

107TH CONGRESS
2^D SESSION

S. 1987

To provide for reform of the Corps of Engineers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2002

Mr. SMITH of New Hampshire (for himself, Mr. FEINGOLD, and Mr. MCCAIN)
introduced the following bill; which was read twice and referred to the
Committee on Environment and Public Works

A BILL

To provide for reform of the Corps of Engineers, 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.**

4 This Act may be cited as the “Corps of Engineers
5 Modernization and Improvement Act of 2002”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **ACADEMY.**—The term “Academy” means
9 the National Academy of Sciences.

1 (2) CORPS.—The term “Corps” means the
2 Corps of Engineers.

3 (3) PRINCIPLES AND GUIDELINES.—The term
4 “Principles and Guidelines” means the principles
5 and guidelines of the Corps for water resources
6 projects (consisting of Engineer Regulation 1105-2-
7 100 and Engineer Pamphlet 1165-2-1).

8 (4) SECRETARY.—The term “Secretary” means
9 the Secretary of the Army.

10 **SEC. 3. PROJECT BACKLOG.**

11 (a) REVIEW AND REPORT ON WATER RESOURCES
12 CONSTRUCTION BACKLOG.—

13 (1) DEFINITIONS.—In this subsection:

14 (A) ACTIVE.—The term “active”, with re-
15 spect to a project, means that—

16 (i) the project is economically justi-
17 fied;

18 (ii) the project has received funding
19 for—

20 (I) preconstruction engineering
21 and design; or

22 (II) construction; and

23 (iii) the non-Federal interests with re-
24 spect to the project have demonstrated

1 willingness and the ability to provide the
2 required non-Federal share.

3 (B) DEFERRED.—The term “deferred”,
4 with respect to a project, means that the
5 project—

6 (i) has doubtful economic justification;

7 (ii) requires restudy to determine the
8 economic feasibility of the project; or

9 (iii) is a project for which the non-
10 Federal interests are unable to provide re-
11 quired cooperation.

12 (C) INACTIVE.—The term “inactive”, with
13 respect to a project, means that—

14 (i) the project is not economically jus-
15 tified;

16 (ii) the project no longer meets cur-
17 rent and prospective needs as described in
18 a feasibility report or general reevaluation
19 report; or

20 (iii) the non-Federal interests with re-
21 spect to the project have not demonstrated
22 willingness or the ability to provide the re-
23 quired non-Federal share.

24 (D) PROJECT.—The term “project” means
25 a water resources project, or a separable ele-

1 ment of a water resources project, that is au-
2 thorized by law for funding from—

3 (i) the Construction, General, appro-
4 priations account; or

5 (ii) the construction portion of the
6 Flood Control, Mississippi River and Trib-
7 utaries, appropriations account.

8 (2) STUDY.—

9 (A) IN GENERAL.—Not later than 1 year
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 a
15 study consisting of—

16 (i) the list described in subparagraph

17 (B); and

18 (ii) the information described in sub-
19 paragraph (C).

20 (B) LIST.—The list referred to in subpara-
21 graph (A) is a list of all authorized water re-
22 sources projects—

23 (i) that have not been commenced; or

24 (ii) the construction of which has not
25 been completed.

- 1 (C) REQUIRED INFORMATION.—Each
2 project on the list described in subparagraph
3 (B) shall be accompanied by information on—
- 4 (i) the primary purpose of the project;
 - 5 (ii) the year in which construction of
6 the project was commenced;
 - 7 (iii) the total cost of the project in
8 current year dollars;
 - 9 (iv) the cost-benefit ratio of the
10 project, determined based on current dis-
11 count rates;
 - 12 (v) the estimated annual benefits and
13 annual costs of the project;
 - 14 (vi) the remaining additional benefits
15 and the remaining additional costs to com-
16 plete construction of the project (including
17 the ratio that remaining benefits bears to
18 remaining costs);
 - 19 (vii)(I) the year during which the
20 most recent major studies of the feasibility
21 and design of the project were completed;
22 and
 - 23 (II) the year during which the most
24 recent environmental impact statement or

1 environmental assessment for the project
2 was completed;

3 (viii) the date of the last year for
4 which economic data that was included in
5 the most recent analysis of the feasibility
6 and justification of the project was col-
7 lected;

8 (ix) the status of each project as—

9 (I) reconnaissance,
10 preconstruction engineering and de-
11 sign, or construction; and

12 (II) active, deferred, or inactive;

13 and

14 (x) the matters described in para-
15 graph (3) for each particular type of
16 project.

17 (3) INFORMATION FOR PARTICULAR PROJECT
18 TYPE.—The study under paragraph (2) shall
19 include—

20 (A) in the case of a flood damage reduc-
21 tion project—

22 (i) the extent to which the project re-
23 flects national flood damage reduction pri-
24 orities as established by the Federal Emer-
25 gency Management Agency;

1 (ii)(I) the level of flood protection pro-
2 vided; and

3 (II) to the maximum extent prac-
4 ticable, the extent to which the project is
5 based on projected growth and the basis
6 for each projection of growth; and

7 (iii) the extent to which the project—

8 (I) restores natural aquatic eco-
9 system functions; and

10 (II) avoids adverse environmental
11 impacts and risk before implementa-
12 tion of mitigation activities;

13 (B) in the case of a navigation project—

14 (i)(I) the extent to which the economic
15 benefits of the project are based on exist-
16 ing levels of commercial traffic rather than
17 projected growth in commercial traffic; and

18 (II) to the maximum extent prac-
19 ticable, the extent to which the project is
20 based on projected growth and the basis
21 for each projection of growth; and

22 (ii) the extent of the likely environ-
23 mental benefits of the project, including
24 the extent of—

1 (I) remediation of contaminated
2 sediments, or reuse of dredged mate-
3 rial, to restore aquatic habitat; and

4 (II) adverse environmental im-
5 pacts and risks of the project; and

6 (C) in the case of an environmental res-
7 toration project—

8 (i) the extent to which the project—

9 (I) restores natural hydrologic
10 processes and the spatial extent of
11 aquatic habitat; and

12 (II) otherwise produces self-sus-
13 taining environmental benefits; and

14 (ii) the extent to which the project ad-
15 dresses critical national conservation prior-
16 ities, including preservation and protection
17 of endangered and threatened species or
18 habitat of endangered and threatened spe-
19 cies.

