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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

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

3 SEC. 2. DEFINITIONS.

In this Act:

4 (1) ACADEMY.—The term “Academy” means

the National Academy of Sciences.
(2) Corps.—The term “Corps” means the Corps of Engineers.

(3) Principles and Guidelines.—The term “Principles and Guidelines” means the principles and guidelines of the Corps for water resources projects (consisting of Engineer Regulation 1105–2–100 and Engineer Pamphlet 1165–2–1).

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

SEC. 3. PROJECT BACKLOG.

(a) Review and Report on Water Resources Construction Backlog.—

(1) Definitions.—In this subsection:

(A) Active.—The term “active”, with respect to a project, means that—

(i) the project is economically justified;

(ii) the project has received funding for—

(I) preconstruction engineering and design; or

(II) construction; and

(iii) the non-Federal interests with respect to the project have demonstrated
willingness and the ability to provide the required non-Federal share.

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

(i) has doubtful economic justification;

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

(iii) is a project for which the non-Federal interests are unable to provide required cooperation.

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

(i) the project is not economically justified;

(ii) the project no longer meets current and prospective needs as described in a feasibility report or general reevaluation report; or

(iii) the non-Federal interests with respect to the project have not demonstrated willingness or the ability to provide the required non-Federal share.

(D) PROJECT.—The term “project” means a water resources project, or a separable ele-
ment of a water resources project, that is au-

thorized by law for funding from—

(i) the Construction, General, appro-

priations account; or

(ii) the construction portion of the

Flood Control, Mississippi River and Trib-

utaries, appropriations account.

(2) STUDY.—

(A) IN GENERAL.—Not later than 1 year

after the date of enactment of this Act, the Sec-

retary shall submit to the Committee on Envi-

ronment and Public Works of the Senate and

the Committee on Transportation and Infra-

structure of the House of Representatives a

study consisting of—

(i) the list described in subparagraph

(B); and

(ii) the information described in sub-

paragraph (C).

(B) LIST.—The list referred to in subpara-

graph (A) is a list of all authorized water re-

sources projects—

(i) that have not been commenced; or

(ii) the construction of which has not

been completed.
(C) REQUIRED INFORMATION.—Each project on the list described in subparagraph (B) shall be accompanied by information on—

(i) the primary purpose of the project;

(ii) the year in which construction of the project was commenced;

(iii) the total cost of the project in current year dollars;

(iv) the cost-benefit ratio of the project, determined based on current discount rates;

(v) the estimated annual benefits and annual costs of the project;

(vi) the remaining additional benefits and the remaining additional costs to complete construction of the project (including the ratio that remaining benefits bears to remaining costs);

(vii)(I) the year during which the most recent major studies of the feasibility and design of the project were completed; and

(II) the year during which the most recent environmental impact statement or
environmental assessment for the project was completed;

(viii) the date of the last year for which economic data that was included in the most recent analysis of the feasibility and justification of the project was collected;

(ix) the status of each project as—

(I) reconnaissance, preconstruction engineering and design, or construction; and

(II) active, deferred, or inactive;

and

(x) the matters described in paragraph (3) for each particular type of project.

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

(A) in the case of a flood damage reduction project—

(i) the extent to which the project reflects national flood damage reduction priorities as established by the Federal Emergency Management Agency;
(ii)(I) the level of flood protection provided; and

(II) to the maximum extent practicable, the extent to which the project is based on projected growth and the basis for each projection of growth; and

(iii) the extent to which the project—

(I) restores natural aquatic ecosystem functions; and

(II) avoids adverse environmental impacts and risk before implementation of mitigation activities;

(B) in the case of a navigation project—

(i)(I) the extent to which the economic benefits of the project are based on existing levels of commercial traffic rather than projected growth in commercial traffic; and

(II) to the maximum extent practicable, the extent to which the project is based on projected growth and the basis for each projection of growth; and

(ii) the extent of the likely environmental benefits of the project, including the extent of—
(I) remediation of contaminated sediments, or reuse of dredged material, to restore aquatic habitat; and

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

(C) in the case of an environmental restoration project—

(i) the extent to which the project—

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

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

(ii) the extent to which the project addresses critical national conservation priorities, including preservation and protection of endangered and threatened species or habitat of endangered and threatened species.

