in subparagraph (A)
7 may only be carried out in a State that—

8 “(I) contributes not less than 2.5
9 percent annually of the total funding
10 of the Harbor Maintenance Trust
11 Fund established under section 9505
12 of the Internal Revenue Code of 1986;
13 and

14 “(II) received less than 50 per-
15 cent of the total amounts collected in
16 the State pursuant to section 9505 of
17 the Internal Revenue Code of 1986 in
18 the previous 3 fiscal years.

19 “(iii) PRIORITIZATION.—In allocating
20 amounts made available under this para-
21 graph, the Secretary shall give priority to
22 projects that have received the lowest rate
23 of funding from the Harbor Maintenance
24 Trust fund in previous fiscal years.”.

1 **TITLE IX—DAM SAFETY**

2 **SEC. 9001. SHORT TITLE.**

3 This title may be cited as the “Dam Safety Act of
4 2012”.

5 **SEC. 9002. PURPOSE.**

6 The purpose of this title and the amendments made
7 by this title is to reduce the risks to life and property from
8 dam failure in the United States through the reauthoriza-
9 tion of an effective national dam safety program that
10 brings together the expertise and resources of the Federal
11 Government and non-Federal interests in achieving na-
12 tional dam safety hazard reduction.

13 **SEC. 9003. ADMINISTRATOR.**

14 (a) IN GENERAL.—The National Dam Safety Pro-
15 gram Act (33 U.S.C. 467 et seq.) is amended by striking
16 “Director” each place it appears and inserting “Adminis-
17 trator”.

18 (b) CONFORMING AMENDMENT.—Section 2 of the
19 National Dam Safety Program Act (33 U.S.C. 467) is
20 amended—

21 (1) by striking paragraph (3);

22 (2) by redesignating paragraphs (1) and (2) as
23 paragraphs (2) and (3), respectively; and

24 (3) by inserting before paragraph (2) (as redesi-
25 gnated by paragraph (2)) the following:

1 “(1) ADMINISTRATOR.—The term ‘Adminis-
2 trator’ means the Administrator of the Federal
3 Emergency Management Agency.”.

4 **SEC. 9004. INSPECTION OF DAMS.**

5 Section 3(b)(1) of the National Dam Safety Program
6 Act (33 U.S.C. 467a(b)(1)) is amended by striking “or
7 maintenance” and inserting “maintenance, condition, or
8 provisions for emergency operations”.

9 **SEC. 9005. NATIONAL DAM SAFETY PROGRAM.**

10 (1) OBJECTIVES.—Section 8(c) of the National
11 Dam Safety Program Act (33 U.S.C. 467f(c)) is
12 amended by striking paragraph (4) and inserting the
13 following:

14 “(4) develop and implement a comprehensive
15 dam safety hazard education and public awareness
16 program to assist the public in preparing for, miti-
17 gating, responding to, and recovering from dam inci-
18 dents;”.

19 (2) BOARD.—Section 8(f)(4) of the National
20 Dam Safety Program Act (33 U.S.C. 467f(f)(4)) is
21 amended by inserting “, representatives from non-
22 governmental organizations,” after “State agencies”.

1 **SEC. 9006. PUBLIC AWARENESS AND OUTREACH FOR DAM**
2 **SAFETY.**

3 The National Dam Safety Program Act (33 U.S.C.
4 467 et seq.) is amended—

5 (1) by redesignating sections 11, 12, and 13 as
6 sections 12, 13, and 14, respectively; and

7 (2) by inserting after section 10 (33 U.S.C.
8 467g–1) the following:

9 **“SEC. 11. PUBLIC AWARENESS AND OUTREACH FOR DAM**
10 **SAFETY.**

11 “The Administrator, in consultation with other Fed-
12 eral agencies, State and local governments, dam owners,
13 the emergency management community, the private sec-
14 tor, nongovernmental organizations and associations, in-
15 stitutions of higher education, and any other appropriate
16 entities shall carry out a nationwide public awareness and
17 outreach program to assist the public in preparing for,
18 mitigating, responding to, and recovering from dam inci-
19 dents.”.