20 (4) MEASUREMENT AND REPORTING.—

21 (A) IN GENERAL.—The Secretary shall use
22 objective and quantifiable standards for meas-
23 uring and reporting the information required to
24 be submitted under paragraph (3).

1 (B) ALTERNATIVE METHOD OF REPORT-
 2 ING.—In any case in which the information re-
 3 quired to be submitted under subparagraph
 4 (B)(ii) or (C) of paragraph (3) cannot be quan-
 5 tified, the information shall be reported through
 6 an objective description of the benefits and im-
 7 pacts of the applicable project.

8 (5) AVAILABILITY TO THE PUBLIC.—The study
 9 submitted to Congress under paragraph (2) shall be
 10 made available to—

11 (A) any person on request; and

12 (B) the public on the Internet.

13 (b) PROJECT DEAUTHORIZATIONS.—Section 1001 of
 14 the Water Resources Development Act of 1986 (33 U.S.C.
 15 579a) is amended to read as follows:

16 **“SEC. 1001. PROJECT DEAUTHORIZATIONS.**

17 **“(a) DEFINITIONS.—**In this section:

18 **“(1) CONSTRUCTION OF A PROJECT.—**The term
 19 ‘construction of a project’ means—

20 **“(A)** with respect to a flood control
 21 project—

22 **“(i)** the acquisition of land, an ease-
 23 ment, or a right-of-way; or

24 **“(ii)** the performance of physical work
 25 under a construction contract;

1 “(B) with respect to an environmental pro-
2 tection and restoration project—

3 “(i) the acquisition of land, an ease-
4 ment, or a right-of-way primarily to facili-
5 tate the restoration of wetland or similar
6 habitat; or

7 “(ii) the performance of physical work
8 under a construction contract—

9 “(I) to modify an existing project
10 facility; or

11 “(II) to construct a new environ-
12 mental protection or restoration meas-
13 ure;

14 “(C) with respect to a shore protection
15 project—

16 “(i) the acquisition of land, an ease-
17 ment, or a right-of-way; or

18 “(ii) the performance of physical work
19 under a construction contract for a struc-
20 tural or a nonstructural measure; and

21 “(D) with respect to any project that is
22 not described in subparagraph (A), (B), or (C),
23 the performance of physical work under a con-
24 struction contract.

1 “(2) INACTIVE.—The term ‘inactive’, with re-
2 spect to a project, means that—

3 “(A) the project is not economically justi-
4 fied;

5 “(B) the project no longer meets current
6 and prospective needs as described in a feasi-
7 bility report or general reevaluation report;

8 “(C) the non-Federal interests with respect
9 to the project have not demonstrated willing-
10 ness or the ability to provide the required non-
11 Federal share; or

12 “(D)(i) the project most recently received,
13 under an Act of Congress, authorization or re-
14 authorization for construction more than 25
15 years before the date of enactment of this sub-
16 paragraph; and

17 “(ii) an amount that is less than 33 per-
18 cent of the estimated total costs of the project
19 (excluding costs of preconstruction engineering
20 and design) has been obligated for the project
21 as of the date of enactment of this subpara-
22 graph.

23 “(3) PHYSICAL WORK UNDER A CONSTRUCTION
24 CONTRACT.—The term ‘physical work under a con-

1 construction contract' does not include any activity re-
2 lating to—

3 “(A) project planning;

4 “(B) engineering and design;

5 “(C) relocation; or

6 “(D) the acquisition of land, an easement,
7 or a right-of-way.

8 “(4) PROJECT.—The term ‘project’ means a
9 water resources project, or a separable element of a
10 water resources project, that is authorized by law for
11 funding from—

12 “(A) the Construction, General, appropria-
13 tions account; or

14 “(B) the construction portion of the Flood
15 Control, Mississippi River and Tributaries, ap-
16 propriations account.

17 “(b) INACTIVE PROJECTS.—

18 “(1) LIST.—Not later than December 31, 2003,
19 and biennially thereafter, the Secretary shall submit
20 to Congress a list of inactive projects.

21 “(2) DEAUTHORIZATION.—An inactive project
22 shall be deauthorized effective beginning 1 year after
23 the date of submission of a list under paragraph (1)
24 that includes the project unless, during that 1-year
25 period, Congress reauthorizes the project in accord-

1 ance with the Corps of Engineers Modernization and
2 Improvement Act of 2002 and the amendments
3 made by that Act.

4 “(c) PROJECTS NEVER UNDER CONSTRUCTION.—

5 “(1) LIST.—The Secretary shall annually sub-
6 mit to Congress a list of projects that have been au-
7 thorized for construction, but for which no Federal
8 funds have been obligated for construction during
9 the 3 consecutive fiscal years preceding the fiscal
10 year in which the list is submitted.