(4) MEASUREMENT AND REPORTING.—

(A) IN GENERAL.—The Secretary shall use objective and quantifiable standards for measuring and reporting the information required to be submitted under paragraph (3).
(B) ALTERNATIVE METHOD OF REPORTING.—In any case in which the information required to be submitted under subparagraph (B)(ii) or (C) of paragraph (3) cannot be quantified, the information shall be reported through an objective description of the benefits and impacts of the applicable project.

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

(A) any person on request; and

(B) the public on the Internet.

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

“SEC. 1001. PROJECT DEAUTHORIZATIONS.

“(a) DEFINITIONS.—In this section:

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

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

“(i) the acquisition of land, an easement, or a right-of-way; or

“(ii) the performance of physical work under a construction contract;
“(B) with respect to an environmental protection and restoration project—

“(i) the acquisition of land, an easement, or a right-of-way primarily to facilitate the restoration of wetland or similar habitat; or

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

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

“(II) to construct a new environmental protection or restoration measure;

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

“(i) the acquisition of land, an easement, or a right-of-way; or

“(ii) the performance of physical work under a construction contract for a structural or a nonstructural measure; and

“(D) with respect to any project that is not described in subparagraph (A), (B), or (C), the performance of physical work under a construction contract.
“(2) INACTIVE.—The term ‘inactive’, with respect to a project, means that—

“(A) the project is not economically justified;

“(B) the project no longer meets current and prospective needs as described in a feasibility report or general reevaluation report;

“(C) the non-Federal interests with respect to the project have not demonstrated willingness or the ability to provide the required non-Federal share; or

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

“(ii) an amount that is less than 33 percent of the estimated total costs of the project (excluding costs of preconstruction engineering and design) has been obligated for the project as of the date of enactment of this sub-paragraph.

“(3) PHYSICAL WORK UNDER A CONSTRUCTION CONTRACT.—The term ‘physical work under a con-
struction contract’ does not include any activity relating to—

“(A) project planning;

“(B) engineering and design;

“(C) relocation; or

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

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

“(A) the Construction, General, appropriations account; or

“(B) the construction portion of the Flood Control, Mississippi River and Tributaries, appropriations account.

“(b) INACTIVE PROJECTS.—

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

“(2) DEAUTHORIZATION.—An inactive project shall be deauthorized effective beginning 1 year after the date of submission of a list under paragraph (1) that includes the project unless, during that 1-year period, Congress reauthorizes the project in accord-
ance with the Corps of Engineers Modernization and
Improvement Act of 2002 and the amendments
made by that Act.

“(c) PROJECTS NEVER UNDER CONSTRUCTION.—

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

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

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

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

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

“(B) for which no Federal funds have been
obligated for construction during the 2 consecu-
tive fiscal years preceding the date of submission of the list.

“(2) DEAUTHORIZATION.—A project that is not subject to subsection (b) but for which Federal funds have been obligated for construction of the project shall be deauthorized if Federal funds appropriated specifically for construction of the project, as indicated in an Act of Congress or in accompanying legislative report language, are not obligated for construction of the project during the period of 3 fiscal years following the last fiscal year in which Federal funds were obligated for construction of the project.

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

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

“(2) in the case of any other project, after construction of the project has been completed.

“(f) CONGRESSIONAL NOTIFICATIONS.—On submission of a list under subsection (b), (c), or (d), the Secretary shall notify each Senator in whose State, and each Member of the House of Representatives in whose district, a project on the list is or would be located.
“(g) Final Deauthorization List.—The Secretary shall annually publish in the Federal Register a list of all projects deauthorized under subsections (b), (c), and (d).”.