20 **SEC. 9007. AUTHORIZATION OF APPROPRIATIONS.**

21 (1) NATIONAL DAM SAFETY PROGRAM.—

22 (A) ANNUAL AMOUNTS.—Section 14(a)(1)
23 of the National Dam Safety Program Act (33
24 U.S.C. 467j(a)(1)) (as so redesignated) is
25 amended by striking “\$6,500,000” and all that
26 follows through “2011” and inserting

1 “\$9,200,000 for each of fiscal years 2013
2 through 2017”.

3 (B) MAXIMUM AMOUNT OF ALLOCATION.—
4 Section 14(a)(2)(B) of the National Dam Safe-
5 ty Program Act (33 U.S.C. 467j(a)(2)(B)) (as
6 so redesignated) is amended—

7 (i) by striking “The amount” and in-
8 serting the following:

9 “(i) IN GENERAL.—The amount”; and

10 (ii) by adding at the end the fol-
11 lowing:

12 “(ii) FISCAL YEAR 2013 AND SUBSE-
13 QUENT FISCAL YEARS.—For fiscal year
14 2013 and each subsequent fiscal year, the
15 amount of funds allocated to a State under
16 this paragraph may not exceed the amount
17 of funds committed by the State to imple-
18 ment dam safety activities.”.

19 (2) NATIONAL DAM INVENTORY.—Section 14(b)
20 of the National Dam Safety Program Act (33
21 U.S.C. 467j(b)) (as so redesignated) is amended by
22 striking “\$650,000” and all that follows through
23 “2011” and inserting “\$500,000 for each of fiscal
24 years 2013 through 2017”.

1 (3) PUBLIC AWARENESS.—Section 14 of the
2 National Dam Safety Program Act (33 U.S.C. 467j)
3 (as so redesignated) is amended—

4 (A) by redesignating subsections (c)
5 through (f) as subsections (d) through (g), re-
6 spectively; and

7 (B) by inserting after subsection (b) the
8 following:

9 “(c) PUBLIC AWARENESS.—There is authorized to be
10 appropriated to carry out section 11 \$1,000,000 for each
11 of fiscal years 2013 through 2017.”.

12 (4) RESEARCH.—Section 14(d) of the National
13 Dam Safety Program Act (as so redesignated) is
14 amended by striking “\$1,600,000” and all that fol-
15 lows through “2011” and inserting “\$1,450,000 for
16 each of fiscal years 2013 through 2017”.

17 (5) DAM SAFETY TRAINING.—Section 14(e) of
18 the National Dam Safety Program Act (as so redesi-
19 gnated) is amended by striking “\$550,000” and all
20 that follows through “2011” and inserting
21 “\$750,000 for each of fiscal years 2013 through
22 2017”.

23 (6) STAFF.—Section 14(f) of the National Dam
24 Safety Program Act (as so redesignated) is amended
25 by striking “\$700,000” and all that follows through

1 “2011” and inserting “\$1,000,000 for each of fiscal
2 years 2013 through 2017”.

3 **TITLE X—INNOVATIVE**
4 **FINANCING PILOT PROJECTS**

5 **SEC. 10001. SHORT TITLE.**

6 This title may be cited as the “Water Infrastructure
7 Finance and Innovation Act of 2012”.

8 **SEC. 10002. PURPOSES.**

9 The purposes of this title are—

10 (1) to promote increased development of critical
11 water resources infrastructure by establishing addi-
12 tional opportunities for financing water resources
13 projects;

14 (2) to attract new investment capital to infra-
15 structure projects that are capable of generating rev-
16 enue streams through user fees or other dedicated
17 funding sources;

18 (3) to complement existing Federal funding
19 sources and address budgetary constraints on the
20 Corps of Engineers civil works program; and

21 (4) to leverage private investment in water re-
22 sources infrastructure.

23 **SEC. 10003. DEFINITIONS.**

24 In this title:

1 (1) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of the Environ-
3 mental Protection Agency.

4 (2) COMMUNITY WATER SYSTEM.—The term
5 “community water system” has the meaning given
6 the term in section 1401 of the Safe Drinking Water
7 Act (42 U.S.C. 300f).