11 “(2) DEAUTHORIZATION.—A project authorized
12 for construction that is not subject to subsection (b)
13 shall be deauthorized effective beginning 5 years
14 after the date of the most recent authorization or re-
15 authorization of the project unless, during that 5-
16 year period, Federal funds are obligated for con-
17 struction of the project.

18 “(d) PROJECTS FOR WHICH CONSTRUCTION HAS
19 BEEN SUSPENDED.—

20 “(1) LIST.—The Secretary shall annually sub-
21 mit to Congress a list of projects—

22 “(A) that have been authorized for con-
23 struction; and

24 “(B) for which no Federal funds have been
25 obligated for construction during the 2 consecu-

1 tive fiscal years preceding the date of submis-
2 sion of the list.

3 “(2) DEAUTHORIZATION.—A project that is not
4 subject to subsection (b) but for which Federal
5 funds have been obligated for construction of the
6 project shall be deauthorized if Federal funds appro-
7 priated specifically for construction of the project, as
8 indicated in an Act of Congress or in accompanying
9 legislative report language, are not obligated for con-
10 struction of the project during the period of 3 fiscal
11 years following the last fiscal year in which Federal
12 funds were obligated for construction of the project.

13 “(e) COMPLETED PROJECTS.—Subsections (b), (c),
14 and (d) shall not apply—

15 “(1) in the case of a beach nourishment project,
16 after initial construction of the project has been
17 completed; or

18 “(2) in the case of any other project, after con-
19 struction of the project has been completed.

20 “(f) CONGRESSIONAL NOTIFICATIONS.—On submis-
21 sion of a list under subsection (b), (c), or (d), the Sec-
22 retary shall notify each Senator in whose State, and each
23 Member of the House of Representatives in whose district,
24 a project on the list is or would be located.

1 “(g) FINAL DEAUTHORIZATION LIST.—The Sec-
2 retary shall annually publish in the Federal Register a list
3 of all projects deauthorized under subsections (b), (c), and
4 (d).”.

5 (c) WATERWAYS.—

6 (1) REPORT BY ACADEMY.—

7 (A) IN GENERAL.—Not later than 1 year
8 after the date of enactment of this Act, the Sec-
9 retary shall enter into a contract with the Acad-
10 emy to prepare a report on waterways in the
11 Inland Waterways System.

12 (B) CONTENTS OF REPORT.—The report
13 shall—

14 (i) review the Inland Waterways Sys-
15 tem;

16 (ii) provide data on the commercial
17 traffic being carried by each waterway in
18 the System as of the date of the report;

19 (iii) provide an analysis of the extent
20 to which prior projections of the commer-
21 cial traffic carried by each waterway in the
22 System were accurate; and

23 (iv) based on the information provided
24 under clauses (ii) and (iii)—

1 (I) identify underused waterways
2 in the System;

3 (II) propose new economic and
4 environmental uses for underused wa-
5 terways;

6 (III) describe statutory and ad-
7 ministrative reforms that are needed
8 to ease the transition from the current
9 authorized uses of the System to new
10 economic and environmental uses of
11 the System; and

12 (IV) recommend which water-
13 ways in the System should be decom-
14 missioned.

15 (2) DECOMMISSIONING MECHANISM FOR
16 UNDERUSED WATERWAYS.—Not later than 1 year
17 after the date of enactment of this Act, the Sec-
18 retary shall by regulation establish a mechanism for
19 the decommissioning of waterways that—

20 (A) are no longer economically justified,
21 based on commercial traffic and current dis-
22 count rates; or

23 (B) are no longer in the national interest.

24 (d) REPORT ON PRIORITIZATION OF PROJECTS.—

1 (1) IN GENERAL.—Not later than 1 year after
2 the date of enactment of this Act, the Water Re-
3 sources Council established under title I of the
4 Water Resources Planning Act (42 U.S.C. 1962a et
5 seq.) shall submit to Congress a report that
6 prioritizes, within each type of water resources
7 project specified in paragraph (2), authorized water
8 resources projects of the Corps based on the extent
9 to which each water resources project—

10 (A) is providing, or may provide, national
11 benefits;

12 (B) has a cost-benefit ratio of 1.5 or great-
13 er, determined based on current discount rates;
14 and

15 (C) meets the criteria for the particular
16 type of project that are specified in paragraph
17 (2).

18 (2) PRIORITIZATION WITHIN EACH PARTICULAR
19 PROJECT TYPE.—The criteria referred to in para-
20 graph (1)(C) are that—

21 (A) in the case of a flood damage reduc-
22 tion project, the project—

23 (i) reflects national flood damage re-
24 duction priorities established by the Fed-
25 eral Emergency Management Agency;

1 (ii)(I) provides a 100-year or greater
2 level of flood protection; and

3 (II) provides a high level of protection
4 to, and benefits derived from, protecting
5 urban property;

6 (iii)(I) restores natural aquatic eco-
7 system functions; and

8 (II) avoids adverse environmental im-
9 pacts and risk; and

10 (iv) contains nonstructural features;

11 (B) in the case of a navigation project, the
12 project—

13 (i)(I) provides economic benefits based
14 on existing levels of commercial traffic
15 rather than projected growth in commer-
16 cial traffic; and

17 (II) has a high level of certainty in a
18 growth projection, if the justification for
19 the project is based on projected growth;
20 and

21 (ii) provides significant environmental
22 benefits, including—

23 (I) remediation of contaminated
24 sediments or reuse of dredged mate-
25 rial to restore aquatic habitat; and

1 (II) low adverse environmental
2 impacts and risks of the project; and

3 (C) in the case of an environmental res-
4 toration project, the project—

5 (i)(I) restores natural hydrologic proc-
6 esses and the spatial extent of aquatic
7 habitat; and

8 (II) otherwise produces self-sustaining
9 environmental benefits; and

10 (ii) addresses critical national con-
11 servation priorities, including preservation
12 and protection of endangered and threat-
13 ened species or habitat of endangered and
14 threatened species.