(c) Waterways.—

(1) Report by Academy.—

(A) In General.—Not later than 1 year after the date of enactment of this Act, the Secretary shall enter into a contract with the Academy to prepare a report on waterways in the Inland Waterways System.

(B) Contents of Report.—The report shall—

(i) review the Inland Waterways System;

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

(iii) provide an analysis of the extent to which prior projections of the commercial traffic carried by each waterway in the System were accurate; and

(iv) based on the information provided under clauses (ii) and (iii)—
(I) identify underused waterways in the System;

(II) propose new economic and environmental uses for underused waterways;

(III) describe statutory and administrative reforms that are needed to ease the transition from the current authorized uses of the System to new economic and environmental uses of the System; and

(IV) recommend which waterways in the System should be decommissioned.

(2) DECOMMISSIONING MECHANISM FOR UNDERUSED WATERWAYS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall by regulation establish a mechanism for the decommissioning of waterways that—

(A) are no longer economically justified, based on commercial traffic and current discount rates; or

(B) are no longer in the national interest.

(d) REPORT ON PRIORITIZATION OF PROJECTS.—
(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Water Resources Council established under title I of the Water Resources Planning Act (42 U.S.C. 1962a et seq.) shall submit to Congress a report that prioritizes, within each type of water resources project specified in paragraph (2), authorized water resources projects of the Corps based on the extent to which each water resources project—

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

(B) has a cost-benefit ratio of 1.5 or greater, determined based on current discount rates; and

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

(2) PRIORITIZATION WITHIN EACH PARTICULAR PROJECT TYPE.—The criteria referred to in paragraph (1)(C) are that—

(A) in the case of a flood damage reduction project, the project—

(i) reflects national flood damage reduction priorities established by the Federal Emergency Management Agency;
(ii)(I) provides a 100-year or greater level of flood protection; and

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

(iii)(I) restores natural aquatic ecosystem functions; and

(II) avoids adverse environmental impacts and risk; and

(iv) contains nonstructural features;

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

(i)(I) provides economic benefits based on existing levels of commercial traffic rather than projected growth in commercial traffic; and

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

(ii) provides significant environmental benefits, including—

(I) remediation of contaminated sediments or reuse of dredged material to restore aquatic habitat; and
(II) low adverse environmental impacts and risks of the project; and

(C) in the case of an environmental restoration project, the project—

(i)(I) restores natural hydrologic processes and the spatial extent of aquatic habitat; and

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

(ii) addresses critical national conservation priorities, including preservation and protection of endangered and threatened species or habitat of endangered and threatened species.

(c) REDUCTION OF MISSION CREEP.—

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

(2) MUNICIPAL AND INDUSTRIAL WATER SUPPLY.—Each municipal and industrial water supply project carried out at any Federal expense is deauthorized.
(3) Irrigation.—Each project that has the primary purpose of providing agricultural water supply, and that is authorized to be carried out by the Secretary, is deauthorized.

(4) School Construction.—Beginning on the date of enactment of this Act, the Secretary shall not enter into any contract or other agreement (including any contract or other agreement under the Support for Others Program of the Corps) to construct or renovate any school in the United States, excluding any school on a military base or in support of a military function.

(f) Projects Without Chief’s Reports.—

(1) Point of Order.—It shall not be in order in the Senate to consider any bill, amendment, motion, or conference report that authorizes a water resources project unless a final report from the Chief of Engineers recommending the water resources project, or an alternative to the water resources project, has been submitted to Congress at least 30 days before the date of consideration of the bill, amendment, motion, or conference report.

(2) Waiver.—This subsection may be waived or suspended in the Senate only by the affirmative
vote of three-fifths of the Members, duly chosen and
sworn.

3 SEC. 4. COST-BENEFIT RATIO.

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

(b) REVIEW AND DEAUTHORIZATION OF
PROJECTS.—

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

(2) PROJECTS SUBJECT TO REVIEW.—A water
resources project shall be subject to review under
paragraph (1) if—
(A) the project was authorized before the date on which the review is commenced;

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

(C) an amount that is less than 33 percent of the estimated total costs of the project (excluding costs of preconstruction engineering and design) has been obligated.