8 (3) FEDERAL CREDIT INSTRUMENT.—The term
9 “Federal credit instrument” means a secured loan
10 or loan guarantee authorized to be made available
11 under this title with respect to a project.

12 (4) INVESTMENT-GRADE RATING.—The term
13 “investment-grade rating” means a rating of BBB
14 minus, Baa3, bbb minus, BBB (low), or higher as-
15 signed by a rating agency to project obligations.

16 (5) LENDER.—

17 (A) IN GENERAL.—The term “lender”
18 means any non-Federal qualified institutional
19 buyer (as defined in section 230.144A(a) of
20 title 17, Code of Federal Regulations (or a suc-
21 cessor regulation), known as Rule 144A(a) of
22 the Securities and Exchange Commission and
23 issued under the Securities Act of 1933 (15
24 U.S.C. 77a et seq.)).

1 (B) INCLUSIONS.—The term “lender” in-
2 cludes—

3 (i) a qualified retirement plan (as de-
4 fined in section 4974(c) of the Internal
5 Revenue Code of 1986) that is a qualified
6 institutional buyer; and

7 (ii) a governmental plan (as defined in
8 section 414(d) of the Internal Revenue
9 Code of 1986) that is a qualified institu-
10 tional buyer.

11 (6) LOAN GUARANTEE.—The term “loan guar-
12 antee” means any guarantee or other pledge by the
13 Secretary or the Administrator to pay all or part of
14 the principal of, and interest on, a loan or other debt
15 obligation issued by an obligor and funded by a lend-
16 er.

17 (7) OBLIGOR.—The term “obligor” means an
18 eligible entity that is primarily liable for payment of
19 the principal of, or interest on, a Federal credit in-
20 strument.

21 (8) PROJECT OBLIGATION.—

22 (A) IN GENERAL.—The term “project obli-
23 gation” means any note, bond, debenture, or
24 other debt obligation issued by an obligor in
25 connection with the financing of a project.

1 (B) EXCLUSION.—The term “project obli-
2 gation” does not include a Federal credit in-
3 strument.

4 (9) RATING AGENCY.—The term “rating agen-
5 cy” means a credit rating agency registered with the
6 Securities and Exchange Commission as a nationally
7 recognized statistical rating organization (as defined
8 in section 3(a) of the Securities Exchange Act of
9 1934 (15 U.S.C. 78c(a))).

10 (10) SECURED LOAN.—The term “secured
11 loan” means a direct loan or other debt obligation
12 issued by an obligor and funded by the Secretary in
13 connection with the financing of a project under sec-
14 tion 10010.

15 (11) STATE.—The term “State” means—

16 (A) a State;

17 (B) the District of Columbia;

18 (C) the Commonwealth of Puerto Rico;

19 and

20 (D) any other territory or possession of the
21 United States.

22 (12) STATE INFRASTRUCTURE FINANCING AU-
23 THORITY.—The term “State infrastructure financing
24 authority” means the State entity established or des-
25 ignated by the Governor of a State to receive a cap-

1 italization grant provided by, or otherwise carry out
2 the requirements of, title VI of the Federal Water
3 Pollution Control Act (33 U.S.C. 1381 et. seq.) or
4 section 1452 of the Safe Drinking Water Act (42
5 U.S.C. 300j–12).

6 (13) **SUBSIDY AMOUNT.**—The term “subsidy
7 amount” means the amount of budget authority suf-
8 ficient to cover the estimated long-term cost to the
9 Federal Government of a Federal credit instrument,
10 as calculated on a net present value basis, excluding
11 administrative costs and any incidental effects on
12 governmental receipts or outlays in accordance with
13 the Federal Credit Reform Act of 1990 (2 U.S.C.
14 661 et seq.).

15 (14) **SUBSTANTIAL COMPLETION.**—The term
16 “substantial completion”, with respect to a project,
17 means the earliest date on which a project is consid-
18 ered to perform the functions for which the project
19 is designed.