15 (e) REDUCTION OF MISSION CREEP.—

16 (1) ENVIRONMENTAL INFRASTRUCTURE
17 PROJECTS.—Each environmental infrastructure
18 project that is authorized to be carried out by the
19 Secretary, and that, as of the date of enactment of
20 this Act, has not received any Federal funding, is
21 deauthorized.

22 (2) MUNICIPAL AND INDUSTRIAL WATER SUP-
23 PLY.—Each municipal and industrial water supply
24 project carried out at any Federal expense is de-
25 authorized.

1 (3) IRRIGATION.—Each project that has the
2 primary purpose of providing agricultural water sup-
3 ply, and that is authorized to be carried out by the
4 Secretary, is deauthorized.

5 (4) SCHOOL CONSTRUCTION.—Beginning on the
6 date of enactment of this Act, the Secretary shall
7 not enter into any contract or other agreement (in-
8 cluding any contract or other agreement under the
9 Support for Others Program of the Corps) to con-
10 struct or renovate any school in the United States,
11 excluding any school on a military base or in support
12 of a military function.

13 (f) PROJECTS WITHOUT CHIEF’S REPORTS.—

14 (1) POINT OF ORDER.—It shall not be in order
15 in the Senate to consider any bill, amendment, mo-
16 tion, or conference report that authorizes a water re-
17 sources project unless a final report from the Chief
18 of Engineers recommending the water resources
19 project, or an alternative to the water resources
20 project, has been submitted to Congress at least 30
21 days before the date of consideration of the bill,
22 amendment, motion, or conference report.

23 (2) WAIVER.—This subsection may be waived
24 or suspended in the Senate only by the affirmative

1 vote of three-fifths of the Members, duly chosen and
2 sworn.

3 **SEC. 4. COST-BENEFIT RATIO.**

4 (a) RECOMMENDATION OF PROJECTS.—Beginning in
5 fiscal year 2003, in the case of a water resources project
6 that is subject to a cost-benefit analysis, the Secretary
7 may recommend the project for authorization by Congress,
8 and may choose the project as a recommended alternative
9 in any record of decision or environmental impact state-
10 ment, only if the project, in addition to meeting any other
11 criteria required by law, has projected benefits that are
12 at least 1.5 times as great as the estimated total costs
13 of the project, based on current discount rates.

14 (b) REVIEW AND DEAUTHORIZATION OF
15 PROJECTS.—

16 (1) REVIEW.—Not later than 180 days after
17 the date of enactment of this Act, the Secretary
18 shall review each water resources project described
19 in paragraph (2) to determine whether the projected
20 benefits of the project are less than 1.5 times as
21 great as the estimated total costs of the project.

22 (2) PROJECTS SUBJECT TO REVIEW.—A water
23 resources project shall be subject to review under
24 paragraph (1) if—

1 (A) the project was authorized before the
2 date on which the review is commenced;

3 (B) the project is subject to a cost-benefit
4 analysis; and

5 (C) an amount that is less than 33 percent
6 of the estimated total costs of the project (ex-
7 cluding costs of preconstruction engineering
8 and design) has been obligated.

9 (3) DEAUTHORIZATIONS.—

10 (A) IN GENERAL.—On completion of the
11 review under paragraph (1), the Secretary shall
12 submit to Congress a list that describes each
13 water resources project the projected benefits of
14 which are less than 1.5 times as great as the
15 estimated total costs of the project.

16 (B) PROJECTS.—A project included on the
17 list under subparagraph (A) shall be deauthor-
18 ized effective beginning 3 years after the date
19 of submission of the list to Congress unless,
20 during that 3-year period, Congress reauthor-
21 izes the project.

22 (4) DEAUTHORIZED PROJECTS FOR WHICH
23 CONSTRUCTION HAS BEEN COMMENCED.—In the
24 case of a water resources project that is deauthor-
25 ized under paragraph (3) and for which construction

1 (other than preconstruction engineering and design)
 2 has been commenced, the Secretary may take such
 3 actions as are necessary with respect to the project
 4 to protect public health and safety and the environ-
 5 ment.

6 (c) EXCLUSION OF ELEMENTS FROM BENEFIT-COST
 7 ANALYSIS.—Section 308(a) of the Water Resources Devel-
 8 opment Act of 1990 (33 U.S.C. 2318(a)) is amended—

9 (1) in paragraph (1)(B), by striking “and” at
 10 the end;

11 (2) in paragraph (2), by striking the period at
 12 the end and inserting “; and”; and

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

14 “(3) any projected benefit attributable to any
 15 increase in the value of privately owned property, in-
 16 crease in the quantity of privately owned property,
 17 or increase in the value of privately owned services,
 18 that arises from the draining, reduction, or elimi-
 19 nation of wetland.”.

20 **SEC. 5. PRINCIPLES AND GUIDELINES.**

21 (a) REALISTIC CONSTRUCTION SCHEDULING.—

22 (1) IN GENERAL.—Not later than 1 year after
 23 the date of enactment of this Act, the Secretary, in
 24 consultation with the Academy and appropriate Fed-
 25 eral agencies, shall revise the Principles and Guide-

1 lines to factor into the cost-benefit analysis for each
2 water resources project a more realistic expected
3 timeframe for completion of construction of the
4 water resources project.