(3) DEAUTHORIZATIONS.—

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

(B) PROJECTS.—A project included on the list under subparagraph (A) shall be deauthorized effective beginning 3 years after the date of submission of the list to Congress unless, during that 3-year period, Congress reauthorizes the project.

(4) DEAUTHORIZED PROJECTS FOR WHICH CONSTRUCTION HAS BEEN COMMENCED.—In the case of a water resources project that is deauthorized under paragraph (3) and for which construction
(other than preconstruction engineering and design) has been commenced, the Secretary may take such actions as are necessary with respect to the project to protect public health and safety and the environment.

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

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

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

(3) by adding at the end the following:

“(3) any projected benefit attributable to any increase in the value of privately owned property, increase in the quantity of privately owned property, or increase in the value of privately owned services, that arises from the draining, reduction, or elimination of wetland.”.

SEC. 5. PRINCIPLES AND GUIDELINES.

(a) REALISTIC CONSTRUCTION SCHEDULING.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Academy and appropriate Federal agencies, shall revise the Principles and Guide-
lines to factor into the cost-benefit analysis for each water resources project a more realistic expected timeframe for completion of construction of the water resources project.

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

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

(I) that have not been commenced; or

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

(ii) the resulting impracticability of assuming that Congress will fund the water resources project as if there were no budget constraints; and

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

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

(1) DEFINITION OF REGION.—In this subsection, the term “region”, with respect to the United States, means—

(A) the North and South Atlantic region;
(B) the Great Lakes region;
(C) the Gulf of Mexico region; and
(D) the North and South Pacific region.

(2) REVISION.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Academy, shall revise the Principles and Guidelines to require that feasibility studies, general reevaluation studies, and environmental impact statements for a port or harbor project include detailed and thorough consideration of—

(A) economic impacts of the project on other United States ports in the same region;
(B) cumulative environmental impacts of the project within the region; and
(C) cumulative impacts of the project on overcapacity in the region.

(3) CONSIDERATION OF OTHER PORT OR HARBOR PROJECTS UNDER CONSTRUCTION OR STUDY.—In applying the Principles and Guidelines as revised under paragraph (2) with respect to a port or harbor project, the Secretary shall take into consideration other port or harbor projects in the region that are under construction or under study (other than a reconnaissance study).
Congressional Statement of Objectives.—

Section 209 of the Flood Control Act of 1970 (42 U.S.C. 1962–2) is amended to read as follows:

"SEC. 209. CONGRESSIONAL STATEMENT OF OBJECTIVES.

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

"(b) REVISION OF PRINCIPLES AND GUIDELINES.— Not later than 1 year after the date of enactment of the Corps of Engineers Modernization and Improvement Act of 2002, the Secretary of the Army, in consultation with the National Academy of Sciences, shall revise the principles and guidelines of the Corps of Engineers for water resources projects (consisting of Engineer Regulation 1105–2–100 and Engineer Pamphlet 1165–2–1)—

"(1) to provide for the consideration of environmental restoration costs under economic models of the Corps;

"(2) to incorporate new techniques in risk and uncertainty analysis;

"(3) to eliminate biases and disincentives for nonstructural flood damage reduction projects;

"(4) to incorporate new analytical techniques;

"(5) to provide for the consideration of environmental restoration costs under economic models of the Corps;
“(5) to encourage, to the maximum extent prac-
ticable, the restoration of aquatic ecosystems; and

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

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

“(d) APPLICABILITY TO OUTDATED
UNCONSTRUCTED PROJECTS.—

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

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

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

SEC. 6. INDEPENDENT REVIEW.

(a) Definitions.—In this section:

(1) Affected state.—The term “affected State”, with respect to a water resources project, means a State or portion of a State that—

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

(B) would be economically or environmentally affected as a result of the project.