20 (15) **TREATMENT WORKS.**—The term “treat-
21 ment works” has the meaning given the term in sec-
22 tion 212 of the Federal Water Pollution Control Act
23 (33 U.S.C. 1292).

1 **SEC. 10004. AUTHORITY TO PROVIDE ASSISTANCE.**

2 (a) IN GENERAL.—The Secretary and the Adminis-
3 trator may provide financial assistance under this title to
4 carry out not more than 10 pilot projects each, which shall
5 be selected to ensure a diversity of project types and geo-
6 graphical locations.

7 (b) RESPONSIBILITY.—

8 (1) SECRETARY.—The Secretary shall carry out
9 all pilot projects under this title that are eligible
10 projects under section 10007(1).

11 (2) ADMINISTRATOR.—The Administrator shall
12 carry out all pilot projects under this title that are
13 eligible projects under paragraphs (2) through (8) of
14 section 10007.

15 **SEC. 10005. APPLICATIONS.**

16 (a) IN GENERAL.—To receive assistance under this
17 title, an eligible entity shall submit to the Secretary or
18 the Administrator, as applicable, an application at such
19 time, in such manner, and containing such information as
20 the Secretary or the Administrator may require.

21 (b) COMBINED PROJECTS.—In the case of an eligible
22 project described in section 10007(8), the Administrator
23 shall require the eligible entity to submit a single applica-
24 tion for the combined group of projects.

1 **SEC. 10006. ELIGIBLE ENTITIES.**

2 The following entities are eligible to receive assistance
3 under this title:

4 (1) A corporation.

5 (2) A partnership.

6 (3) A joint venture.

7 (4) A trust.

8 (5) A Federal, State, or local governmental en-
9 tity, agency, or instrumentality.

10 (6) A State infrastructure financing authority.

11 **SEC. 10007. PROJECTS ELIGIBLE FOR ASSISTANCE.**

12 The following projects may be carried out with
13 amounts made available under this title:

14 (1) A project for flood control that the Sec-
15 retary has determined is technically sound, economi-
16 cally justified, and environmentally acceptable, in-
17 cluding—

18 (A) a structural or nonstructural measure
19 to reduce flood risk, enhance stream flow, or
20 protect natural resources; and

21 (B) a levee, dam, tunnel, aqueduct, res-
22 ervoir, or other related water infrastructure.

23 (2) 1 or more activities that are eligible for as-
24 sistance under section 603(c) of the Federal Water
25 Pollution Control Act (33 U.S.C. 1383(c)), notwith-

1 standing the public ownership requirement under
2 paragraph (1) of that subsection.

3 (3) 1 or more activities described in section
4 1452(a)(2) of the Safe Drinking Water Act (42
5 U.S.C. 300j–12(a)(2)).

6 (4) A project for enhanced energy efficiency in
7 the operation of a public water system.

8 (5) A project for accelerated repair and replace-
9 ment of an aging water distribution facility.

10 (6) A brackish or sea water desalination
11 project.

12 (7) Acquisition of real property or an interest
13 in real property for water storage, reclaimed or recy-
14 cled water, or wastewater, if the acquisition is inte-
15 gral to a project described in paragraphs (1)
16 through (6).

17 (8) A combination of projects, each of which is
18 eligible under paragraph (2) or (3), for which a
19 State infrastructure financing authority submits to
20 the Administrator a single application.

21 **SEC. 10008. ACTIVITIES ELIGIBLE FOR ASSISTANCE.**

22 For purposes of this title, an eligible activity with re-
23 spect to an eligible project includes the cost of—

24 (1) development-phase activities, including plan-
25 ning, feasibility analysis, revenue forecasting, envi-

1 ronmental review, permitting, preliminary engineer-
2 ing and design work, and other preconstruction ac-
3 tivities;

4 (2) construction, reconstruction, rehabilitation,
5 and replacement activities;

6 (3) the acquisition of real property (including
7 water rights, land relating to the project, and im-
8 provements to land), environmental mitigation, con-
9 struction contingencies, and acquisition of equip-
10 ment;

11 (4) capitalized interest necessary to meet mar-
12 ket requirements, reasonably required reserve funds,
13 capital issuance expenses, and other carrying costs
14 during construction; and

15 (5) refinancing interim construction funding,
16 long-term project obligations, or a secured loan or
17 loan guarantee made under this title.