5 (2) CONSIDERATIONS.—The revision under
6 paragraph (1) shall reflect—

7 (A)(i) the impact of the large number of
8 authorized water resources projects—

9 (I) that have not been commenced; or

10 (II) the construction of which has not
11 been completed; and

12 (ii) the resulting impracticability of assum-
13 ing that Congress will fund the water resources
14 project as if there were no budget constraints;
15 and

16 (B) the levels of appropriations from the
17 Construction, General, appropriations account
18 for similar water resources projects during the
19 most recent 5 fiscal years.

20 (b) REGIONAL IMPACTS OF PORT AND HARBOR
21 PROJECTS.—

22 (1) DEFINITION OF REGION.—In this sub-
23 section, the term “region”, with respect to the
24 United States, means—

25 (A) the North and South Atlantic region;

- 1 (B) the Great Lakes region;
2 (C) the Gulf of Mexico region; and
3 (D) the North and South Pacific region.

4 (2) REVISION.—Not later than 1 year after the
5 date of enactment of this Act, the Secretary, in con-
6 sultation with the Academy, shall revise the Prin-
7 ciples and Guidelines to require that feasibility stud-
8 ies, general reevaluation studies, and environmental
9 impact statements for a port or harbor project in-
10 clude detailed and thorough consideration of—

11 (A) economic impacts of the project on
12 other United States ports in the same region;

13 (B) cumulative environmental impacts of
14 the project within the region; and

15 (C) cumulative impacts of the project on
16 overcapacity in the region.

17 (3) CONSIDERATION OF OTHER PORT OR HAR-
18 BOR PROJECTS UNDER CONSTRUCTION OR STUDY.—

19 In applying the Principles and Guidelines as revised
20 under paragraph (2) with respect to a port or har-
21 bor project, the Secretary shall take into consider-
22 ation other port or harbor projects in the region that
23 are under construction or under study (other than a
24 reconnaissance study).

1 (c) CONGRESSIONAL STATEMENT OF OBJECTIVES.—
2 Section 209 of the Flood Control Act of 1970 (42 U.S.C.
3 1962–2) is amended to read as follows:

4 **“SEC. 209. CONGRESSIONAL STATEMENT OF OBJECTIVES.**

5 “(a) IN GENERAL.—It is the intent of Congress that
6 economic development and environmental protection and
7 restoration be co-equal goals of water resources planning
8 and development.

9 “(b) REVISION OF PRINCIPLES AND GUIDELINES.—
10 Not later than 1 year after the date of enactment of the
11 Corps of Engineers Modernization and Improvement Act
12 of 2002, the Secretary of the Army, in consultation with
13 the National Academy of Sciences, shall revise the prin-
14 ciples and guidelines of the Corps of Engineers for water
15 resources projects (consisting of Engineer Regulation
16 1105–2–100 and Engineer Pamphlet 1165–2–1)—

17 “(1) to provide for the consideration of environ-
18 mental restoration costs under economic models of
19 the Corps;

20 “(2) to incorporate new techniques in risk and
21 uncertainty analysis;

22 “(3) to eliminate biases and disincentives for
23 nonstructural flood damage reduction projects;

24 “(4) to incorporate new analytical techniques;

1 “(5) to encourage, to the maximum extent prac-
2 ticable, the restoration of aquatic ecosystems; and

3 “(6) to ensure that water resources projects are
4 justified by benefits that accrue to the public at
5 large and not only to a limited number of private
6 businesses.

7 “(c) REVISION OF GUIDANCE.—The Secretary of the
8 Army shall revise the Guidance for Conducting Civil
9 Works Planning Studies (ER 1105–2–100) to comply with
10 this section.

11 “(d) APPLICABILITY TO OUTDATED
12 UNCONSTRUCTED PROJECTS.—

13 “(1) IN GENERAL.—After carrying out sub-
14 section (c), the Secretary shall not commence or con-
15 tinue with construction of any water resources
16 project, or separable element of a water resources
17 project, described in paragraph (2) until such time
18 as a general reevaluation study that evaluates a full
19 range of alternatives demonstrates that the water re-
20 sources project or separable element meets all
21 project criteria and requirements (including the revi-
22 sions under subsections (b) and (c)) that are appli-
23 cable at the time at which the general reevaluation
24 study is commenced.

1 “(2) PROJECTS AND ELEMENTS.—A water re-
2 resources project or separable element referred to in
3 paragraph (1) is a project or element—

4 “(A) that has been authorized for 10 years
5 or more; and

6 “(B) on which an amount that is less than
7 15 percent of the estimated total costs of the
8 project or element (excluding costs of
9 preconstruction engineering and design) has
10 been obligated.”.

11 **SEC. 6. INDEPENDENT REVIEW.**

12 (a) DEFINITIONS.—In this section:

13 (1) AFFECTED STATE.—The term “affected
14 State”, with respect to a water resources project,
15 means a State or portion of a State that—

16 (A) is located, at least partially, within the
17 drainage basin in which the project is carried
18 out; and

19 (B) would be economically or environ-
20 mentally affected as a result of the project.

21 (2) DIRECTOR.—The term “Director” means
22 the Director of Independent Review appointed under
23 subsection (c)(1).

24 (b) PROJECTS SUBJECT TO INDEPENDENT RE-
25 VIEW.—

1 (1) IN GENERAL.—The Secretary shall ensure
2 that each feasibility report, general reevaluation re-
3 port, and environmental impact statement for each
4 water resources project described in paragraph (2) is
5 subject to review by an independent panel of experts
6 established under this section.