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

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

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

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

(B) the Governor of an affected State requests the establishment of an independent panel of experts for the project;

(C) the Director of the United States Fish and Wildlife Service or the Director of the National Marine Fisheries Service determines that the project is likely to have significant adverse impacts on fish or wildlife even if any proposed mitigation plans are carried out;

(D) the Administrator of the Environmental Protection Agency determines that the project is likely to have a significant adverse impact on the environment; or
(E) the Secretary determines under para-
graph (3) that the project is controversial.

(3) CONTROVERSIAL PROJECTS.—

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

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

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

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

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

(II) was not considered in the
feasibility report, general reevaluation
report, or environmental impact state-
ment for the project.
(B) Written requests.—Not later than 30 days after the date on which the Secretary receives a written request of an interested party, or on the initiative of the Secretary, the Secretary shall determine whether a project is controversial.

(c) Director of Independent Review.—

(1) Appointment.—The Director of the Office of Management and Budget shall appoint in the Office of the Inspector General of the Department of the Army a Director of Independent Review.

(2) Qualifications.—The Director of the Office of Management and Budget shall select the Director from among individuals who are distinguished experts in biology, hydrology, engineering, economics, or another discipline relating to water resources management.

(3) Limitation on appointments.—The Director of the Office of Management and Budget shall not appoint an individual to serve as the Director if the individual has a financial interest in or close professional association with any entity with a strong financial interest in a water resources project that, on the date of appointment, is—

(A) under construction;
(B) in the preconstruction engineering and
design phase; or

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

(4) TERMS.—

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

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

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

(d) ESTABLISHMENT OF PANELS.—

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

(2) MEMBERSHIP.—A panel of experts estab-
lished by the Director for a project shall be com-
posed of not less than 5 nor more than 9 independent experts, including 1 or more biologists, engineers, and economists, who represent a range of areas of expertise.

(3) LIMITATION ON APPOINTMENTS.—The Director shall not appoint an individual to serve on a panel of experts for a project if the individual has a financial interest in or close professional association with any entity with a strong financial interest in the project.

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

(5) COMPENSATION.—An individual serving on a panel of experts under this section shall be compensated at a rate of pay to be determined by the Inspector General.

(6) TRAVEL EXPENSES.—A member of a panel of experts under this section shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the panel.
(c) DUTIES OF PANELS.—A panel of experts established for a water resources project under this section shall—

(1) review each feasibility report, general reevaluation report, and environmental impact statement prepared for the project;

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

(A) the best available economic and scientific methods of analysis have been used; and

(B) any regional effects on navigation systems have been examined;

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

(4) not later than the deadline established under subsection (f), submit to the Secretary a report concerning the economic, engineering, and environmental analysis of the project, including the conclusions of the panel, with particular emphasis on areas of public controversy, with respect to the feasibility report, general reevaluation report, or environmental impact statement; and

(5) not later than 30 days after the date of issuance of a final feasibility report, final general re-
evaluation report, or final environmental impact
statement, but prior to the entry of a record of deci-
sion, submit to the Secretary a brief report stating
the views of the panel on the extent to which the
final analysis adequately addresses issues or con-
cerns raised by each earlier evaluation by the panel.

(f) Duration of Project Reviews.—

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

(2) Extension of Deadline for Report on
Economic, Engineering, and Environmental
Analysis.—A panel of experts shall submit to the
Secretary a report required under subsection (e)(4)
not later than 240 days after the date of issuance
of a feasibility report, general reevaluation report, or
environmental impact statement, if the panel sub-
mits to the Director before the end of the 180-day
period described in paragraph (1), and the Director
approves, a request for a 60-day extension of the
deadline established under that paragraph.