18 **SEC. 10009. DETERMINATION OF ELIGIBILITY AND**
19 **PROJECT SELECTION.**

20 (a) **ELIGIBILITY REQUIREMENTS.**—To be eligible to
21 receive financial assistance under this title, a project shall
22 meet the following criteria, as determined by the Secretary
23 or Administrator, as applicable:

24 (1) **CREDITWORTHINESS.**—

1 (A) IN GENERAL.—Subject to subpara-
2 graph (B), the project shall be creditworthy,
3 which shall be determined by the Secretary or
4 the Administrator, as applicable, who shall en-
5 sure that any financing for the project has ap-
6 propriate security features, such as a rate cov-
7 enant, to ensure repayment.

8 (B) PRELIMINARY RATING OPINION LET-
9 TER.—The Secretary or the Administrator, as
10 applicable, shall require each project applicant
11 to provide a preliminary rating opinion letter
12 from at least 1 rating agency indicating that
13 the senior obligations of the project (which may
14 be the Federal credit instrument) have the po-
15 tential to achieve an investment-grade rating.

16 (C) SPECIAL RULE FOR CERTAIN COM-
17 BINED PROJECTS.—The Administrator shall de-
18 velop a credit evaluation process for a Federal
19 credit instrument provided to a State infra-
20 structure financing authority for a project
21 under section 10007(8), which may include re-
22 quiring the provision of a preliminary rating
23 opinion letter from at least 1 rating agency.

1 (2) ELIGIBLE PROJECT COSTS.—The eligible
2 project costs of a project shall be reasonably antici-
3 pated to be not less than \$20,000,000.

4 (3) DEDICATED REVENUE SOURCES.—The Fed-
5 eral credit instrument for the project shall be repay-
6 able, in whole or in part, from dedicated revenue
7 sources that also secure the project obligations.

8 (4) PUBLIC SPONSORSHIP OF PRIVATE ENTI-
9 TIES.—In the case of a project carried out by an en-
10 tity that is not a State or local government or an
11 agency or instrumentality of a State or local govern-
12 ment, the project shall be publicly sponsored.

13 (b) SELECTION CRITERIA.—

14 (1) ESTABLISHMENT.—The Secretary or the
15 Administrator, as applicable, shall establish criteria
16 for the selection of projects that meet the eligibility
17 requirements of subsection (a), in accordance with
18 paragraph (2).

19 (2) CRITERIA.—The selection criteria shall in-
20 clude the following:

21 (A) The extent to which the project is na-
22 tionally or regionally significant, with respect to
23 the generation of economic benefits.

24 (B) The extent to which assistance under
25 this section would foster innovative public-pri-

1 vate partnerships and attract private debt or
2 equity investment.

3 (C) The likelihood that assistance under
4 this section would enable the project to proceed
5 at an earlier date than the project would other-
6 wise be able to proceed.

7 (D) The extent to which the project uses
8 new or innovative approaches.

9 (E) The amount of budget authority re-
10 quired to fund the Federal credit instrument
11 made available under this title.

12 (F) The extent to which the project helps
13 maintain or protect the environment.

14 (G) The extent to which assistance under
15 this section reduce the contribution of Federal
16 grant assistance to the project.

17 (3) SPECIAL RULE FOR CERTAIN COMBINED
18 PROJECTS.—For a project described in section
19 10007(8), the Administrator shall only consider the
20 criteria described in subparagraphs (B) through (G)
21 of paragraph (2).

22 (c) FEDERAL REQUIREMENTS.—Nothing in this sec-
23 tion supersedes the applicability of other requirements of
24 Federal law (including regulations).