7 (2) PROJECTS SUBJECT TO REVIEW.—A water
8 resources project shall be subject to review under
9 paragraph (1) if—

10 (A) the project has an estimated total cost
11 of more than \$25,000,000, including mitigation
12 costs;

13 (B) the Governor of an affected State re-
14 quests the establishment of an independent
15 panel of experts for the project;

16 (C) the Director of the United States Fish
17 and Wildlife Service or the Director of the Na-
18 tional Marine Fisheries Service determines that
19 the project is likely to have significant adverse
20 impacts on fish or wildlife even if any proposed
21 mitigation plans are carried out;

22 (D) the Administrator of the Environ-
23 mental Protection Agency determines that the
24 project is likely to have a significant adverse
25 impact on the environment; or

1 (E) the Secretary determines under para-
2 graph (3) that the project is controversial.

3 (3) CONTROVERSIAL PROJECTS.—

4 (A) IN GENERAL.—The Secretary shall de-
5 termine that a water resources project is con-
6 troversial for the purposes of paragraph (2)(E)
7 if the Secretary finds that—

8 (i) there is a significant public dispute
9 as to the size, nature, or effects of the
10 project;

11 (ii) there is a significant public dis-
12 pute as to the economic or environmental
13 costs or benefits of the project; or

14 (iii) there is a significant public dis-
15 pute as to the benefits to the communities
16 affected by the project of a project alter-
17 native that—

18 (I) was not the focus of the feasi-
19 bility report, general reevaluation re-
20 port, or environmental impact state-
21 ment for the project; or

22 (II) was not considered in the
23 feasibility report, general reevaluation
24 report, or environmental impact state-
25 ment for the project.

1 (B) WRITTEN REQUESTS.—Not later than
2 30 days after the date on which the Secretary
3 receives a written request of an interested
4 party, or on the initiative of the Secretary, the
5 Secretary shall determine whether a project is
6 controversial.

7 (c) DIRECTOR OF INDEPENDENT REVIEW.—

8 (1) APPOINTMENT.—The Director of the Office
9 of Management and Budget shall appoint in the Of-
10 fice of the Inspector General of the Department of
11 the Army a Director of Independent Review.

12 (2) QUALIFICATIONS.—The Director of the Of-
13 fice of Management and Budget shall select the Di-
14 rector from among individuals who are distinguished
15 experts in biology, hydrology, engineering, econom-
16 ics, or another discipline relating to water resources
17 management.

18 (3) LIMITATION ON APPOINTMENTS.—The Di-
19 rector of the Office of Management and Budget
20 shall not appoint an individual to serve as the Direc-
21 tor if the individual has a financial interest in or
22 close professional association with any entity with a
23 strong financial interest in a water resources project
24 that, on the date of appointment, is—

25 (A) under construction;

1 (B) in the preconstruction engineering and
2 design phase; or

3 (C) under feasibility or reconnaissance
4 study by the Corps.

5 (4) TERMS.—

6 (A) IN GENERAL.—The term of a Director
7 appointed under this subsection shall be 6
8 years.

9 (B) TERM LIMIT.—An individual may
10 serve as the Director for not more than 2 non-
11 consecutive terms.

12 (5) DUTIES.—The Director shall establish a
13 panel of experts to review each water resources
14 project that is subject to review under subsection
15 (b).

16 (d) ESTABLISHMENT OF PANELS.—

17 (1) IN GENERAL.—After the Secretary selects a
18 preferred alternative for a water resources project
19 subject to review under subsection (b) in a formal
20 draft feasibility report, draft general reevaluation re-
21 port, or draft environmental impact statement, the
22 Director shall establish a panel of experts to review
23 the project.

24 (2) MEMBERSHIP.—A panel of experts estab-
25 lished by the Director for a project shall be com-

1 posed of not less than 5 nor more than 9 inde-
2 pendent experts, including 1 or more biologists, engi-
3 neers, and economists, who represent a range of
4 areas of expertise.

5 (3) LIMITATION ON APPOINTMENTS.—The Di-
6 rector shall not appoint an individual to serve on a
7 panel of experts for a project if the individual has
8 a financial interest in or close professional associa-
9 tion with any entity with a strong financial interest
10 in the project.

11 (4) CONSULTATION.—The Director may consult
12 with the Academy in developing lists of individuals
13 to serve on panels of experts under this section.

14 (5) COMPENSATION.—An individual serving on
15 a panel of experts under this section shall be com-
16 pensated at a rate of pay to be determined by the
17 Inspector General.

18 (6) TRAVEL EXPENSES.—A member of a panel
19 of experts under this section shall be allowed travel
20 expenses, including per diem in lieu of subsistence,
21 at rates authorized for an employee of an agency
22 under subchapter I of chapter 57 of title 5, United
23 States Code, while away from the home or regular
24 place of business of the member in the performance
25 of the duties of the panel.

1 (e) DUTIES OF PANELS.—A panel of experts estab-
2 lished for a water resources project under this section
3 shall—

4 (1) review each feasibility report, general re-
5 evaluation report, and environmental impact state-
6 ment prepared for the project;

7 (2) assess the adequacy of the economic and
8 scientific models used by the Secretary in reviewing
9 the project to ensure that—

10 (A) the best available economic and sci-
11 entific methods of analysis have been used; and

12 (B) any regional effects on navigation sys-
13 tems have been examined;

14 (3) receive from the public written and oral
15 comments concerning the project;

16 (4) not later than the deadline established
17 under subsection (f), submit to the Secretary a re-
18 port concerning the economic, engineering, and envi-
19 ronmental analysis of the project, including the con-
20 clusions of the panel, with particular emphasis on
21 areas of public controversy, with respect to the feasi-
22 bility report, general reevaluation report, or environ-
23 mental impact statement; and

24 (5) not later than 30 days after the date of
25 issuance of a final feasibility report, final general re-

1 evaluation report, or final environmental impact
2 statement, but prior to the entry of a record of deci-
3 sion, submit to the Secretary a brief report stating
4 the views of the panel on the extent to which the
5 final analysis adequately addresses issues or con-
6 cerns raised by each earlier evaluation by the panel.