(g) RECOMMENDATIONS OF PANEL.—

(1) CONSIDERATION BY SECRETARY.—

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

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

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

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

(2) PUBLIC REVIEW; SUBMISSION TO CON-
GRESS.—After receiving a report on a water re-
sources project from a panel of experts under this
section (including a report under subsection (e)(5)),
the Secretary shall—

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

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

(h) COSTS.—

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

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

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

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

(3) COST SHARING.—A review of a project
under this section shall be subject to section 105(a)
of the Water Resources Development Act of 1986 (33 U.S.C. 2215(a)).

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

(i) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to a panel of experts established under this section.

SEC. 7. COST SHARING.

(a) INLAND WATERWAYS.—

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

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

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

(2) OPERATION AND MAINTENANCE.—Section 102 of the Water Resources Development Act of
1986 (33 U.S.C. 2212) is amended by striking subsections (b) and (e) and inserting the following:

“(b) OPERATION AND MAINTENANCE.—

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

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

“(B) the portion of the project authorized by section 844 that is allocated to inland navigation.

“(2) SOURCE OF FEDERAL SHARE.—

“(A) GENERAL FUND.—In the case of a project described in paragraph (1) or (2) of subsection (a) with respect to which the cost of operation and maintenance is less than or equal to 1 cent per ton mile, or in the case of the portion of the project authorized by section 844 that is allocated to inland navigation, the Federal share under paragraph (1) shall be paid only from amounts appropriated from the general fund of the Treasury.

“(B) GENERAL FUND AND INLAND WATERWAYS TRUST FUND.—In the case of a project described in paragraph (1) or (2) of subsection
(a) with respect to which the cost of operation
and maintenance is greater than 1 but less than
or equal to 10 cents per ton mile—

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

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

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

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

(1) in subsections (a)(2) and (b) by striking
“35” each place it appears and inserting “50”;
(2) in the paragraph heading of subsection (a)(2), by striking “35 PERCENT MINIMUM” and inserting “MINIMUM”; and

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

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

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

SEC. 8. COST CONTROLS.

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

(b) REQUIREMENT OF PAYMENT OF NON-FEDERAL SHARE AFTER WAIVER.—
(1) IN GENERAL.—Notwithstanding any other provision of law, in the case of a water resources project or a separable element of a water resources project described in paragraph (2), the Secretary may obligate funds authorized for the project or separable element only after the non-Federal interests have demonstrated willingness and the ability to provide 100 percent of the non-Federal share required to be paid, under title I of the Water Resources Development Act of 1986 (33 U.S.C. 2211 et seq.), with respect to the project or separable element.

(2) WATER RESOURCES PROJECTS.—A water resources project or separable element referred to in paragraph (1) is a water resources project or separable element—

(A) that was authorized on or after November 17, 1986, but before the date of enactment of this Act;

(B) with respect to which the requirement that the non-Federal interests pay a non-Federal share has been waived under a provision of law other than section 103(m) of the Water Resources Development Act of 1986 (33 U.S.C. 2213(m)); and
(C) for which, as of the date of enactment of this Act, the Secretary has not entered into a project cooperation agreement with the non-Federal interests.

SEC. 9. PUBLIC ACCESS TO INFORMATION.

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

(1) to any individual on request; and

(2) to the public on the Internet.

(b) TYPES OF INFORMATION.—Information concerning a water resources project that shall be made available under subsection (a) shall include—

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

(2) all data, analytical documents, and other information considered or used by the Corps in the analysis or justification of the project.

(c) EXCEPTION FOR TRADE SECRETS.—

(1) IN GENERAL.—Under subsection (a), the Secretary shall not make available any information that the Secretary determines to be a trade secret of
the person that provided the information to the Corps.

(2) CRITERIA FOR TRADE SECRETS.—The Secretary shall consider information to be a trade secret only if—

(A) the person that provided the information to the Corps—

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

(I) an officer or employee of the United States or a State or local government;

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

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

(ii) has taken reasonable measures to protect the confidentiality of the information and demonstrates an intent to continue to take such measures;

(B) the information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law; and
(C) disclosure of the information is likely to cause substantial harm to the competitive position of the person that provided the information to the Corps.