

110TH CONGRESS
2D SESSION

S. 2842

To require the Secretary of the Interior to carry out annual inspections of canals, levees, tunnels, dikes, pumping plants, dams, and reservoirs under the jurisdiction of the Secretary, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 10, 2008

Mr. REID (for himself, Mr. BINGAMAN, Mr. SALAZAR, and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To require the Secretary of the Interior to carry out annual inspections of canals, levees, tunnels, dikes, pumping plants, dams, and reservoirs under the jurisdiction of the Secretary, 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 “Aging Water Infra-
5 structure and Maintenance Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) INSPECTION.—The term “inspection”
2 means an inspection of a project facility carried out
3 by the Secretary—

4 (A) to assess and determine the general
5 condition of the project facility; and

6 (B) to estimate the value of property, and
7 the size of the population, that would be at risk
8 if the project facility fails, is breached, or other-
9 wise allows flooding to occur.

10 (2) PROJECT FACILITY.—The term “project fa-
11 cility” means any part or incidental feature of a rec-
12 lamation or irrigation project (including any canal,
13 levee, tunnel, dike, pumping plant, dam, or res-
14 ervoir) that is—

15 (A) under the jurisdiction of the Secretary
16 (including any facility owned by the Depart-
17 ment of the Interior); and

18 (B) not covered by the Reclamation Safety
19 of Dams Act of 1978 (43 U.S.C. 506 et seq.).

20 (3) RESERVED PROJECT FACILITY.—The term
21 “reserved project facility” means any project facility
22 at which the Secretary carries out the operation and
23 maintenance of the project facility.

1 (4) SECRETARY.—The term “Secretary” means
2 the Secretary of the Interior, acting through the
3 Commissioner of Reclamation.

4 (5) TRANSFERRED PROJECT FACILITY.—The
5 term “transferred project facility” means a project
6 facility the operation and maintenance of which is
7 carried out by a non-Federal entity.

8 **SEC. 3. INSPECTION OF PROJECT FACILITIES.**

9 (a) INSPECTIONS.—

10 (1) INITIAL INSPECTION PERIOD.—

11 (A) IN GENERAL.—In accordance with
12 subparagraph (B), not later than 1 year after
13 the date of enactment of this Act, the Secretary
14 shall conduct an inspection of not less than 75
15 percent of all project facilities.

16 (B) SELECTION OF PROJECT FACILI-
17 TIES.—In selecting project facilities to inspect
18 during the initial inspection period under sub-
19 paragraph (A), the Secretary shall take into ac-
20 count the risk posed by each project facility to
21 public health or safety, or property.

22 (2) FINAL INSPECTION PERIOD.—Not later
23 than 2 years after the date of enactment of this Act,
24 the Secretary shall conduct an inspection of each

1 project facility not inspected by the Secretary during
2 the initial inspection period under paragraph (1)(A).

3 (3) REIMBURSEMENT RELATING TO INSPEC-
4 TIONS OF TRANSFERRED PROJECT FACILITIES.—
5 Notwithstanding any applicable law (including regu-
6 lations), with respect to an inspection of a trans-
7 ferred project facility carried out under this sub-
8 section, the Secretary may not request from the non-
9 Federal entity that carries out the operation and
10 maintenance of the transferred project facility reim-
11 bursement for costs arising from the inspection.

12 (4) PERIODIC REVIEW OF INSPECTIONS.—Not
13 later than 3 years after the date described in para-
14 graph (2) and every 3 years thereafter, the Sec-
15 retary shall carry out a review of each inspection
16 carried out under paragraphs (1) and (2).

17 (b) USE OF INSPECTION DATA.—The Secretary shall
18 use the data collected by the Secretary through the con-
19 duct of the inspections under paragraphs (1) and (2) of
20 subsection (a)—

21 (1) to develop for each reserved project facility
22 a detailed schedule for the conduct of regular main-
23 tenance;

1 (2) to develop for, and provide to, each non-
2 Federal entity that carries out the operation and
3 maintenance of a transferred project facility—

4 (A) a detailed schedule for the conduct of
5 regular maintenance; and

6 (B) a document that contains guidance de-
7 scribing the manner by which to comply with
8 the schedule described in subparagraph (A);
9 and

10 (3) to create a national priorities list that con-
11 tains a description of each project facility that re-
12 quires the most urgent maintenance with respect to
13 the infrastructure of the project facility.

14 (c) NATIONAL PRIORITIES LIST.—

15 (1) ANNUAL REVIEW.—Not later than 1 year
16 after the date on which the Secretary develops the
17 national priorities list under subsection (b)(3) and
18 annually thereafter, the Secretary shall carry out a
19 review of each project facility to update the list for
20 the year covered by the review.

21 (2) PUBLICATION.—The national priorities list
22 shall be published by the Secretary in the budget
23 justification of the Department of the Interior for
24 the year covered by the national priorities list.

1 (d) STATE PARTICIPATION.—In conducting an in-
 2 spection of a project facility under subsection (a), the Sec-
 3 retary shall—

4 (1) notify the appropriate State agency of the
 5 State in which the project facility is located of the
 6 inspection;

7 (2) allow the State agency described in para-
 8 graph (1) to participate in the inspection of the
 9 project facility; and

10 (3) provide to the State agency described in
 11 paragraph (1) a report that describes the results of
 12 the inspection of the project facility.