7 (f) DURATION OF PROJECT REVIEWS.—

8 (1) DEADLINE.—Except as provided in para-
9 graph (2), not later than 180 days after the date of
10 establishment of a panel of experts for a water re-
11 sources project under this section, the panel shall
12 complete each required review of the project and all
13 other duties of the panel relating to the project
14 (other than the duties described in subsection
15 (e)(5)).

16 (2) EXTENSION OF DEADLINE FOR REPORT ON
17 ECONOMIC, ENGINEERING, AND ENVIRONMENTAL
18 ANALYSIS.—A panel of experts shall submit to the
19 Secretary a report required under subsection (e)(4)
20 not later than 240 days after the date of issuance
21 of a feasibility report, general reevaluation report, or
22 environmental impact statement, if the panel sub-
23 mits to the Director before the end of the 180-day
24 period described in paragraph (1), and the Director

1 approves, a request for a 60-day extension of the
2 deadline established under that paragraph.

3 (g) RECOMMENDATIONS OF PANEL.—

4 (1) CONSIDERATION BY SECRETARY.—

5 (A) IN GENERAL.—If the Secretary re-
6 ceives a report on a water resources project
7 from a panel of experts under this section by
8 the deadline established under subsection (f),
9 the Secretary shall, before entering a final
10 record of decision for the water resources
11 project—

12 (i) take into consideration any rec-
13 ommendations contained in the report; and

14 (ii) prepare a written explanation for
15 any recommendations not adopted.

16 (B) INCONSISTENT RECOMMENDATIONS
17 AND FINDINGS.—Recommendations and find-
18 ings of the Secretary that are inconsistent with
19 the recommendations and findings of a panel of
20 experts under this section shall not be entitled
21 to deference in a judicial proceeding.

22 (2) PUBLIC REVIEW; SUBMISSION TO CON-
23 GRESS.—After receiving a report on a water re-
24 sources project from a panel of experts under this

1 section (including a report under subsection (e)(5)),
2 the Secretary shall—

3 (A) make a copy of the report (and any
4 written explanation of the Secretary on rec-
5 ommendations contained in the report) available
6 for public review; and

7 (B) include a copy of the report (and any
8 written explanation of the Secretary) in any re-
9 port submitted to Congress concerning the
10 project.

11 (h) COSTS.—

12 (1) LIMITATION ON COST OF REVIEW.—The
13 cost of conducting a review of a water resources
14 project under this section shall not exceed—

15 (A) \$250,000 for a project, if the total cost
16 of the project in current year dollars is less
17 than \$50,000,000; and

18 (B) 0.5 percent of the total cost of the
19 project in current year dollars, if the total cost
20 is \$50,000,000 or more.

21 (2) TREATMENT.—The cost of conducting a re-
22 view of a project under this section shall be consid-
23 ered to be part of the total cost of the project.

24 (3) COST SHARING.—A review of a project
25 under this section shall be subject to section 105(a)

1 of the Water Resources Development Act of 1986
2 (33 U.S.C. 2215(a)).

3 (4) WAIVER OF LIMITATION.—The Secretary
4 may waive a limitation under paragraph (1) if the
5 Secretary determines that the waiver is appropriate.

6 (i) APPLICABILITY OF FEDERAL ADVISORY COM-
7 MITTEE ACT.—The Federal Advisory Committee Act (5
8 U.S.C. App.) shall apply to a panel of experts established
9 under this section.

10 **SEC. 7. COST SHARING.**

11 (a) INLAND WATERWAYS.—

12 (1) CONSTRUCTION.—Section 102(a) of the
13 Water Resources Development Act of 1986 (33
14 U.S.C. 2212(a)) is amended—

15 (A) in the first sentence, by striking “One-
16 half of the costs of construction” and inserting
17 “Forty-five percent of the costs of construc-
18 tion”; and

19 (B) by striking the second sentence and in-
20 serting “Fifty-five percent of those costs shall
21 be paid only from amounts appropriated from
22 the Inland Waterways Trust Fund.”.

23 (2) OPERATION AND MAINTENANCE.—Section
24 102 of the Water Resources Development Act of

1 1986 (33 U.S.C. 2212) is amended by striking sub-
2 sections (b) and (c) and inserting the following:

3 “(b) OPERATION AND MAINTENANCE.—

4 “(1) FEDERAL SHARE.—The Federal share of
5 the cost of operation and maintenance shall be 100
6 percent in the case of—

7 “(A) a project described in paragraph (1)
8 or (2) of subsection (a); or

9 “(B) the portion of the project authorized
10 by section 844 that is allocated to inland navi-
11 gation.

12 “(2) SOURCE OF FEDERAL SHARE.—

13 “(A) GENERAL FUND.—In the case of a
14 project described in paragraph (1) or (2) of
15 subsection (a) with respect to which the cost of
16 operation and maintenance is less than or equal
17 to 1 cent per ton mile, or in the case of the por-
18 tion of the project authorized by section 844
19 that is allocated to inland navigation, the Fed-
20 eral share under paragraph (1) shall be paid
21 only from amounts appropriated from the gen-
22 eral fund of the Treasury.