1 **SEC. 10010. SECURED LOANS.**

2 (a) AGREEMENTS.—

3 (1) IN GENERAL.—Subject to paragraphs (2)
4 through (4), the Secretary or the Administrator, as
5 applicable, may enter into agreements with 1 or
6 more obligors to make secured loans, the proceeds of
7 which shall be used—

8 (A) to finance eligible project costs of any
9 project selected under section 10009;

10 (B) to refinance interim construction fi-
11 nancing of eligible project costs of any project
12 selected under section 10009; or

13 (C) to refinance long-term project obliga-
14 tions or Federal credit instruments, if that re-fi-
15 nancing provides additional funding capacity for
16 the completion, enhancement, or expansion of
17 any project that—

18 (i) is selected under section 10009; or

19 (ii) otherwise meets the requirements
20 of section 10009.

21 (2) LIMITATION ON REFINANCING OF INTERIM
22 CONSTRUCTION FINANCING.—A secured loan under
23 paragraph (1) shall not be used to refinance interim
24 construction financing under paragraph (1)(B) later
25 than 1 year after the date of substantial completion
26 of the applicable project.

1 (3) RISK ASSESSMENT.—Before entering into
2 an agreement under this subsection for a secured
3 loan, the Secretary or the Administrator, as applica-
4 ble, in consultation with the Director of the Office
5 of Management and Budget and each rating agency
6 providing a preliminary rating opinion letter under
7 section 10009(a)(1)(B), shall determine an appro-
8 priate capital reserve subsidy amount for the secured
9 loan, taking into account each such preliminary rat-
10 ing opinion letter.

11 (4) INVESTMENT-GRADE RATING REQUIRE-
12 MENT.—The execution of a secured loan under this
13 section shall be contingent on receipt by the senior
14 obligations of the project of an investment-grade rat-
15 ing.

16 (b) TERMS AND LIMITATIONS.—

17 (1) IN GENERAL.—A secured loan provided for
18 a project under this section shall be subject to such
19 terms and conditions, and contain such covenants,
20 representations, warranties, and requirements (in-
21 cluding requirements for audits), as the Secretary or
22 the Administrator, as applicable, determines to be
23 appropriate.

1 (2) MAXIMUM AMOUNT.—The amount of a se-
2 cured loan under this section shall not exceed the
3 lesser of—

4 (A) an amount equal to 49 percent of the
5 reasonably anticipated eligible project costs; and

6 (B) if the secured loan does not receive an
7 investment-grade rating, the amount of the sen-
8 ior project obligations of the project.

9 (3) PAYMENT.—A secured loan under this sec-
10 tion—

11 (A) shall be payable, in whole or in part,
12 from State or local taxes, user fees, or other
13 dedicated revenue sources that also secure the
14 senior project obligations of the relevant
15 project;

16 (B) shall include a rate covenant, coverage
17 requirement, or similar security feature sup-
18 porting the project obligations; and

19 (C) may have a lien on revenues described
20 in subparagraph (A), subject to any lien secur-
21 ing project obligations.

22 (4) INTEREST RATE.—The interest rate on a
23 secured loan under this section shall be not less than
24 the yield on United States Treasury securities of a

1 similar maturity to the maturity of the secured loan
2 on the date of execution of the loan agreement.

3 (5) MATURITY DATE.—

4 (A) IN GENERAL.—The final maturity date
5 of a secured loan under this section shall be not
6 later than 35 years after the date of substantial
7 completion of the relevant project.

8 (B) SPECIAL RULE FOR STATE INFRA-
9 STRUCTURE FINANCING AUTHORITIES.—The
10 final maturity date of a secured loan to a State
11 infrastructure financing authority under this
12 section shall be not later than 35 years after
13 the date on which amounts are first disbursed.

14 (6) NONSUBORDINATION.—A secured loan
15 under this section shall not be subordinated to the
16 claims of any holder of project obligations in the
17 event of bankruptcy, insolvency, or liquidation of the
18 obligor of the project.

19 (7) FEES.—The Secretary or the Adminis-
20 trator, as applicable, may establish fees at a level
21 sufficient to cover all or a portion of the costs to the
22 Federal Government of making a secured loan under
23 this section.

24 (8) NON-FEDERAL SHARE.—The proceeds of a
25 secured loan under this section may be used to pay

1 any non-Federal share of project costs required if
2 the loan is repayable from non-Federal funds.