13 **SEC. 4. FEDERAL STANDARDS AND GUIDELINES FOR**
 14 **PROJECT FACILITIES.**

15 (a) PROMULGATION OF STANDARDS.—

16 (1) IN GENERAL.—Not later than 180 days
 17 after the date of enactment of this Act, in accord-
 18 ance with paragraph (2), the Secretary shall promul-
 19 gate final regulations to establish standards for the
 20 condition and maintenance of project facilities.

21 (2) CONTENTS.—The regulations promulgated
 22 by the Secretary under paragraph (1) shall contain
 23 a detailed description of each condition with which
 24 a project facility shall comply to be eligible to be
 25 considered by the Secretary—

1 (A) to function properly and in accordance
 2 with the objectives of the project facility; and

3 (B) to operate in a manner to ensure, to
 4 the maximum extent practicable—

5 (i) the safety of populations located in
 6 close proximity to the project facility; and

7 (ii) the preservation of property lo-
 8 cated in close proximity to the project fa-
 9 cility.

10 (b) PROMULGATION OF GUIDELINES.—

11 (1) IN GENERAL.—Not later than 1 year after
 12 the date of enactment of this Act, in accordance
 13 with paragraph (2), the Secretary shall promulgate
 14 final regulations to establish guidelines—

15 (A) to implement this Act; and

16 (B) to ensure compliance with the regula-
 17 tions promulgated by the Secretary under sub-
 18 section (a).

19 (2) CONTENTS.—The regulations promulgated
 20 by the Secretary under paragraph (1) shall reflect
 21 an agency-wide policy with respect to the type, and
 22 proportion of, activities relating to the operation and
 23 maintenance of a project facility that may be appro-
 24 priately carried out by a non-Federal entity, taking
 25 into account—

1 (A) any economic benefit that may result
 2 from the carrying out of the activities by a non-
 3 Federal entity; and

4 (B) the capabilities of the non-Federal en-
 5 tity to carry out the activities.

6 **SEC. 5. MODIFICATION OF PROJECT FACILITIES.**

7 (a) IN GENERAL.—The Secretary shall carry out or,
 8 in accordance with subsection (b), provide to a non-Fed-
 9 eral entity financial support to carry out, any modification
 10 to a project facility that the Secretary determines to be
 11 reasonably required to preserve the structural safety of the
 12 project facility.

13 (b) REIMBURSEMENT OF COSTS ARISING FROM THE
 14 REPAIR OF STRUCTURALLY DEFICIENT TRANSFERRED
 15 PROJECT FACILITIES.—

16 (1) COMPLIANT TRANSFERRED PROJECT FA-
 17 CILITIES.—

18 (A) IN GENERAL.—Subject to subpara-
 19 graph (B), to reimburse a non-Federal entity
 20 for costs arising from the carrying out of repair
 21 activities to improve the safety of a transferred
 22 project facility, the Secretary may provide to
 23 the non-Federal entity an amount equal to 65
 24 percent of the costs incurred by the non-Fed-
 25 eral entity to carry out the repair activities.

1 (B) DETERMINATION OF SECRETARY.—

2 The Secretary shall reimburse the non-Federal
3 entity described in subparagraph (A) if the Sec-
4 retary determines that—

5 (i) the transferred project facility of
6 the non-Federal entity is structurally defi-
7 cient; and

8 (ii) the structural deficiency is not a
9 result of noncompliance with any regula-
10 tion promulgated by the Secretary under
11 section 4.

12 (2) NONCOMPLIANT TRANSFERRED PROJECT
13 FACILITIES.—

14 (A) IN GENERAL.—The Secretary may
15 carry out any repair activity that the Secretary
16 determines to be necessary to minimize the risk
17 of imminent harm to public health or safety, or
18 property—

19 (i) if the Secretary determines that—

20 (I) the transferred project facility
21 is structurally deficient; and

22 (II) the structural deficiency is a
23 result of noncompliance with any reg-
24 ulation promulgated by the Secretary
25 under section 4; and

1 (ii) after the date on which the Sec-
 2 retary consults with the non-Federal entity
 3 that carries out the operation and mainte-
 4 nance of the transferred project facility.

5 (B) REIMBURSEMENT.—In accordance
 6 with any applicable law (including regulations)
 7 or agreement, the Secretary may seek reim-
 8 bursement from the non-Federal entity that
 9 carries out the operation and maintenance of
 10 the transferred project facility described in sub-
 11 paragraph (A) for costs arising from each re-
 12 pair activity carried out by the Secretary under
 13 that subparagraph.

14 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

15 (a) INSPECTION OF PROJECT FACILITIES.—There
 16 are authorized to be appropriated to the Secretary to carry
 17 out section 3—

18 (1) \$5,000,000 for fiscal year 2009; and
 19 (2) \$1,500,000 for each of fiscal years 2010
 20 through 2013.

21 (b) MODIFICATION OF PROJECT FACILITIES.—There
 22 are authorized to be appropriated such sums as are nec-
 23 essary to carry out section 5.

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