23 “(B) GENERAL FUND AND INLAND WATER-
24 WAYS TRUST FUND.—In the case of a project
25 described in paragraph (1) or (2) of subsection

1 (a) with respect to which the cost of operation
2 and maintenance is greater than 1 but less than
3 or equal to 10 cents per ton mile—

4 “(i) 75 percent of the Federal share
5 under paragraph (1) shall be paid only
6 from amounts appropriated from the gen-
7 eral fund of the Treasury; and

8 “(ii) 25 percent of the Federal share
9 under paragraph (1) shall be paid only
10 from amounts appropriated from the In-
11 land Waterways Trust Fund.

12 “(C) INLAND WATERWAYS TRUST FUND.—
13 In the case of a project described in paragraph
14 (1) or (2) of subsection (a) with respect to
15 which the cost of operation and maintenance is
16 greater than 10 cents per ton mile, 100 percent
17 of the Federal share under paragraph (1) shall
18 be paid only from amounts appropriated from
19 the Inland Waterways Trust Fund.”.

20 (b) FLOOD DAMAGE REDUCTION.—Section 103 of
21 the Water Resources Development Act of 1986 (33 U.S.C.
22 2213) is amended—

23 (1) in subsections (a)(2) and (b) by striking
24 “35” each place it appears and inserting “50”;

1 (2) in the paragraph heading of subsection
2 (a)(2), by striking “35 PERCENT MINIMUM” and in-
3 serting “MINIMUM”; and

4 (3) in the paragraph heading of subsection (b),
5 by striking “35” in and inserting “50”.

6 (c) BEACH REPLACEMENT.—Section 103(d)(2) of the
7 Water Resources Development Act of 1986 (33 U.S.C.
8 2213(d)(2)) is amended by striking subparagraph (A) and
9 inserting the following:

10 “(A) IN GENERAL.—The non-Federal cost
11 of the periodic nourishment of a project, or any
12 measure for shore protection or beach erosion
13 control for a project, shall be 65 percent.”.

14 **SEC. 8. COST CONTROLS.**

15 (a) INCREASES IN TOTAL COSTS.—Section 902 of the
16 Water Resources Development Act of 1986 (33 U.S.C.
17 2280) is amended by striking “In order” and all that fol-
18 lows through “project shall be” and inserting “In order
19 to ensure against cost overruns, with respect to a water
20 resources project that an Act of Congress authorizes the
21 Secretary to carry out, each total cost specified for the
22 project in an Act, or in accompanying legislative report
23 language, shall be”.

24 (b) REQUIREMENT OF PAYMENT OF NON-FEDERAL
25 SHARE AFTER WAIVER.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of law, in the case of a water resources
3 project or a separable element of a water resources
4 project described in paragraph (2), the Secretary
5 may obligate funds authorized for the project or sep-
6 arable element only after the non-Federal interests
7 have demonstrated willingness and the ability to pro-
8 vide 100 percent of the non-Federal share required
9 to be paid, under title I of the Water Resources De-
10 velopment Act of 1986 (33 U.S.C. 2211 et seq.),
11 with respect to the project or separable element.

12 (2) WATER RESOURCES PROJECTS.—A water
13 resources project or separable element referred to in
14 paragraph (1) is a water resources project or sepa-
15 rable element—

16 (A) that was authorized on or after No-
17 vember 17, 1986, but before the date of enact-
18 ment of this Act;

19 (B) with respect to which the requirement
20 that the non-Federal interests pay a non-Fed-
21 eral share has been waived under a provision of
22 law other than section 103(m) of the Water Re-
23 sources Development Act of 1986 (33 U.S.C.
24 2213(m)); and

1 (C) for which, as of the date of enactment
2 of this Act, the Secretary has not entered into
3 a project cooperation agreement with the non-
4 Federal interests.

5 **SEC. 9. PUBLIC ACCESS TO INFORMATION.**

6 (a) **IN GENERAL.**—Except as provided in subsection
7 (c), the Secretary shall ensure that information relating
8 to the analysis or justification of a water resources project
9 by the Corps is made available—

10 (1) to any individual on request; and

11 (2) to the public on the Internet.

12 (b) **TYPES OF INFORMATION.**—Information con-
13 cerning a water resources project that shall be made avail-
14 able under subsection (a) shall include—

15 (1) all information that has been made available
16 to the non-Federal interests with respect to the
17 project; and

18 (2) all data, analytical documents, and other in-
19 formation considered or used by the Corps in the
20 analysis or justification of the project.

21 (c) **EXCEPTION FOR TRADE SECRETS.**—

22 (1) **IN GENERAL.**—Under subsection (a), the
23 Secretary shall not make available any information
24 that the Secretary determines to be a trade secret of

1 the person that provided the information to the
2 Corps.

3 (2) CRITERIA FOR TRADE SECRETS.—The Sec-
4 retary shall consider information to be a trade secret
5 only if—

6 (A) the person that provided the informa-
7 tion to the Corps—

8 (i) has not disclosed the information
9 to any person other than—

10 (I) an officer or employee of the
11 United States or a State or local gov-
12 ernment;

13 (II) an employee of the person
14 that provided the information to the
15 Corps; or

16 (III) a person that is bound by a
17 confidentiality agreement; and

18 (ii) has taken reasonable measures to
19 protect the confidentiality of the informa-
20 tion and demonstrates an intent to con-
21 tinue to take such measures;

22 (B) the information is not required to be
23 disclosed, or otherwise made available, to the
24 public under any other Federal or State law;
25 and

1 (C) disclosure of the information is likely
2 to cause substantial harm to the competitive po-
3 sition of the person that provided the informa-
4 tion to the Corps.

○