3 (9) MAXIMUM FEDERAL INVOLVEMENT.—For
4 each project for which assistance is provided under
5 this title, the total amount of Federal assistance
6 shall not exceed 80 percent of the total project cost.

7 (c) REPAYMENT.—

8 (1) SCHEDULE.—The Secretary or the Admin-
9 istrator, as applicable, shall establish a repayment
10 schedule for each secured loan provided under this
11 section, based on the projected cash flow from
12 project revenues and other repayment sources.

13 (2) COMMENCEMENT.—

14 (A) IN GENERAL.—Scheduled loan repay-
15 ments of principal or interest on a secured loan
16 under this section shall commence not later
17 than 5 years after the date of substantial com-
18 pletion of the project.

19 (B) SPECIAL RULE FOR STATE INFRA-
20 STRUCTURE FINANCING AUTHORITIES.—Sched-
21 uled loan repayments of principal or interest on
22 a secured loan to a State infrastructure financ-
23 ing authority under this title shall commence
24 not later than 5 years after the date on which
25 amounts are first disbursed.

1 (3) DEFERRED PAYMENTS.—

2 (A) AUTHORIZATION.—If, at any time
3 after the date of substantial completion of a
4 project for which a secured loan is provided
5 under this section, the project is unable to gen-
6 erate sufficient revenues to pay the scheduled
7 loan repayments of principal and interest on the
8 secured loan, the Secretary or the Adminis-
9 trator, as applicable, subject to subparagraph
10 (C), may allow the obligor to add unpaid prin-
11 cipal and interest to the outstanding balance of
12 the secured loan.

13 (B) INTEREST.—Any payment deferred
14 under subparagraph (A) shall—

15 (i) continue to accrue interest in ac-
16 cordance with subsection (b)(4) until fully
17 repaid; and

18 (ii) be scheduled to be amortized over
19 the remaining term of the secured loan.

20 (C) CRITERIA.—

21 (i) IN GENERAL.—Any payment defer-
22 ral under subparagraph (A) shall be con-
23 tingent on the project meeting such cri-
24 teria as the Secretary or the Adminis-
25 trator, as applicable, may establish.

1 (ii) REPAYMENT STANDARDS.—The
2 criteria established under clause (i) shall
3 include standards for reasonable assurance
4 of repayment.

5 (4) PREPAYMENT.—

6 (A) USE OF EXCESS REVENUES.—Any ex-
7 cess revenues that remain after satisfying
8 scheduled debt service requirements on the
9 project obligations and secured loan and all de-
10 posit requirements under the terms of any trust
11 agreement, bond resolution, or similar agree-
12 ment securing project obligations may be ap-
13 plied annually to prepay a secured loan under
14 this section without penalty.

15 (B) USE OF PROCEEDS OF REFI-
16 NANCING.—A secured loan under this section
17 may be prepaid at any time without penalty
18 from the proceeds of refinancing from non-Fed-
19 eral funding sources.

20 (d) SALE OF SECURED LOANS.—

21 (1) IN GENERAL.—Subject to paragraph (2), as
22 soon as practicable after the date of substantial
23 completion of a project and after providing a notice
24 to the obligor, the Secretary or the Administrator, as
25 applicable, may sell to another entity or reoffer into

1 the capital markets a secured loan for a project
2 under this section, if the Secretary or the Adminis-
3 trator, as applicable, determines that the sale or re-
4 offering can be made on favorable terms.

5 (2) CONSENT OF OBLIGOR.—In making a sale
6 or reoffering under paragraph (1), the Secretary or
7 the Administrator, as applicable, may not change the
8 original terms and conditions of the secured loan
9 without the written consent of the obligor.

10 (e) LOAN GUARANTEES.—

11 (1) IN GENERAL.—The Secretary or the Admin-
12 istrator, as applicable, may provide a loan guarantee
13 to a lender in lieu of making a secured loan under
14 this section, if the Secretary or the Administrator,
15 as applicable, determines that the budgetary cost of
16 the loan guarantee is substantially the same as that
17 of a secured loan.

18 (2) TERMS.—The terms of a loan guarantee
19 provided under this subsection shall be consistent
20 with the terms established in this section for a se-
21 cured loan, except that the rate on the guaranteed
22 loan and any prepayment features shall be nego-
23 tiated between the obligor and the lender, with the
24 consent of the Secretary or the Administrator, as
25 applicable.

1 **SEC. 10011. PROGRAM ADMINISTRATION.**

2 (a) REQUIREMENT.—The Secretary or the Adminis-
3 trator, as applicable, shall establish a uniform system to
4 service the Federal credit instruments made available
5 under this title.

6 (b) FEES.—

7 (1) IN GENERAL.—The Secretary or the Admin-
8 istrator, as applicable, may collect and spend fees,
9 contingent on authority being provided in appropria-
10 tions Acts, at a level that is sufficient to cover—

11 (A) the costs of services of expert firms re-
12 tained pursuant to subsection (d); and

13 (B) all or a portion of the costs to the
14 Federal Government of servicing the Federal
15 credit instruments provided under this title.

16 (c) SERVICER.—

17 (1) IN GENERAL.—The Secretary or the Admin-
18 istrator, as applicable, may appoint a financial entity
19 to assist the Secretary or the Administrator in serv-
20 icing the Federal credit instruments provided under
21 this title.

22 (2) DUTIES.—A servicer appointed under para-
23 graph (1) shall act as the agent for the Secretary or
24 the Administrator, as applicable.

25 (3) FEE.—A servicer appointed under para-
26 graph (1) shall receive a servicing fee, subject to ap-

1 proval by the Secretary or the Administrator, as ap-
2 plicable.

3 (d) ASSISTANCE FROM EXPERTS.—The Secretary or
4 the Administrator, as applicable, may retain the services,
5 including counsel, of organizations and entities with exper-
6 tise in the field of municipal and project finance to assist
7 in the underwriting and servicing of Federal credit instru-
8 ments provided under this title.

9 (e) APPLICABILITY OF OTHER LAWS.—Section 513
10 of the Federal Water Pollution Control Act (33 U.S.C.
11 1372) applies to the construction of a project carried out,
12 in whole or in part, with assistance made available through
13 a Federal credit instrument under this title in the same
14 manner that section applies to a treatment works for
15 which a grant is made available under that Act.

16 **SEC. 10012. STATE AND LOCAL PERMITS.**

17 The provision of financial assistance for project under
18 this title shall not—

19 (1) relieve any recipient of the assistance of any
20 obligation to obtain any required State or local per-
21 mit or approval with respect to the project;

22 (2) limit the right of any unit of State or local
23 government to approve or regulate any rate of re-
24 turn on private equity invested in the project; or

1 (3) otherwise supersede any State or local law
2 (including any regulation) applicable to the construc-
3 tion or operation of the project.

4 **SEC. 10013. REGULATIONS.**

5 The Secretary or the Administrator, as applicable,
6 may promulgate such regulations as the Secretary or Ad-
7 ministrator determines to be appropriate to carry out this
8 title.

9 **SEC. 10014. FUNDING.**

10 (a) IN GENERAL.—There is authorized to be appro-
11 priated to each of the Secretary and the Administrator
12 to carry out this title \$50,000,000 for each of fiscal years
13 2013 through 2017, to remain available until expended.

14 (b) ADMINISTRATIVE COSTS.—Of the funds made
15 available to carry out this title, the Secretary or the Ad-
16 ministrator, as applicable, may use for the administration
17 of this title not more than \$2,200,000 for each of fiscal
18 years 2013 through 2017.

19 **SEC. 10015. REPORT TO CONGRESS.**

20 Not later than 2 years after the date of enactment
21 of this Act, and every 2 years thereafter, the Secretary
22 or the Administrator, as applicable, shall submit to the
23 Committee on Environment and Public Works of the Sen-
24 ate and the Committee on Transportation and Infrastruc-
25 ture of the House of Representatives a report summa-

1 rizing the financial performance of the projects that are
2 receiving, or have received, assistance under this title, in-
3 cluding a recommendation as to whether the objectives of
4 this title are being met.